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Overview

Court navigators for the pilot project will be trained about what constitutes unauthorized practice of law (UPL) and monitored for avoidance of UPL, but they will not be engaging in the practice of law and so do not need to be directly supervised by an attorney. They will largely act independently to assist unrepresented litigants in the ways that are permitted by law.

The definition of what constitutes the practice of law has been described by the Maryland Attorney General's Office as "inevitably imprecise," 80 Op. Atty. Gen. Md. 138, 141 (1995). That lack of precision presents complications when nonlawyers provide independent assistance to persons with legal problems.

However, the AG has indicated that in such situations nonlawyers are allowed to give other persons information about their legal rights as long as it does not cross over into legal advice: "[T]he simple act of providing *information* about legal rights, as opposed to offering advice about such rights and what to do about them, is not unauthorized." 80 Op. Atty Gen. Md. at 142. Indeed, the "mere conveying of information about a provision of law does not constitute the practice of law," and "a rule to the contrary would grind commerce and government to a halt." 80 Op. Atty Gen. Md. at 142. Rather, "the line of unauthorized practice is potentially crossed when someone who is not a lawyer purports to give professional advice about another person's legal situation or suggests a course of conduct based on an interpretation of the law, [but] the line is not crossed by the unadorned provision of information." 79 *Opinions of the Attorney General* 174 at 175, cited in 80 Op. Atty Gen. Md. at 142.

Further, not all kinds of advice and assistance are prohibited to nonlawyers. Rather, advice and assistance are prohibited if they involve specialized legal knowledge and skill. The Maryland Court of Appeals has stated that the "practice of law includes utilizing legal education, training, and experience to apply the special analysis of the profession to the client's problem." *Attorney Grievance Commission v. Shaw*, 354 Md. 636, 649 (1999). The practice of law involves "much more than merely working with legally-related matters The focus of the inquiry is, in fact, whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent." *Id.* (citations omitted). Accordingly, to the extent that a nonlawyer is providing assistance that does not require the kind of knowledge and skill that lawyers acquire through professional training, it is not the unauthorized practice of law. Thus, various kinds of basic legal, clerical, and mechanical functions can be independently performed by nonlawyers without amounting to the practice of law.

Indeed, the Maryland Attorney General's Office has emphasized that nonlawyers have a role to play in the legal system. For example, in the context of domestic violence cases, the AG observed that "[l]ay advocates could help victims assert legal rights that they would otherwise have no means of pursuing." 80 Op. Atty Gen. Md. at 145. And even in issuing an opinion concluding that nonlawyers could not assist workers compensation claimants, due to a specific

provision in Maryland law that prevented such assistance, the AG remarked, “we feel constrained to point out that there seems to be a number of sound policy reasons for reaching a contrary conclusion. ... [I]n ... simpler cases, claimants (and employers) might well be able to pursue their claims quite competently, and perhaps more economically, with nonlegal assistance.” 65 Op. Atty. Gen. Md. 28, 13 (1980). Nonlawyers benefit the legal system by enabling more access to legal remedies than would otherwise be available, by providing assistance that may be sufficiently competent, and by doing so in a way that is especially cost-effective.

According to the Maryland AG opinions, the key consideration is whether the particular provision of services by nonlawyers would harm consumers. See 90 Op. Atty Gen. Md. 101, 10 (2005), where the AG explains that “the underlying purpose of the prohibition against the unauthorized practice of law ... is, in essence, a consumer protection law.” For example, when a loan officer fills out standard mortgage documents, “there appears to be little consumer benefit to requiring that an attorney complete the form – and little threat that the absence of an attorney will result in the consumer harm that the prohibition against unauthorized practice is designed to prevent.” *Id.* The AG has also pointed out that “expansive interpretation” of what constitutes the practice of law “might raise antitrust issues.” 90 Op. Atty Gen. Md. 101, 107 (2005). As long as nonlawyer assistance benefits consumers, it is in keeping with the spirit of UPL restrictions.

Specific items in the navigator proposal “scope of services”

Obtain preliminary information from litigant to confirm pro se status.

This item does not involve the practice of law. As explained by *Attorney Grievance Commission v. Shaw*, 354 Md. 636, 649 (1999), the question where unauthorized practice is concerned is “whether the activity in question require[s] legal knowledge and skill.” *Id.* This item does not require any legal knowledge and skill, as it would simply involve asking the person whether he or she had an attorney.

Explain scope of navigator project to litigant, explicitly informing litigant that navigators are not lawyers and cannot provide legal representation, including legal advice or advocacy on behalf of the litigant.

This item also does not require legal knowledge and skill, and would be based on information prepared for navigators indicating the limitations to the assistance navigators can provide.

Provide information about any free legal assistance for which the litigant may be eligible, as well as other self-help assistance and materials, and resources available on the internet.

This item merely consists of informing persons where else information and assistance can be obtained, and accordingly in no way involves the application of law.

Provide a scripted description of rent escrow process, including remedies available and elements that have to be established for each remedy, and answer questions, including basic legal questions, posed by the litigant.

As long as the navigator merely provided information about the law, the navigator would not be engaged in unauthorized practice. See 80 Op. Atty Gen. Md. at 142, which indicates that “the simple act of providing *information* about legal rights, as opposed to offering advice about such rights and what to do about them, is not unauthorized.” For example, a social worker may inform a birth parent about his or her statutory right to revoke consent to adoption. See 79 Op. Atty Gen. Md. 174 (1994). See also 80 Op. Atty Gen. Md. at 142, which indicates that “Lay advocates may provide information to victims about their potential legal rights and remedies.”

Navigators may also answer some basic legal questions. For example, 80 Op. Atty Gen. Md. at 143 indicates that nonlawyers may define unfamiliar terms on legal forms as well as give general orientations or overviews of legal proceedings. However, the answers to questions should not involve “specialized knowledge ordinarily beyond the purview of a layperson.” *Id.*

Assist the litigant with the completion of the rent escrow petition and other court forms and answer questions about the forms.

See 80 Op. Atty Gen. Md. at 139, which states that a lay advocate may assist pro se litigants in “preparing a legal pleading or other legal document by defining unfamiliar terms on a form [and] explaining where on a form the victim is to provide certain information” See also *Lukas v. Bar Association of Montgomery County*, 35 Md. App. 442, 448, 371 A.2d 669, *cert. denied*, 280 Md. 733 (1977), which indicates that the performance of “mechanical functions,” such as the completion of forms or clerical work, does not constitute the practice of law. *Id.* The navigator can make sure that the person understands the form and fills it out as accurately and completely as possible.

Provide a general description of the courtroom process and describe the roles of the clerk, judge, housing inspector, landlord, and landlord's agent.

See 80 Op. Atty Gen. Md. at 138, which states that a lay advocate may provide persons with “basic information about the manner in which judicial proceedings are conducted.” Accordingly, “Lay advocates may inform victims about purely nonlegal, basic matters such as appropriate attire, where to sit, and so forth. They may also provide a general orientation or overview about the kind of proceeding involved. This kind of information is not legal advice.” *Id.* at 143. They cannot provide more particular or individualized information, such as how to present a case, how to call witnesses, how to cross-examine witnesses, and the like. *Id.* As long as the navigator provides basic and general information about the legal process, it is not encroaching on the practice of law.

Inform litigant generally what issues may arise during courtroom proceedings and how they may be handled.

As long as the navigator merely describes the courtroom process and legal actions and remedies that are available in that context – and does not tailor the information to the specifics of a person’s case – that is not the unauthorized practice of law. See 80 Op. Atty Gen. Md. at 138. For example, if a tenant asked what she could do if the landlord stated that the housing code violations had been fixed (but they had not been), the navigator could say that sometimes tenants in such situations have asked for, and courts have ordered, a reinspection. It should be noted that navigators will have some information about the court process that comes from research into what happens in the courtroom that is not actually based on legal training but merely reflects factual information about the process. The navigator can say what has been done in such situations but cannot say that the tenant is *legally entitled* to a reinspection or that she *should* ask for a reinspection, as the former requires specialized legal knowledge to determine and the latter constitutes legal advice. But saying that reinspections have in fact been granted by courts is simple factual information, not based on legal analysis and not amounting to legal advice.

While providing information, the navigator has to avoid helping the tenant decide what to do. As the AG has explained, the nonlawyer should not help persons decide, based on their particular circumstances, whether to invoke any of their rights or pursue any of their potential remedies, as that would be improperly suggesting a “course of conduct.” 80 Op. Atty Gen. at 142.

The navigator must also avoid applying legal analysis to reach conclusions about the law. The navigator must avoid “applying legal principles to problems of any complexity.” *Lukas v. Bar Association of Montgomery County*, 35 Md. App. 442, 448 (1977), *cert. denied*, 250 Md. 733 (1977) (citations omitted). Any answers navigators give to questions about the law should be based on “the most elementary knowledge of law.” *Id.*

Accompany litigant during courtroom proceedings. Assist with organizing and submitting any documents requested by judge. Take notes.

See 80 Op. Atty Gen. Md. 138, 143 (1995), which states that “Lay advocates may sit at trial table or stand by the [litigant] in the courtroom, subject to the discretion of the trial judge, provided they do not engage in any activities otherwise prohibited. They may not hold themselves out as representatives of victims or provide victims with any kind of assistance at trial that constitutes unauthorized practice.”

See also *Lukas v. Bar Association of Montgomery County*, 35 Md. App. 442, 448, 371 A.2d 669, *cert. denied*, 280 Md. 733 (1977), which indicates that the performance of “mechanical functions” does not constitute the practice of law. *Id.* Helping litigants with

organizing and handing over documents that the judge requests are clerical functions that do not require legal skill. The same applies to taking notes on what happens in the courtroom, as long as the notes are merely descriptive and do not involve editorial comments or conclusions.

Accompany litigant during any hallway negotiations with opposing attorney, landlord, or landlord representative.

As long as the navigator does not participate in or intervene in the negotiations, the navigator would not be engaged in the practice of law. The mere presence of the navigator in this situation is like being present in court (see above).

Discuss whatever happens with litigant to ensure understanding of and compliance with any court order or settlement agreement. Provide litigant with information pertaining to follow-up steps, such as reinspection and how to restore the case to the court calendar by motion, and remind litigant of any future court date.

As with filling out the form petition, this item would involve going over with the litigant any written orders or oral instructions from the court to the litigant and ensuring that the litigant understood the terms. Further, the provision of information about reinspection and how to restore the case to the calendar amount to information about legal rights and remedies, and as long as the navigator did not advise the litigant whether to pursue these options, the mere provision of the information about their availability would not constitute unauthorized practice.