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David L. McGuffey, CELA*
Kristin M.S. Poland, Associate
Elder Law | Special Needs Law | Estate Planning
**Certified Elder Law Attorney by the National Elder Law Foundation*

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The Practice of Law and the Unauthorized Practice of Law

Every person has a constitutional right to represent himself or herself. However, the right to represent someone else is regulated. Each State regulates the practice of law differently. This memorandum concerns Georgia.¹

In Georgia, the practice of law is defined as: (1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body; (2) Conveyancing; (3) The preparation of legal instruments of all kinds whereby a legal right is secured; (4) The rendering of opinions as to the validity or invalidity of titles to real or personal property; (5) The giving of any legal advice; and (6) Any action taken for others in any matter connected with the law. O.C.G.A. § 15-19-50.

O.C.G.A. § 15-19-51(a) provides that it is **unlawful** for any person other than a duly licensed attorney: (1) To practice or appear as an attorney at law for any person other than himself in any court of this state or before any judicial body; (2) To make it a business to practice as an attorney at law for any person other than himself in any of such courts; (3) To hold himself out to the public or otherwise to any person as being entitled to practice law; (4) To render or furnish legal services or advice; (5) To furnish attorneys or counsel; (6) To render legal services of any kind in actions or proceedings of any nature; (7) To assume or use or advertise the title of "lawyer," "attorney," "attorney at law," or equivalent terms in any language in such manner as to convey the impression that he is entitled to practice law or is entitled to furnish legal advice, services, or counsel; or (8) To advertise that either alone or together with, by, or through any person, whether a duly and regularly admitted attorney at law or not, he has, owns, conducts, or maintains an office for the practice of law or for furnishing legal advice, services, or counsel.

¹ For example, the Supreme Court of Florida issued an advisor opinion on January 15, 2015, finding that certain activities of nonlawyer Medicaid planners constituted the illegal practice of law. Available at <http://www.floridasupremecourt.org/decisions/2015/sc14-211.pdf>. It is likely that most of the actions found to be illegal in Florida would also be illegal in Georgia (e.g., preparation of contracts, preparation of trusts, giving advice regarding rights and obligations under the law).

In *Huber v. State*, 234 Ga. 357 (1975), the Court upheld a criminal conviction for the unauthorized practice of law. In doing so, it found: "[W]e are of the opinion that the practice of law . . . [is] not confined to practice in the courts of this State, but [is] of larger scope, including the preparation of pleadings and other papers incident to any action or special proceeding in any court or other judicial body, conveyancing, the preparation of all legal instruments of all kinds whereby a legal right is secured, the rendering of opinions as to the validity or invalidity of the title to real or personal property, the giving of any legal advice, and any action taken for others in any matter connected with the law." (quoting *Boykin v. Hopkins*, 174 Ga. 511, 519).

O.C.G.A. § 15-19-51(b) provides that it is also unlawful for any corporation, voluntary association, or company to do or perform any of the acts recited in subsection (a) of O.C.G.A. § 15-19-51.

The exception to the general rule that unauthorized practice of law is illegal is found in O.C.G.A. § 15-19-52. There, the law provides: any person, firm, or corporation be prohibited from drawing any legal instrument for another person, firm, or corporation, **provided it is done without fee and solely at the solicitation and the request and under the direction of the person, firm, or corporation desiring to execute the instrument.** Thus, free services provided at the specific request of someone do not violate the law.

Any person, corporation or voluntary association who violates O.C.G.A. § 15-19-51 is guilty of a **misdemeanor** as provided in O.C.G.A. § 15-19-56(a). Anyone assisting is also guilty of a misdemeanor.²

In UPL Advisory Opinion 2005-1, the Standing Committee on the Unauthorized Practice of Law was asked: Does a nonlawyer engage in the unlicensed practice of law when he prepares, for another and for remuneration, articles of incorporation, bylaws or other documents relating to the establishment of a corporation? The answer was "yes." The reason is the existence of a corporation depends entirely upon the law, and the documents that bring it into being secure legal rights. Consequently, the preparation of those documents involves the practice of law. A nonlawyer who prepares such documents for another in exchange for a fee engages in the unlicensed practice of law. Similarly, preparation of a lien is the practice of law and cannot be done by a nonlawyer. See UPL Advisory Opinion 2004-1. The preparation of a Georgia deed by anyone other than a Georgia licensed attorney is the unauthorized practice of law. See UPL Advisory Opinion 2003-2. Giving advice regarding debt and attempting to negotiate a settlement of debt is the practice of law and cannot be performed by a nonlawyer. See UPL Advisory Opinion 2003-1.

A person practicing law without a license may also be guilty of theft by deception. O.C.G.A. § 16-8-3 provides: (a) A person commits the offense of theft by deception when

² A professional referring someone to a nonlawyer might also be liable for damages for making a negligent referral. The theory is that a professional typically has a duty to safeguard his or her client and should know better.

he obtains property by any deceitful means or artful practice with the intention of depriving the owner of the property. Subsection (b) provides: A person deceives if he intentionally: (1) Creates or confirms another's impression of an existing fact or past event which is false and which the accused knows or believes to be false; (2) Fails to correct a false impression of an existing fact or past event which he has previously created or confirmed; (3) Prevents another from acquiring information pertinent to the disposition of the property involved; (4) Sells or otherwise transfers or encumbers property intentionally failing to disclose a substantial and valid known lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not a matter of official record; or (5) Promises performance of services which he does not intend to perform or knows will not be performed. Evidence of failure to perform standing alone shall not be sufficient to authorize a conviction under this subsection.

Other related criminal statutes include O.C.G.A. § 16-9-1 & 16-9-2 (forgery); and O.C.G.A. § 16-10-96 (impersonating another). Unauthorized practice of law may also be a public nuisance as described in O.C.G.A. § 41-2-1.

In *Ledee v. Devoe*, 250 Ga. App. 15 (2001), a civil suit, the Court found there was ample evidence in the record that Ledee's unauthorized practice of law was the direct cause of Devoe's injuries. It is the duty of the Court to charge a jury concerning every controlling, material substantive and vital issue in the case. Accordingly, the court did not err in charging the jury on negligence per se.³ In most cases, where negligence per se is found, the only remaining issues are causation and the amount of damages.

In *Marks v. State*, 280 Ga. 70 (2005), an individual who was preparing estate planning documents for an elderly individual without a license to practice law, and who represented himself as being a lawyer, was charged with exploitation of an elder person (O.C.G.A. § 30-5-8). In that case, the person committing the unauthorized practice of law also took assets belonging to the elder.

The State Bar of Georgia investigates allegations of unauthorized practice of law. If you believe you have been victimized by someone who is providing legal advice without a license, you may report them to the State Bar of Georgia at:

The Unlicensed Practice of Law Department
State Bar of Georgia
104 Marietta St. NW, Suite 100
Atlanta, GA 30303
(404) 527-8769
Fax: (404) 527-8717

The State Bar of Georgia provides a complaint form at:

http://www.gabar.org/committeesprogramssections/programs/upload/upl_complaint_form.pdf

³ Negligence per se is a legal doctrine indicating that an act is negligent because it violates a statute.