



# Teaching Unauthorized Practice of Law: Paralegal Professional Identity Formation

AAFPE CONFERENCE Spring 2025

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## **AGENDA:**

- 1. CORE PROFESSIONAL IDENTITIES OF THE LEGAL PROFESSION**
- 2. NATIONAL EDUCATION STANDARDS RELATING TO PROFESSIONAL IDENTITY**
- 3. TEACHING UNAUTHORIZED PRACTICE OF LAW**
- 4. RESOURCES**
- 5. QUESTIONS**



## **PROBLEM:**

The legitimacy of our legal system is in crisis because of the lack of access to legal help

Paralegal students often (understandably!) do not understand the scope of what they may or not do to provide legal help.

While paralegals can't advise people on what to do, they can give people information about legal options that can help people decide for themselves.



## ABA Standard 303(b)


Legal education should “provide substantial opportunities to students for . . . the development of a professional identity.”

**Interpretation 303-6:** The development of a professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.



## FOUNDATIONAL QUESTION

What does it mean to be a member of the the legal profession and what are the special obligations members of the legal community have to their clients and society?



## **What are our core ethical and professional identities as members of the legal profession?**

We are:

- a) representatives of clients;
- b) officers of the legal system; and
- c) public citizens having special responsibility for the quality of justice.


# Professional Development and Identity Formation



Successful Legal Education Support These Identity Formation Goals/Values:

- A) ownership of continuous professional development toward excellence;
- B) A deep responsibility and service orientation to others;
- C) Client-centered problem-solving approach and good judgment that ground the student's responsibility to the client;
- D) Well-being practices for themselves and their professional community

1. Hamilton NW, Bilionis LD. Law Student Professional Development and Formation. In: *Law Student Professional Development and Formation: Bridging Law School, Student, and Employer Goals*. Cambridge University Press; 2022:i-ii.



## **Educating Lawyers: Preparation for the Profession of Law AKA Carnegie Report (Sullivan et al., 2007)**

How to prepare student beyond just "thinking like an advocate" to "*being* an advocate"

- Three apprenticeships:

Cognitive: learning the knowledge

Practical: developing communication, research, advocacy skills

Formative: developing a professional purpose and identity that connects to the cognitive and practical apprenticeship





## Self-Determination Theory (Krieger & Sheldon)

LEGAL PROFESSIONALS THRIVE WHEN THREE CORE  
PSYCHOLOGICAL NEEDS ARE MET:

- Autonomy
- Competence
- Relatedness



## **KEY SKILL: REFLECTIVE THINKING PRACTICE, SELF-ASSESSMENT AND SEEKING FEEDBACK**

Using and modeling a **reflexive practitioner model**, or an ongoing cycle of careful examination of specific thoughts, actions, and experiences from the students own perspective and the perspectives of others with a goal of i informing and improving insight and practice for future experiences



## Access to Justice Crisis

- 90% of low-income Americans cannot obtain needed legal help
- 60% -85% of middle-income Americans struggle to afford legal services
- We cannot pro bono lawyer our way out of this crisis

The expansion of paralegal services has been identified as a key remedy to this problem

<https://clp.law.stanford.edu/justice-problems-without-legal-help/>



## Oregon Paralegal Licensing

Licensing of paralegals began in 2024.

There are 19 licensed paralegals, practicing with limited scope licenses in areas of family (mainly divorce, custody, parenting time), and landlord tenant law (eviction defense, expungement\_.

LPs cannot represent clients in evidentiary proceedings but can give legal advice and can draft and prepare pleadings, discovery, participate in mediation)

While conducting it's Civil Legal Need Survey focus groups, researchers noted that access to a paralegal's help dramatically increased clients' ability and willingness to participate in legal process/obtain legal hel



## **PCC'S APPROACH: 3 DIMENSIONS OF PARALEGAL PROFESSIONAL IDENTITY THROUGH UPL**

1. **\*\*Critical Analysis and Ethical Judgment\*\*** - how to analyze complex and confusing UPL legal landscape: understand professional boundaries and maximize assistance within those boundaries
2. **\*\*Core Professional Identity Development\*\***: understanding the role of the paralegal in the justice system/access to justice crisis, the current limitations opportunities for growth and for community
3. **\*\*Practical Application and Problem-Solving\*\*** working within the UPL boundaries to maximize client assistance and the interests of justice



## UPL TEACHING PLAN (1-2 MODULES)

1. ASSESS UPL/UNDERSTANDING WITH HYPOS
2. INTRODUCE ACCESS TO JUSTICE CRISIS
3. INTRODUCE THE HISTORY OF UPL ENFORCEMENT NATIONALLY AND LOCALLY
4. INTRODUCE MODERN APPROACHES AND CHALLENGES (UPSOLVE V. JAMES)
5. DISCUSSION WITH AUDIO/VISUAL COMPONENT (PARTS 1 AND 2)
6. GROUP DISCUSSION; WHAT ARE OUR DUTIES TO THE PUBLIC SEEKING LEGAL HELP? HOW DO WE MAXIMIZE ASSISTANCE BUT NOT COMMIT UPL? WHERE DO WE FALL ON THE SPECTRUM?



# UNAUTHORIZED PRACTICE OF LAW HYPOS

STUDENTS PROVIDE UNGRADED RESPONSES TO HYPOTHETICALS SUCH AS:

1. Amanda is a highly experienced paralegal at a prominent law firm. She frequently has initial consultations with potential clients before they meet with the firm's partners. At these consultations, Amanda explains different legal options and answers questions about the law from clients. Recently, she met with a client seeking a divorce but, hearing their story, explained that they may qualify for annulment based on details they provided about the marriage.
2. Lyn is a paralegal in Oregon. He is part of an internet chat group for tenant rights. A tenant in that group posts a question about whether they need to show up in court for a first appearance in a forcible entry and detainer case. Lyn responds by providing the court's address and the time of First Appearance and tells the poster that they should show up on time to court.



# ACCESS TO JUSTICE CRISIS

To prepare for class 1, students will:

Review local data: Oregon Civil Legal Needs Assessment

<https://oregonlawfoundation.org/Ins/>

Review national data: Stanford Law School Rhode Center on the Legal Profession (various data reports)





# UPL ENFORCEMENT AND RESOURCES - LOCAL

TO PREPARE FOR CLASS 1: STUDENTS READ OREGON CASE LAW: WHAT IS THE PRACTICE OF LAW? WHAT IS LEGAL ADVICE?

Oregon State Bar v. Smith, 149 Or. App. 171(1997): practice of law means the exercise of professional judgment in applying legal principles to address another person's individualized needs through analysis, advice, or other assistance.

Oregon State Bar v. Security Escrows, Inc., 233 Or 80 (1962): the practice of law includes the drafting or selection of documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons being served.

STUDENTS IN CLASS ALSO REVIEW THE BAR'S (BRIEF) COLLECTION OF UPL JUDGMENTS/CONSENT AGREEMENTS AND GUIDANCE ON WHAT IS NOT UPL



# UPL ENFORCEMENT NATIONAL RESOURCES

TO PREPARE FOR DISCUSSION POSTS ASSIGNMENT:

Students Read: [Upsolve Inc. v. James](#), No. 22-cv-627 (SDNY, May 24, 2022).

And in addition one of:

Lauren Sudeall, 'The Overreach of Limits on "Legal Advice"' (2021-2022) 131 Yale LJ F. 637

Nora Freeman Engstrom & David Freeman Engstrom, [Brief of Amici Curiae Law Professors Supporting Plaintiffs-Appellees in the Upsolve, Inc. v. James Case](#), No. 22-1345 in the United States Court of Appeals for the Second Circuit (January 11, 2023).

Jacobowitz, Jan L. and Jarvis, Peter, Unauthorized Practice or Untenable Prohibitions: Refining and Redefining UPL (May 10, 2023). St. Mary's Law Journal on Legal Malpractice and Ethics, Vol. 13.



## CLASS DISCUSSION

Can nonlawyers/non licensed LPs practice law in any context? If so what is permitted and what is the policy reason(s) for this?

How have jurisdictions differed in their definitions of unauthorized practice of law? What are the factors that have been most convincing to courts?

How is Oregon consistent with other jurisdictions in their approach? How is it different?



## **SMALL GROUP DISCUSSION: WHERE IS OUR LINE?:**

Students pair up/assemble small groups and brainstorm answers to the following kinds of questions:

Do I have a good case?

Where/when do I file my appeal?

Should I show up in court?

I think I need a restraining order. What should I do?

How do I get my deposit on my rental home back?

Lack students to create a spectrum of answers (clear legal information only to



## CLASS GENERATED IDEAS

You need to speak to a lawyer, I can't help you

I'm not a lawyer, and I can't give you legal advice, but I can give you basic legal information and suggestions on how to protect your rights (how to document landlord-tenant violations for example)

I'm not a lawyer, and it would be a good idea for you to speak to one, but I can tell you that the law says that landlords must return a deposit within 31 days or provide tenants with a written accounting ....

The law says that tenants have 20 days to file an appeal, but you should get advice from a lawyer about the timing of your own filing

I can't give you legal advice, but I can show you where to find some helpful information about restraining orders at [lawhelp.org](http://lawhelp.org)



## REFLECTION ACTIVITY

WHAT IS MY PURPOSE/GOAL AS A PARALEGAL?

DO I FEEL I UNDERSTAND THE BOUNDARIES OF UPL?

WHERE IS MY COMFORT LEVEL IN NAVIGATING  
UNCERTAINTY?

WHAT DO I NEED TO DO TO BECOME A BETTER  
PROFESSIONAL?

HOW CAN I IMPROVE MY PROFESSIONAL COMMUNITY?



# DISCUSSION POST ASSIGNMENT 1

## Discussion Board Requirements:

1. Video/Audio Presentation (90 seconds)
  - Present your assigned position on whether UPL was committed
  - Support your argument with at least one scholarly or legal authority.
  
2. Written Research Summary
  - Post a written research summary in support of your assigned position
  - Cite at least two sources of Oregon authority
  
3. Peer Response

Engage with the documents within your assigned team



## DISCUSSION POST ASSIGNMENT 2

1. Create and post a 90-second video/audio response to a classmate's interpretation of the UPL issues in the Upsolve case. Choose a classmate who took an opposing view to your original assigned position.
2. Write a minimum 2-paragraph analysis post identifying which opposing arguments about UPL you find most convincing, even if they don't align with your assigned position. Suggest changes to how UPL should be re-defined.
3. Engage with a classmate in your group by responding to their UPL analysis in their reply (#2 above) with meaningful feedback that reflects thoughtful consideration of their points of view.





**Thank you!**

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