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The Ethical Utilization of Paralegals in Ohio

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THE ETHICAL UTILIZATION OF PARALEGALS IN OHIO

WENDY I. WILLS¹

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I. DEVELOPMENT OF SUPPORT POSITIONS IN THE LAW OFFICE

The paralegal profession, also known as legal assisting, has been evolving for the past several decades.² After some initial resistance, attorneys have come to accept paralegals and realize their positive impact on the delivery of legal services.³ Consumer-oriented clients are demanding more affordable and available legal information.⁴ The American Bar Association Commission on Nonlawyer Practice recently recommended increased utilization of supervised paralegals to improve law office quality and efficiency:

Nonlawyers have important roles to perform in reaching the legal profession's urgent goal of expanding access to the American justice system, so long as the public is protected from harm that might be

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²The terms paralegal and legal assistant are used interchangeably, much like lawyer and attorney. As early as 1968, the American Bar Association ("ABA") formed a Special Committee on Lay Assistants for Lawyers to develop and encourage support persons in the law office.

³Attorneys have come to accept that legal assistants reduce costs, increase profits, and ultimately benefit clients in the delivery of legal services. See Arthur G. Green, *Legal Assistants: Measuring Profitability*, 14 NO. 2 LEGAL ECON. 26 (1987). See generally William R. Fry, *Practicing Law Without a License*, 81 A.B.A. J. 36 (1995).

⁴Attorney Fry notes consumers are writing their own wills, filing their own divorces, buying self-help law books and standard law forms in print and on disk. *Id.* "The bar has lost control of routine information about the law. . . In the public forum of the computer bulletin board, American lawyers and laypeople swap questions and answers about the law." *Id.* at 36.

caused by incompetent, unethical conduct by those providing legal or law-related services.⁵

Nationally, several professional organizations have formed with separate emphasis for Legal Administrators,⁶ Legal Secretaries,⁷ Legal Assistants,⁸ Legal Assistant Managers,⁹ and Paralegals.¹⁰ As a matter of practice, the legal community remains unclear of distinctions and ethical guidelines regarding legal support positions.¹¹ In the absence of more formal recognition in statutes and cases, the two major paralegal groups, the National Federation of Paralegal Associations ("NFPA") and the National Association for Legal Assistants ("NALA"), have fashioned their own ethical codes, standards and practices.¹²

⁵The ABA Commission on Nonlawyer Practice recently recommended "an expansion of the range of activities for traditional paralegals for whose work lawyers are ethically and legally accountable. Expanding the roles of paralegals should increase law practice productivity, efficiency, and quality and reduce costs to clients." Herbert M. Rosenthal, *Report of the Commission on Nonlawyer Practice*, 7 PROF. LAW. 12 (1995).

⁶The Association of Legal Administrators is located at 175 East Hawthorne Parkway, Vernon Hills, Ill. 60061-1428 and can be reached at 847-816-1212. Information may also be obtained from their website <<http://www.alanet.org>>.

⁷Legal Secretaries International, Inc., has their headquarters at 8902 Sunnywood Drive, Houston, Texas 77088-3729.

⁸The National Association of Legal Assistants ("NALA") was incorporated in 1975 and has a current membership just over 17,000. The national headquarters is located at 1516 S. Boston, #200, Tulsa, Oklahoma 74119.

⁹The Legal Assistant Management Association ("LAMA") has offices located at 638 Prospect Avenue, Hartford, Connecticut 06105-4298.

¹⁰The National Federation of Paralegal Associations, Inc. ("NFPA"), P.O. Box 33108, Kansas City, MO 64114-0108.

¹¹In 1996, "[m]ore than 20 states or bar associations ha[d] enacted guidelines designed to educate paralegals . . ." and their supervising attorneys about ethical issues. Hope Viner Sanborn, *Conflicts and Confidences*, 82 A.B.A. J. 24 (1996). In 1997, at least fourteen states are still debating. See also *Shades of Regulation: State Bills Apply Sundry Standards to Independent Paralegals*, 83 A.B.A. J. 26 (1997). The proposals vary greatly. States, such as Oregon and California, may permit independent paralegals to provide greater access to legal information and services for low-income persons, under specific standards and regulatory guidelines. *Id.* "The ABA's Consortium on Legal Services and the Public confirmed [in 1994] that legal needs are not being met [for lower-income households]." *Id.* On the other hand, Ohio has a criminal penalty of a first degree misdemeanor. OHIO REV. CODE. ANN. § 4705.99 (Banks-Baldwin 1997).

¹²NFPA adopted an ethics code in 1993, which supports an independent but regulated role for paralegals. In 1995, NALA's version required attorney supervision. Hope Viner Sanborn, *Conflicts and Confidences*, 82 A.B.A. J. 24 (1996). Responsibility falls on the lawyer-supervisors. "Lawyers can be disbarred, but what can we do to our [NFPA] members? Dismember them?" asks paralegal Robin Solomon. *Id.* at 25.

II. OHIO CASES ON THE UNAUTHORIZED PRACTICE OF LAW

In the context of this confusion, several cases from Ohio were decided in 1977 on the issue of the unauthorized practice of law. These cases addressed several areas including an independent paralegal drafting and signing pleadings without attorney supervision, advising clients and appearing in court;¹³ a financial planner, corporation and a non-Ohio attorney advising clients on estate planning and trusts, preparing legal documents and supervising their execution;¹⁴ lay persons marketing and preparing living trusts on behalf of a corporation, advising clients on specific questions about particular probate assets, trust forms, taxation and selection of beneficiaries;¹⁵ and lay persons preparing and filing appeals of real property valuations on behalf of taxpayers with the county board of revision.¹⁶

This Comment will focus on the short, perfunctory ruling on the unauthorized practice of law by an independent paralegal in the 1997 case of *Akron Bar Ass'n v. Greene*.¹⁷ The court reiterated that only duly licensed attorneys may practice law in Ohio, without any indication of which activities could be delegated under attorney supervision.¹⁸ Unfortunately, the recent proclamation from Ohio's highest court, if taken out of the national context, leaves room for wide interpretation and error.

Although Raymond E. Greene was not an attorney licensed to practice law in the state of Ohio, he drafted and signed a complaint for divorce as "Paralegal for Doretha Diggs."¹⁹ He then signed and filed the action under a corporate name.²⁰ Thereafter, when Greene appeared in court to represent Diggs, the Judge dismissed the case.²¹ The Akron Bar Association admonished Green for the unauthorized practice of law.²² Subsequently, Greene prepared, signed and filed a counterclaim as an attorney-in-fact under a Power of Attorney, using the name R. Edinborough Greene on behalf of Deborah Christian, *pro se*.²³ When

¹³*Akron Bar Ass'n v. Greene*, 673 N.E.2d 1307 (Ohio 1997).

¹⁴*Trumbull Bar Ass'n v. Hanna*, 684 N.E.2d 329 (Ohio 1997).

¹⁵*Akron Bar Ass'n v. Miller*, 684 N.E.2d 288 (Ohio 1997).

¹⁶*Gammarino v. Hamilton Bd. of Rev.*, 684 N.E.2d 309 (Ohio 1997).

¹⁷*Greene*, 673 N.E.2d at 1307.

¹⁸*Id.* at 1307.

¹⁹*Id.*

²⁰*Id.* at 1308.

²¹*Id.*

²²*Greene*, 673 N.E.2d at 1308.

²³*Id.*

the Judge determined that Green was not an attorney, Greene was again admonished and removed from the court.²⁴

The Akron Bar Association brought a claim of unauthorized practice of law before the Supreme Court of Ohio.²⁵ The supreme court applied the well-settled legal principle that the practice of law is reserved to attorneys duly licensed in the state.²⁶ The court relied on the leading Ohio case, *Land Title Abstract & Trust Co. v. Dworken*, which defined the "practice of law" in 1934.²⁷ The first paragraph of the syllabus states:

The practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law.²⁸

Later, the Ohio Supreme Court described three activities generally included in the practice of law: legal advice and instructions to inform clients of their rights and obligations; preparation of documents and papers requiring knowledge of legal principles not possessed by ordinary laymen; appearing for clients before public tribunals and assisting in interpretation and enforcement of law.²⁹

Consistent with a long line of judicial precedent, the court held that Greene and his sham corporation engaged in the unauthorized practice of law, and enjoined him from counseling people about their legal rights; preparing legal instruments and documents; preparing, signing or filing pleadings or other legal papers in litigation; and appearing on behalf of clients in court.³⁰

At first glance, it would seem that the high court is merely following precedent in a relatively straightforward case. The Ohio Revised Code clearly prohibits the practice of law by any person not admitted to the Ohio Bar as an attorney.³¹ Further, the Rules for the Governance of the Bar include

²⁴*Id.* at 1307.

²⁵*Id.*

²⁶*Id.*

²⁷*Greene*, 673 N.E.2d at 1307.

²⁸*Land Title Abstract & Trust Co. v. Dworken*, 193 N.E. 650 at para. 1 of syllabus (1934).

²⁹*McMillen v. McCahan*, 167 N.E.2d 541, 550 (1960).

³⁰*Greene*, 673 N.E.2d at 1308.

³¹Ohio Revised Code section 4705.01, provides in pertinent part:

No person shall be permitted to practice as an attorney and counsel or at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person,

qualifications and procedures for admission to practice law, and sanctions against those not so admitted.³²

Without authorization by the Bar, no individual or legal person may practice law in Ohio, including corporations.³³ In 1965, the Ohio Supreme Court held that a bank or trust company is giving legal advice if it "provides specific legal information in relation to the specific facts of a particular person's estate" regarding tax and other legal benefits.³⁴ Similarly, a non-lawyer officer or agent of a corporation may not bring a *pro se* action on behalf of the corporation.³⁵ Documents filed by *pro se* counsel may be stricken by the court.³⁶ In addition, an officer of a corporation may not represent or appear as counsel for the corporation at pre-trial or as co-counsel at a deposition.³⁷

Among the first to encroach upon the exclusive territory of lawyers were real estate agents and brokers. Ohio lawyers responded by defining the exclusive role of attorneys as follows: giving legal advice on real property matters, negotiating leases, preparing real estate documents;³⁸ inserting or changing terms in a printed real estate contract beyond mere scrivenering;³⁹ rendering a title opinion in a real estate matter;⁴⁰ representing a landlord in court, signing a complaint and motion as agent on behalf of a landlord;⁴¹ and negotiating lease agreements and charging for legal services.⁴²

Another area of encroachment was with injury and insurance law. Insurance companies, who are in the business of risk allocation and settlement of claims, employ attorneys to bring subrogation claims, litigate coverage issues, and defend lawsuits for their insureds. Prior to suit, however, non-lawyer adjusters investigate and set values to claims, and negotiate settlements as an insurance

unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.

OHIO REV. CODE ANN. § 4705.01 (Anderson 1997).

³²Gov. Bar R. VII § 2 (A).

³³Cuyahoga Bar Ass'n v. Gold Shield, Inc., 369 N.E.2d 1232 (Ohio 1975).

³⁴Green v. Huntington Nat'l Bank, 212 N.E.2d 585 para. 1 of the syllabus (Ohio 1965).

³⁵Union Sav. Ass'n v. Home Owners Aid, Inc., 262 N.E.2d 558 (1970). *See generally* 19 A.L.R.3d 1073 (1969).

³⁶Palmer v. Westmeyer, 549 N.E.2d 1202 (Ohio 1988).

³⁷Mahoning Bar Ass'n v. Rector, 608 N.E.2d 866, 867 (Ohio 1992).

³⁸Cleveland Bar Ass'n v. Slavin, 608 N.E.2d 870 (Ohio 1993).

³⁹Ralph R. Greer & Co. v. McGinnis, 217 N.E.2d 890 (Ohio 1965).

⁴⁰Land Title Abstract of Trust Co. v. Dworken, 193 N.E. 650, at para. 1 of the syllabus (Ohio 1934).

⁴¹Croxton v. Freisner, 603 N.E.2d 1162 (1992).

⁴²Slavin, 608 N.E.2d at 870; OHIO REV. CODE ANN. § 4705.01 (Anderson 1997); Gov. Bar Rule VII, § 9 (West 1997).

company employee on behalf of the insureds.⁴³ An independent claims adjuster may not charge fees, give legal advice, or represent claimants in negotiations with insurance companies.⁴⁴

In the area of workers' compensation, independent lay persons may not prepare forms, represent claimants, or give legal advice for administrative hearings.⁴⁵ Moreover, the Industrial Commission is without authority to permit non-lawyers to practice law.⁴⁶

In response to divorce and dissolution forms available to consumers, Ohio lawyers brought lawsuits to defend their exclusive practice in the area of domestic relations. Thus, the practice of law includes preparing legal documents, giving advice and counseling clients on the law of divorce and dissolution in Ohio.⁴⁷

In the areas of accounting, taxation, probate and estate planning, legal and financial issues sometimes intertwine and overlap. In a recent example, attorney Robert Yurich and his brother Dennis Yurich, whom they called a paralegal, created a corporate venture to sell living trusts, which generated revenues of about \$320,000 between 1990 and 1993.⁴⁸ Clients were interviewed and legal documents were prepared without attorney supervision by non-lawyers.⁴⁹ In some cases, the documents were then reviewed by the attorney with his clients.⁵⁰ The court found that forming a corporation to market and sell living trusts to clients, advising clients regarding their specific circumstances, collecting fees and detailed financial information to prepare legal documents on computers, and helping clients to execute the documents constituted the unauthorized practice of law.⁵¹

Probate and estate planning activities have been included in the exclusive practice of law. For instance, preparing wills, trusts, contracts or other legal documents, giving legal advice to customers, performing legal services in estate planning, and probating an estate;⁵² even if performed by a non-attorney employee of a bank, trust company or other financial institution, is within the

⁴³See generally *Activities of Insurance Adjusters as Unauthorized Practice of Law*, 29 A.L.R.4th 1156 (1981).

⁴⁴Bar Ass'n v. Brunson, 304 N.E.2d 250 (Ohio 1973).

⁴⁵McMillen v. McCahan, 167 N.E.2d 541 (Ohio 1960); R.E. Harrington, Inc., v. Windmiller, 177 N.E.2d 816 (Ohio 1961). See generally *Handling, Preparing, Presenting, or Trying Workmen's Compensation Claims or Cases as Practice of Law*, 2 A.L.R.3d 724 (1966).

⁴⁶*In re Unauthorized Practice of Law*, 192 N.E.2d 54 (Ohio 1963).

⁴⁷Akron Bar Ass'n v. Singleton, 573 N.E.2d 1249 (Ohio 1990).

⁴⁸Cleveland Bar Ass'n v. Yurich, 642 N.E.2d 79 (Ohio 1994).

⁴⁹*Id.*

⁵⁰*Id.* at 81.

⁵¹*Id.* at 83.

⁵²Cleveland Bar Ass'n v. Scali, 608 N.E.2d 865 (1991).

practice of law.⁵³ In addition, performing unsolicited probate research beyond genealogy, contacting potential heirs and representing them for a fee;⁵⁴ advising and counseling of clients concerning probate tax and trust matters; and preparation of trust agreements for a fee⁵⁵ are also regarded as exclusive areas of law practice. Advising clients on tax and estate law;⁵⁶ and forming a corporation, negotiating a contract and giving tax advice for a client⁵⁷ are also considered areas of legal practice.

Thus the traditional line of cases in Ohio has largely ignored the national trend toward increasing availability and accessibility of legal services. Instead, the Bar Associations have jealously guarded their livelihood by bringing charges of unauthorized practice of law in a variety of circumstances described above. In the context of the widespread and seemingly inevitable development of the paralegal profession, however, the *Greene* opinion, described above, could be misconstrued so as to prohibit support staff in law offices from performing their jobs within the bounds of the law, under attorney supervision.

Any misinterpretation would be particularly unfortunate in light of the statutory language regarding support staff in the law office:

A lawyer often delegates tasks to clerks, secretaries, and other law persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.⁵⁸

The court does not distinguish between independent paralegals, like *Green*, who practice law without authority, and paralegal assistants, who perform delegated legal tasks under the supervision of attorneys, with the blessing of the Ohio legislature.

Recall that *Greene* was enjoined from preparing legal instruments and documents, filing pleadings or other legal papers in court, as well as counseling people about their legal rights, signing pleadings or other legal papers, and appearing on behalf of clients in court.⁵⁹ If *Greene* were supervised by an attorney, however, then the preparation of drafts and the filing of legal documents would be part of his regularly delegated duties. He could also

⁵³*Green*, 212 N.E.2d at 587-88.

⁵⁴*In re Estate of Rice*, 193 N.E.2d 566 (Ohio 1963).

⁵⁵Gov. Bar R. VII(2)(A) (West 1997); *Ohio Bar Ass'n v. Martin*, 642 N.E.2d 75 (1994). See also *Mahoning Bar Ass'n v. Senior Servs. Group, Inc.*, 642 N.E.2d 102 (Ohio 1994).

⁵⁶*Stark Bar Ass'n v. Beaman*, 574 N.E.2d 599 (Ohio 1990).

⁵⁷*Cincinnati Bar Ass'n v. Davis*, 590 N.E.2d 916 (Ohio 1992); *In re Incorporation Consultants*, 216 N.E.2d 912 (Ohio 1965).

⁵⁸OHIO CODE OF PROF. RESPONSIBILITY EC 3-6 (1995) (delegation of work).

⁵⁹*Greene*, 673 N.E.2d at 1308.

accompany an attorney to court, or relay information to the client at the direction of the attorney. Persons reading the *Greene* opinion out of the national context would be unaware of these distinctions.

III. IMPLICATIONS FOR THE DELIVERY OF LEGAL SERVICES IN OHIO

With the focus on preventing encroachment on the exclusive domain of legal services by non-lawyers, the question of assisting lawyers in improving the quality and delivery of legal services needs to be addressed. Recently, public sentiment against attorneys as greedy and time-wasting erupted in tort-reform legislation aimed at curtailing so-called "Lawsuit Abuse."⁶⁰

In practice, Ohio lawyers are utilizing the services of a variety of personnel in support roles, such as docket clerks, investigators, law clerks, legal secretaries, paralegals, photographers, receptionists, and others in increasing numbers.⁶¹ The Ohio legislature has extended permission to third-year law students, who may apply for authorization to practice law under the supervision of a legal services attorney.⁶²

In 1995, the Ohio Supreme Court finally recognized and expressed in *Community Mutual Insurance Co. v. Tracy*,⁶³ that lay persons may perform legal support services if accomplished under the supervision of an attorney.⁶⁴ In *Community Mutual Insurance Co.*, the defendant, Community Mutual Insurance Company ("Community"), needed to code 135 boxes of records in response to discovery requests.⁶⁵ The coding was performed in part by the attorneys, paralegals and law students hired by Community.⁶⁶ When quicker progress was needed, Document Automation Corporation was hired to code the documents under the direction of the attorneys, following a written manual.⁶⁷ Several retrieval fields were specified, including privileged materials, specific legal or factual categories, plus summarized and divided into searchable "memo" fields.⁶⁸ The coding was stored on a tape kept in the attorneys' vault.⁶⁹ The charges were passed on to Community through the law firm. The court determined that the encoding process constituted delegated

⁶⁰See *Rush to File; Lawsuit Abuse Won't End With Deadline*, COLUMBUS DISPATCH, Jan. 28, 1997, at 10A.

⁶¹Fry, *supra* note 3, at 36.

⁶²Gov. Bar Rule II §§ 2-3 (West 1997). See also *Activities of Law Clerks as Illegal Practice of Law*, 13 A.L.R.3d 1137 (1997).

⁶³*Community Mut. Ins. Co. v. Tracy*, 653 N.E.2d 220 (Ohio 1995).

⁶⁴*Id.* at 221.

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Community Mut. Ins. Co.*, 653 N.E.2d at 221.

⁶⁹*Id.* at 221-22.

legal services under Ohio statute, properly performed under the supervision of attorneys.⁷⁰

Ohio cases provide some additional instances when non-lawyers may be involved with legal documents without practicing law.⁷¹ Under these circumstances, certain activities for the public good may be permitted. Some of these permissible activities include: filling in pre-printed real estate forms;⁷² providing real property appraisals and property reports;⁷³ and representing an employer at an unemployment hearing where a record was kept.⁷⁴

In other jurisdictions, the effective delivery of legal services towards the public good has included delegation of non-essential tasks to non-lawyers working under the supervision of attorneys in a variety of contexts described below.

IV. DEVELOPMENT OF PARALEGALS IN OTHER JURISDICTIONS

In 1976, the Florida Bar petitioned to amend their Code of Professional Responsibility to more fully define the delegation of tasks to non-lawyer personnel employed by attorneys in law offices. The proposal was adopted by the Florida Supreme Court, permitting delegation to non-lawyer personnel, provided that the "lawyer retains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product."⁷⁵ It is contemplated that the delegated work "loses its separate identity and becomes . . . merged in the product of the attorney . . ."⁷⁶

The Supreme Court of Florida specified that non-lawyers could not perform the following tasks: counsel clients about legal matters; appear in court or in proceedings which are a part of the judicial process; or otherwise engage in the unauthorized practice of law.⁷⁷ When communicating outside the office, the non-lawyer must disclose his status clearly at the beginning of any

⁷⁰The court held that the properly delegated legal services were tax-exempt. *Id.* at 222 (citing OHIO CODE OF PROF. RESPONSIBILITY EC 3-6 (1995)).

⁷¹When a non-lawyer represented taxpayers challenging the valuation of real estate before the board of revisions, there was no evidence of any harm to the public, and the issue of fair market value of real estate did not require legal skill to resolve. *See Cleveland Bar Ass'n v. Middleton*, 642 N.E.2d 71 (Ohio 1994). As a matter of practice, many non-attorneys have appeared without problems before such boards throughout the eighty-eight counties in Ohio. *Id.* The board members are not attorneys, and the rules of evidence do not govern. *Id.*

⁷²*Gustafson v. Taylor & Sons, Inc.*, 35 N.E.2d 435 (Ohio 1941).

⁷³*Dayton Bar Ass'n v. Lender's Serv., Inc.*, 532 N.E.2d 120 (Ohio 1988).

⁷⁴*Henize v. Giles*, 490 N.E.2d 585 (Ohio 1986)(involving a non-attorney from an actuarial firm).

⁷⁵*Florida Bar v. Pascual*, 424 So.2d 757 (Fla. 1982).

⁷⁶*Id.* at 757.

⁷⁷DR 3-104; *Pascual*, 424 So.2d at 757.

conversation.⁷⁸ Non-lawyer personnel may sign law firm stationary, if the non-lawyer status is specified.⁷⁹ The lawyer is bound to a "high standard of care to assure compliance."⁸⁰ Ultimately, the supreme court determined "the lawyer must . . . supervise the work and maintain a direct relationship with the client."⁸¹

Following this change in the Code of Professional Responsibility, Florida had some of the first opportunities to address the issue of ethics for non-lawyers. In 1982, a paralegal who represented a party at a commercial real estate closing was held to engage in the unauthorized practice of law.⁸² The paralegal was president of a title company which shared office space with an attorney.⁸³ At the closing, the paralegal gave legal advice to a party outside the presence of his attorney, and signed correspondence without disclaimer of his status.⁸⁴ He was permanently enjoined from such conduct in the future.⁸⁵

The Supreme Court of Florida has defined through caselaw the acts constituting the unauthorized practice of law, including: "appearing in court or in proceedings which are part of the judicial process;"⁸⁶ and "active participation in depositions."⁸⁷ Similarly, a Florida appellate court later prohibited a paralegal's active participation in questioning witnesses at a deposition without the presence and immediate guidance of an attorney.⁸⁸

In Oregon, a paralegal service and its president were also enjoined from engaging in the unauthorized practice of law.⁸⁹ For eight years, defendants Robin Smith and Peoples' Paralegal Service, Inc., provided "legal technician" services for a fee.⁹⁰ They provided consumers with legal forms, discussed facts, assisted individuals by typing in the blanks, and informed persons about procedures for filing papers in court.⁹¹

⁷⁸*Pascual*, 424 So.2d at 757.

⁷⁹*Id.*

⁸⁰DR 3-104; *Pascual*, 424 So.2d at 757.

⁸¹*Pascual*, 424 So.2d at 757.

⁸²*Id.*

⁸³*Id.*

⁸⁴*Id.*

⁸⁵*Id.*

⁸⁶*Florida Bar v. Kaufmann*, 452 So.2d 526, 527 (Fla. 1984).

⁸⁷*Florida Bar v. Riccardi*, 304 So.2d 444, 445 (Fla. 1974).

⁸⁸*State v. Foster*, 674 So.2d 747 (Fla. App. 1996).

⁸⁹*Oregon Bar v. Robin Smith*, 942 P.2d 793 (Or. 1997).

⁹⁰*Id.*

⁹¹*Id.*

In their favor, the paralegals never represented consumers in court, nor did they sign any documents as attorneys.⁹² Intake sheets provided a disclaimer of attorney status.⁹³ On six different occasions, however, paralegals gave legal advice on specific issues to consumers.⁹⁴ Sometimes, these ethical violations were harmless.⁹⁵ In other cases, however, the legal advice was incorrect and harmful.⁹⁶ The Oregon court enjoined the paralegals from the unauthorized practice of law.⁹⁷

Other state courts have prohibited advertising the unauthorized practice of law.⁹⁸ In New Jersey, the court explained that attorneys may delegate legal tasks to paralegals, if the attorneys "maintain direct relationships with their clients, supervise [the] paralegal's work and remain responsible for work product."⁹⁹

V. CONCLUSION

Applying the statutory guidelines for delegation of legal tasks to non-lawyer assistants, a bright-line rule regarding the unauthorized practice of law in Ohio may be discerned. Following ABA Model Rules, Ohio statutes, the *Tracy* opinion and national trends, it is clear that supervised paralegals should be permitted to prepare documents, communicate with the attorney's clients, take notes and provide assistance at depositions and trials all under the supervision of a duly licensed attorney. Without attorney supervision, however, these legal tasks are prohibited by a long tradition of cases in Ohio, and may in the near future generate criminal penalties under Ohio statute.¹⁰⁰ The 1997 Ohio Supreme Court cases give notice to independent paralegals that the Ohio bench and bar will neither condone nor ignore the unauthorized practice of law, absent legislative initiative, despite broader acceptance in other jurisdictions.

⁹²*Id.*

⁹³"We Are Not Attorneys. We Are Legal Technicians. Our Service Provides Preparation Of The Papers Including Typing, Notary Service, And Procedural Information. . . . If You Require Legal Advice Please See An Attorney." *Id.* at 794.

⁹⁴*Oregon Bar*, 942 P.2d at 794 n.2.

⁹⁵*Id.* at 795.

⁹⁶*Id.*

⁹⁷*Id.*

⁹⁸*Kentucky Bar Ass'n v. Legal Alternatives, Inc.*, 792 S.W.2d 368 (Ky. 1990). *See also* *Monroe v. Horwitch*, 820 F. Supp. 682 (D.C. Conn. 1993).

⁹⁹*In re* Opinion No. 24 of Comm. on Unauthorized Practice of Law, 607 A.2d 962 (N.J. 1992). In New Jersey, the paralegal could be an independent contractor retained by the firm.

¹⁰⁰*See supra* note 11.