

CONNECTICUT LAW REVIEW

VOLUME 36

WINTER 2004

NUMBER 2

Connecticut Unauthorized Practice Laws and Some Options for Their Reform

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This article has two principal objectives: to briefly summarize Connecticut laws of unauthorized law practice and to set forth many of the options available to Connecticut lawmakers for revising or clarifying the state's unauthorized practice laws. In many important respects Connecticut unauthorized practice laws are unduly ambiguous, uncertain, and much in need of clarification. Also, some Connecticut unauthorized practice laws are clear and certain probably should be revised, better adapted to current needs, including exclusion from the legal services' market those providers who it now appears are unqualified or untrustworthy. Unauthorized practice laws are essential to our legal order as they largely determine who may provide legal services and to whom. Given their significance, it is particularly important that these laws be clear, complete, and up-to-date in meeting contemporary needs.

Part I of this article summarizes existing Connecticut unauthorized practice laws; Part II describes many of the options available for amplifying and revising those laws; and Part III adds some concluding remarks. Most of the options considered have been adopted as law in one or more

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other states and as such may be particularly valuable law reform guides. The objective in setting out these options is not to tell Connecticut lawmakers what they should do but to suggest possibilities for action by them. It is urged, however, that Connecticut lawmakers take action in the near term to amplify and modernize this important field of law. The law reform process also would be aided by the Connecticut courts, as soon as possible, unequivocally declaring what is the exact scope of their constitutional power over the unauthorized practice of law relative to the other two branches of government. Doubts over this issue add to the uncertainty in the state's unauthorized practice laws and to the uncertainty as to which lawmakers have ultimate responsibility for reforming those laws.

Determining just what reforms should be made in a state's unauthorized practice laws is not an easy undertaking. The subject is highly controversial, there are powerful interest groups with opposing views on most reform proposals, and there are many possible variables as to where lines should be drawn between the permissible and impermissible. But Connecticut lawmakers have been delinquent in not modernizing this important field of law and action by them is overdue.

I. CONNECTICUT LAWS ON THE UNAUTHORIZED PRACTICE OF LAW

A. Statutes

The Connecticut statutes as to who may and may not practice law consist of a basic statutory section, section 51-88, that restricts such practice to attorneys admitted to practice law in Connecticut,¹ and a scattering of statutory provisions setting forth exceptions and qualifications to the general restriction of law practice to admitted Connecticut attorneys. No Connecticut statute, however, defines the practice of law. Most statutory exception and qualification provisions pertain to judges and court officials. For example, judges of the superior, appellate and supreme courts of the state shall not engage in private law practice.² Also, some restrictions on the practice of law are imposed on probate judges,³ partners and associates

¹ CONN. GEN. STAT. § 51-88 (2003). An additional statutory section prohibits a nonattorney from soliciting another person to institute an action for damages if the solicitor receives compensation from the solicited person or that person's lawyer. *Id.* Unlike section 51-88, this section has rarely been considered in reported judicial opinions. *But see* Robertson v. Town of Stonington, 253 Conn. 255, 256-57, 750 A.2d 460, 461-62 (2000) (holding that a property owner was not barred from appealing a property tax assessment because he had contracted with a nonattorney to challenge the assessment, a contract that allegedly violated section 51-86, however the alleged invalidity of the contract was considered irrelevant to the taxpayer's right to appeal the tax assessment).

On the earlier history of Connecticut statutes prohibiting the practice of law by persons not admitted to practice law in Connecticut, see *Grievance Committee v. Dacey*, 154 Conn. 129, 137-40, 222 A.2d 339, 344-45 (1966).

² CONN. GEN. STAT. § 51-47(c) (2003).

³ Probate judges shall not appear in a contested matter in probate court. *Id.* § 45a-25.

of probate judges,⁴ retired judges,⁵ state marshals and constables,⁶ and superior court clerks.⁷ There are, however, some statutory exceptions to prohibitions on practice of law. A pro se exception exists that permits any person to practice law or plead at the bar of any Connecticut court in the person's own cause,⁸ certain legal documents may be prepared by town clerks,⁹ any person may act as an agent or representative for a party in an international arbitration,¹⁰ and certain court clerks for housing matters may provide assistance to pro se litigants.¹¹

Violation of section 51-88 is a crime and violators are deemed in contempt of court.¹² Exempt from this criminal provision are house counsel or other attorney employees of business entities not admitted to practice law in Connecticut but admitted elsewhere in the United States. If these attorneys are employed in Connecticut and render legal services to their employer within the scope of their employment, they are not subject to the criminal sanctions of section 51-88.¹³ A similar exemption does not exist for these attorneys as to contempt or restraining order sanctions, as section 51-88 states that anyone violating any provision of section 51-88 is deemed to be in contempt of court and may be restrained by the superior court on petition of any member of the Connecticut bar in good standing or on the court's own motion.¹⁴

B. Court Rules

A number of different rules of the Connecticut Superior Court permit or prohibit the practice of law by particular categories of persons. Most of these rules are concerned with the law practice rights of attorneys or judges. There is no broad court rule, comparable in coverage to section 51-88(a) of the General Statutes of Connecticut, that generally prohibits the practice of law by persons not admitted to practice law in Connecticut. Nor is there any court rule that defines the practice of law or the unauthorized practice of law.

Attorneys from other states not admitted in Connecticut may, by a

⁴ A partner or associate of a probate judge cannot practice in the court of probate in which the judge holds office. *Id.* § 45a-26.

⁵ Retired judges assigned judicial duties shall not engage in private practice. *Id.* § 51-50k.

⁶ "No state marshal or constable shall appear in court as attorney." *Id.* § 51-89.

⁷ Superior court clerks may not engage in the private practice of criminal law. *Id.* § 51-57(c).

⁸ *Id.* § 51-88(d).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* § 51-52(d) (stating that "(e)ach clerk for housing matters and the clerks for the judicial district of New Haven at Meriden . . . shall provide assistance to pro se litigants. . .").

¹² *Id.* § 51-88(b), (c).

¹³ *Id.* § 51-88(b).

¹⁴ *Id.* § 51-88(c).

court rule, be admitted *pro hac vice* for a particular case and generally this authorization is by the judge before whom the case is to be heard.¹⁵ But admission is in the discretion of the court, it may be granted only on special and infrequent occasions and for good cause shown, and a member of the Connecticut bar must work closely with the out-of-state attorney and be responsible for the conduct of the cause.¹⁶ Other Connecticut court rules permit qualifying attorneys admitted in other U.S. states, territories or the District of Columbia to become licensed members of the Connecticut bar by admission on motion and without taking the Connecticut bar examination.¹⁷ But the restrictions on qualification for this type of admission are such as to exclude out-of-state attorneys expecting to engage in only occasional law practice activities in Connecticut.¹⁸ Admission on motion also is a slow process that can take some months to complete, it is not available to attorneys who have not been engaged in law practice for some years,¹⁹ and there is a reciprocity provision that excludes attorneys from some states from qualifying.²⁰ Other court rules permit a qualified foreign attorney to be licensed by the superior court as a foreign legal consultant to advise Connecticut clients on the law of the foreign country in which the consultant is admitted to practice law.²¹ Also, pursuant to court rules, most law students may qualify as legal interns to perform legal services for others if properly supervised by a member of the Connecticut bar.²² These student

¹⁵ CONN. SUPER. CT. R. § 2-16. This rule and all other Connecticut superior court civil rules are included in Comm'n on Official Legal Publ'ns, Official Connecticut Practice Book (2003) and in 1 Wesley W. Horton & Kimberly A. Knox, Connecticut Practice Series: Practice Book Annotated (West 2003). The Practice Book also includes the Rules of Professional Conduct and the Code of Judicial Conduct as adopted in Connecticut, both of which are rules of the Connecticut Superior Court.

It has been held that Connecticut Superior Court Rule section 2-16 does not violate the Federal Constitution. *Silverman v. Browning*, 414 F. Supp. 80, 88 (D. Conn. 1976) (holding that state courts "possess the inherent power to regulate who shall practice law before them Absent proof of prejudice or abuse of discretion, the state courts must be presumed to act in good faith and with judicial wisdom, and must be permitted to exercise their regulatory powers freely.").

¹⁶ CONN. SUPER. CT. R. § 2-16.

¹⁷ *Id.* §§ 2-13 to 2-15.

¹⁸ *Id.* § 2-13 (stating that an applicant must intend on "a continuing basis, to practice law actively in Connecticut and to devote the major portion of his or her working time to the practice of law in Connecticut").

¹⁹ *Id.* (requiring that to qualify for admission on motion, an applicant must have "lawfully engaged in the practice of law as the applicant's principal means of livelihood . . . for at least five of the seven years immediately preceding the date of the application and is in good standing").

²⁰ *Id.* (stating that the applicant must be a member of a bar that "would admit a member of the bar of Connecticut to its bar without examination under provisions similar to those set out in this section").

²¹ *Id.* §§ 2-17 to 2-19. A statute expressly permits judges of the superior court to make rules regulating foreign legal consultants. CONN. GEN. STAT. § 51-80a (2003). There currently are no licensed foreign legal consultants in Connecticut. E-mail from Howard Emond, Deputy Director, Connecticut Bar Examining Committee, to the Connecticut Law Review (Oct. 27, 2003, 08:13 EST) (on file with the Connecticut Law Review).

²² CONN. SUPER. CT. R. §§ 3-14 to 3-21.

legal interns, with requisite approval, may make appearances before a court or administrative tribunal on behalf of a client.²³ In addition they may prepare pleadings, briefs, abstracts and other legal documents.²⁴

There also are Connecticut court rules that prohibit or restrict the practice of law or provision of legal services by Connecticut judges and government attorneys. One such rule prohibits a judge of the state's supreme court, appellate court or superior court from practicing law in any state or federal court.²⁵ The superior court judges have also adopted an amended version of the American Bar Association's Model Code of Judicial Conduct with revisions stating that "[a] judge shall not practice law"²⁶ and adding that all full-time judges and those family support magistrates appointed pursuant to section 46b-231(f) of the General Statutes of Connecticut shall comply with the Code.²⁷ Another court rule prohibits full-time public defenders and full-time state's attorneys from engaging in the private practice of law.²⁸ Court rule restrictions on practicing law also are imposed on court clerks²⁹ and on state's attorneys, assistant state's attorneys and their law firm partners and associates.³⁰ In addition, there are court rules that prohibit the practice of law by lawyers placed on inactive status because of mental incompetency or involuntary commitment to a mental hospital.³¹ And retired lawyers, who have elected not to pay the annual Connecticut occupational tax on lawyers, may not practice law.³²

The ABA model rules, that with revisions have been adopted as rules of court by the Connecticut superior court judges, are the Rules of Professional Conduct.³³ The Connecticut version of these rules includes prohibitions on Connecticut lawyers engaging in the unauthorized practice of

²³ *Id.* § 3-14.

²⁴ *Id.* § 3-17(c).

²⁵ *Id.* § 2-66(a).

²⁶ Compare CONN. CODE OF JUDICIAL CONDUCT Canon 5(f) (2003) (stating that "[a] judge should not practice law"), with MODEL CODE OF JUDICIAL CONDUCT Canon 4G (2000) (stating that "[a] judge shall not practice law"). The Connecticut Code also provides that a judge should not act as an arbitrator or mediator, other than in court annexed alternate dispute resolution programs. CONN. CODE OF JUDICIAL CONDUCT Canon 5(e) (2003).

²⁷ CONN. CODE OF JUDICIAL CONDUCT, Compliance with the Code of Judicial Conduct (compliance statement at the end of the Code).

²⁸ CONN. SUPER. CT. R. § 2-66(b). Public defenders also are prohibited from appearing on behalf of the state in any criminal case. *Id.* § 2-66(e).

²⁹ *Id.* § 2-66(d) (stating that a full-time court clerk shall not "appear as counsel in any civil or criminal case in any state or federal court" but "may otherwise [practice law] as permitted by established judicial branch policy").

³⁰ These attorneys are prohibited from appearing "in any criminal case in behalf of any accused in any state or federal court." *Id.* § 2-66(c).

³¹ *Id.* §§ 2-56 to 57.

³² CONN. GEN. STAT. § 51-81b(g) (2003); CONN. SUPER. CT. R. § 2-55

³³ 1 HORTON & KNOX, *supra* note 15, at 3-4 (discussing the history of the Connecticut Rules of Professional Conduct).

law³⁴ or assisting others in the unauthorized practice of law.³⁵ Court rules provide that attorney violators are subject to sanctions varying in severity from reprimand to disbarment.³⁶ A court rule also permits the superior court, for just cause, to punish or restrain any person, attorney or nonattorney, engaged in the unauthorized practice of law.³⁷

Connecticut court rules on unauthorized practice of law and on who may or may not practice law in the state are adopted not by the supreme court, as in most states, but by the judges of the superior court.³⁸ A rules committee of the superior court initially determines whether or not a new or revised court rule should be adopted and its decisions are submitted to all judges of the superior court for a final decision on adoption.³⁹ But superior court rules become effective by vote of all judges of the superior court and without approval of the state legislature or the section 51-15a represen-

³⁴ CONN. RULES OF PROF'L CONDUCT R. 5.5(1) (2003) (prohibiting, under the heading of "Unauthorized Practice of Law", a lawyer from practicing law "in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction").

³⁵ *Id.* R. 5.5(2). For a court rule that deters attorneys from assisting banks and trust companies in the unauthorized practice of law, see Connecticut Superior Court Rule section 2-67, which prohibits attorneys from receiving payment from a bank or trust company for preparing wills, codicils, or drafts of such instruments or advising others as to legal rights under such instruments.

³⁶ CONN. SUPER. CT. R. § 2-47. A violating attorney may also be reprimanded by the statewide grievance committee or a reviewing committee, with right of review by the superior court. *Id.* §§ 2-37 to -38. Section 2-37 adds additional sanctions and conditions, other than reprimand, that the statewide grievance committee or a reviewing committee may impose on attorney violators of the Rules of Professional Conduct. Among these additional sanctions are restitution and assessment of costs. *Id.* § 2-37.

³⁷ *Id.* § 2-44.

³⁸ The legal authority for superior court rulemaking on unauthorized practice by nonattorneys is somewhat vague and uncertain. A statute authorizing the superior court, as well as the supreme court and appellate court, to adopt rules "regulating pleading, practice and procedure in judicial proceedings" could be construed to include rulemaking on nonattorney unauthorized practice. See CONN. GEN. STAT. § 51-14 (2003). There also is a long statutory and caselaw history in Connecticut of superior court rulemaking on pleading, practice and procedure in judicial proceedings. See William M. Maltbie, *The Rule-Making Power of the Judges*, in THE CONNECTICUT PRACTICE BOOK OF 1951 xi, xi-xvi (1951) (detailing the early history of Connecticut's judicial rulemaking); DONNA J. PUGH ET AL., JUDICIAL RULEMAKING: A COMPENDIUM 36-39 (1984) (reviewing the history of judicial rulemaking in Connecticut); see generally Richard S. Kay, *The Rule-making Authority and Separation of Powers in Connecticut*, 8 CONN. L. REV. 1 (1975) (evaluating rulemaking by Connecticut courts critically). And there is caselaw authority in Connecticut and elsewhere suggesting that the courts have an inherent right to make procedural rules. See Maltbie, *supra* at xvi. This inherent power conceivably could be extended to include judicial rulemaking authority over unauthorized practice by nonattorneys.

³⁹ On adoption and the effective date of rules adopted by the superior court judges, see section 1-9 of the Connecticut Superior Court Rules. There is surprisingly limited reference to the rules committee of the superior court in either the Connecticut statutes or court rules. The committee is briefly referred to in section 1-9 of the Connecticut Superior Court Rules and sections 51-14 and 51-15a of the General Statutes of Connecticut.

Representatives of the state legislature's joint standing committee on the judiciary and the superior court rules committee meet at least annually to consider matters of mutual interest. CONN. GEN. STAT. § 51-15a (2003).

tatives.⁴⁰ The rules committee currently has nine members, eight of whom are superior court judges.⁴¹ The chair is a supreme court justice.⁴² The Chief Justice of the Connecticut Supreme Court appoints five of the nine members, including the chair, and the superior court judges appoint the other four.⁴³ The rules committee of the superior court receives research assistance from the lawyers in the Court Operations Division of the State of Connecticut Judicial Branch.⁴⁴ The rules committee usually meets monthly, except in July and August, and at least one of its annual meetings is a public session to receive comments on proposed superior court rules revisions it is considering.⁴⁵ Most of those who appear at these hearings are attorneys, and the Connecticut Bar Association often sends a representative to testify at the hearings.⁴⁶ The rules committee will soon consider extensive changes in the Connecticut Rules of Professional Conduct proposed by the CBA House of Delegates; and which changes in the ABA's recent revisions of the ABA Model Rules of Professional Conduct should be adopted in Connecticut. These include controversial ABA proposals for changes in Model Rules of Professional Conduct Rules 5.5 and 8.5 pertaining to the unauthorized practice of law.

C. Executive Agency Regulations

Most of the many Connecticut state executive agencies that hold hearings on contested matters have regulations as to who may appear before the agency. Violators presumably are engaged in the unauthorized practice of law. Typical of agency regulatory language as to who, other than agency personnel, may appear at agency hearings is that “[a] party or intervenor may appear in person or by an attorney or other representative.”⁴⁷ Some regulations are more detailed.⁴⁸ One even adds: “Nothing contained herein

⁴⁰ CONN. SUPER. CT. R. § 1-9; PUGH ET AL., *supra* note 38, at 38.

⁴¹ Telephone Interview with Carl Testo, Director of Legal Services, Court Operations Division, State of Connecticut Judicial Branch (Oct. 14, 2003).

⁴² *Id.*

⁴³ *Id.* The appointments by the chief justice presumably are among the responsibilities of that position as head of the judicial department. See CONN. GEN. STAT. § 51-1b(a) (2003) (stating that “[t]he Chief Justice of the Supreme Court shall be the head of the Judicial Department and shall be responsible for its administration”).

⁴⁴ Telephone Interview with Carl Testo, *supra* note 41.

⁴⁵ *Id.*

⁴⁶ *Id.*; see PUGH ET AL., *supra* note 38, at 38 (noting the bar's influence on judicial rule development and adoption).

⁴⁷ CONN. AGENCIES REGS. § 22a-3a-6(g) (1997) (stating the Department of Environmental Protection contested cases rule). For agency regulations using very similar language, see, for example, *id.* § 16-1-29 to 30 (1997) (stating the Department of Public Utility control representation of parties and intervenors rule and its definition of “attorney”); *id.* § 17-311-29 (1995) (stating the Department of Income Maintenance representation of parties and intervenors rule).

⁴⁸ *E.g.*, *id.* § 27-102(d)-51(21) (1998) (stating in the Department of Veterans' Affairs definitions rule that “[r]epresentative' means an informal or formal agent of the petitioner or respondent, includ-

shall be construed to require any representative to be an attorney at law.⁴⁹ A few regulations also include provisions as to who may represent the agency.⁵⁰ Regulations of several agencies even restrict or prohibit former commissioners or other former employees from appearing before the agency as attorney or representative after termination of their employment.⁵¹

D. *Caselaw*

1. *Nonattorneys*

Given the prevalence over time of legal services being provided by individuals and entities that are not attorneys and the many different kinds of

ing a spouse, an adult child, an attorney, a conservator and any other party authorized by a program participant or a court of competent jurisdiction to act on behalf of a party and who has informed the agency of such designation, or anyone provided by the Commissioner”).

Former regulations on hearings to determine if a child should be removed from a foster home, provided that an advocate for the child should be designated by the Department of Children and Families and be a private social service agency or qualified professional outside the Department. *Id.* § 17a-98-4(d)(2)(A) and (B) (repealed 1997). Also, the regulations stated that the foster parent was permitted to bring an attorney or other representative to the hearing. *Id.* § 17a-98-4(d)(3) (repealed 1997).

⁴⁹ *Id.* § 31-376-14(d) (1999) (stating the Occupational Health and Safety Review Commission rule regarding representatives of parties and intervenors rule).

⁵⁰ *E.g.*, *id.* § 17-2a-7 (1995) (Department of Income Maintenance witnesses rule stating that at hearings on appeals of departmental decisions or actions, the Department may be represented by the social worker, investigator or supervisor and “if necessary, by a consultant who is acquainted with the technical aspect of property or medical questions involved”); *id.* § 17a-98-4(d)(6)(A) (repealed 1997) (Department of Children & Families hearing procedures rule stating that in proceedings to remove a child from a foster home “[t]he department shall be represented by the regional office social worker for the child and the supervisor or program supervisor involved in the decision to remove the child”).

⁵¹ For example, the Connecticut Department of Labor/Board of Labor Relations regulations state:

Any person who at any time has been a member of or employed by the board shall not be permitted to appear as attorney or representative for any person, firm, corporation or organization until the expiration of six (6) months from the termination of his employment with the board, nor shall he at any time be permitted to appear in any case which was pending before the board during the period of his employment with the board.

Id. § 31-101-73 (1999).

In addition, Department of Banking regulations state:

Except when specially authorized by the commissioner, no person who has served as commissioner, deputy commissioner, or employee of the commissioner shall practice or act as attorney, agent or representative in any contested case before the commissioner or by any means aid in the preparation or prosecution of any such contested case which was pending before the commissioner while that person was so serving, if such representation or other employment in the contested case does or may involve the disclosure of confidential information acquired while serving as such commissioner or employee of the commissioner. In all cases except upon individual application and showing that such subsequent employment is not contrary to the public interest, no former commissioner or employee of the commissioner shall appear before the commissioner or accept employment in connection with any contested case before the commissioner within six (6) months after the termination of such employment.

Id. § 36-1-20 (1998).

businesses that provide some legal services to their customers, a surprisingly small number of reported opinions of Connecticut courts have held nonattorneys to be engaged in the unauthorized practice of law. Moreover, some of the opinions are so old that there are doubts as to whether they would be upheld if reconsidered by today's courts. One of the most important of the earlier cases held two Connecticut commercial banks to have engaged in the unauthorized practice of law due to activities of the banks' trust department employees.⁵² In this case the court concluded that the employees, including attorney employees, had violated the state's unauthorized practice laws when they prepared probate court instruments for estates the banks were administering⁵³ and when the banks' attorney employees appeared in a fiduciary capacity before probate courts in matters pertaining to estates the banks were administering.⁵⁴

Other nonattorneys or their firms that Connecticut courts have held had engaged in the unauthorized practice of law include a mutual fund sales operation that provided estate and trust documents and advice to its customers,⁵⁵ a legal document preparation service that prepared for its customers such documents as wills, living trusts, and essential name change and divorce documents,⁵⁶ and divorce assistance services that included legal document preparation and legal advice to persons seeking a pro se divorce.⁵⁷

⁵² *State Bar Ass'n v. Conn. Bank & Trust Co.*, 145 Conn. 222, 236-37, 140 A.2d 863, 871 (1958), *aff'd*, 146 Conn. 556, 564, 153 A.2d 453, 458 (1959).

⁵³ *Id.* at 871. However, in its injunction and declaratory order on subsequent appeal the court clarified its previous position by stating that the acts are not the "illegal practice of law unless the problems involved in the particular case are such that their solution is commonly understood to be the practice of law." *Conn. Bank & Trust Co.*, 153 A.2d at 457 n.3.

⁵⁴ *Conn. Bank & Trust Co.*, 140 A.2d at 871. See also *Conn. Bank & Trust Co.*, 153 A.2d at 457 n.3 (designating an injunction and declaratory order in accord with the earlier opinion). *But cf.* *King v. Guiliani*, 9 Conn. L. Rptr. No. 17, 527, 531 (Conn. Super. Ct. 1993) (holding that attorneys working for a captive insurance company law firm involved in that case may represent insured persons in claims against the insurer, as the interests of the insurer and insured did not conflict).

⁵⁵ *Grievance Comm. v. Dacey*, 154 Conn. 129, 148, 156, 222 A.2d 339, 349, 352 (1966) (holding that defendant violated section 51-88 of the General Statutes of Connecticut, a statute that the court also held was not so vague as to be unconstitutional).

⁵⁶ *Statewide Grievance Comm. v. Patton*, 239 Conn. 251, 253, 255, 683 A.2d 1359, 1360, 1361 (1996) (holding that defendant violated CONN. GEN. STAT. § 51-88).

⁵⁷ *Statewide Grievance Comm. v. Harris*, 239 Conn. 256, 257, 683 A.2d 1362, 1362 (1996) (holding that defendant, a nonattorney, violated CONN. GEN. STAT. § 51-88 when he advertised an uncontested pro se divorce assistance service with the advertisement stating that, "Paralegals prepare all papers for your signing and step you through the self-help divorce."); *Statewide Grievance Comm. v. Zadora*, 62 Conn. App. 828, 833, 772 A.2d 681, 684 (2001) (stating that "[a]dvertising alone is sufficient to constitute the unauthorized practice of law if the advertisement is for activity that amounts to legal services."); *cf.* *Monroe v. Horwitch*, 820 F. Supp. 682, 688 (D. Conn. 1993) (holding that a paralegal who advertised that she would prepare court papers for parties proceeding pro se in divorce cases was engaged in the unauthorized practice of law in violation of section 51-88 of the General Statutes of Connecticut).

An early Connecticut case also held a nonattorney, business not disclosed in the opinion, to have engaged in the unauthorized practice of law when drafting a will for another person.⁵⁸ Another early Connecticut case held that a town clerk was engaged in the unauthorized practice of law when she made real estate title searches and then submitted title opinions to savings banks and loan associations on the properties involved.⁵⁹ Only one Connecticut reported judicial opinion has considered whether accountants' services are the unauthorized practice of law. In that case the court held that the accountant's services in attempting to negotiate a federal claim of tax delinquency did not constitute illegal law practice and the court relied in part and quoted at length from a New York case holding that tax returns usually may be prepared by accountants, although if involved and difficult legal questions arise, advice should be sought from a qualified lawyer.⁶⁰

Quite universally in the United States, one category of nonattorney, an individual person, is exempt from unauthorized practice restrictions when providing legal services to himself or herself. Connecticut courts have frequently recognized this right of self-representation by an individual,⁶¹ and, in doing so, have often stated that they will treat such pro se litigants with some leniency.⁶² However, they also have declared that this "leniency should not be invoked as to affect adversely the other parties' rights,"⁶³ nor should it authorize lack of compliance with relevant rules of procedural or substantive law.⁶⁴ The self-representation right exists only for natural persons, not for corporations or other organizations,⁶⁵ and a corporation cannot

⁵⁸ *State v. Thiede*, 4 Conn. Supp. 438 (Conn. Super. Ct. 1937).

⁵⁹ *Grievance Comm. v. Payne*, 128 Conn. 325, 332, 22 A.2d 623, 627 (1941) (holding that the defendant violated an unauthorized practice statute then in effect).

⁶⁰ *Kiniry v. Degutis*, 18 Conn. Supp. 186, 190-98 (Conn. Super. Ct. 1953) (holding that the accountant was entitled to be paid for his services, although less than he had requested (construing *In re New York County Lawyers Ass'n*, 78 N.Y.S.2d 209, 216-21 (N.Y. App. Div. 1948))).

⁶¹ But the right of self-representation does not extend to a husband appearing in court representing his wife pro se. *Johnson v. Ivimey*, 3 Conn. App. 392, 395, 488 A.2d 1275, 1277 (1985).

⁶² There are many cases in which the courts apparently treated pro se litigants with special leniency. See, e.g., *Galland v. Bronson*, 204 Conn. 330, 527 A.2d 1192 (1987); *Higgins v. Hartford County Bar Ass'n*, 109 Conn. 690, 145 A. 20 (1929); cf. *Bitonti v. Tucker*, 162 Conn. 626, 295 A.2d 545 (1972) (granting great latitude to a pro se litigant's arguments on appeal but, in so far as it was possible for the court to understand them, the court concluded that the arguments advanced had no merit).

⁶³ *Sicaras v. City of Hartford*, 44 Conn. App. 771, 788, 692 A.2d 1290, 1300 (1997) (quoting *Lo Sacco v. Young*, 20 Conn. App. 6, 12, 564 A.2d 610, 614 (1989)); see also *Conn. Light & Power Co. v. Kluczinsky*, 171 Conn. 516, 519-20, 370 A.2d 1306, 1308 (1976) (being solicitous of the rights of a pro se defendant, but in doing so the court would not "interfere with the just rights' of the plaintiff." (quoting *Higgins*, 145 A. at 20 (1929))).

⁶⁴ *Lemoine v. McCann*, 40 Conn. App. 460, 465, 673 A.2d 115, 118 (1996).

⁶⁵ *Am. Sand & Gravel, Inc. v. Clark & Fray Const. Co.*, 2 Conn. Cir. Ct. 284, 286, 198 A.2d 68, 69 (1963). But cf. *Margaret Maunder Assocs. v. A-Copy, Inc.*, 40 Conn. Supp. 361, 364-65, 499 A.2d 1172, 1174 (1985) (permitting the president and sole stockholder of the plaintiff corporation to represent the corporation in court, the court stated, "Maunder is not acting for another in a true sense, for,

practice law by employing attorneys to do so in the corporation's name.⁶⁶ In addition to nonattorneys' pro se representation rights in certain limited circumstances, Connecticut courts have held that specified types of persons or organizations who were not attorneys or law firms could provide some legal services to others. These include the right of a commercial bank or trust company to perform certain acts, among them providing general information about relevant laws or reviewing legal instruments. These acts can be performed as incidents to the bank's or trust company's fiduciary business in serving customers or prospective customers.⁶⁷ In another case, a Connecticut court held that nonattorney social workers employed and acting for a state government department could draft, sign and file parental termination petitions in a Connecticut court proceeding without this constituting the unauthorized practice of law.⁶⁸

The usual sanction imposed when nonlawyers have been determined by a Connecticut court to have engaged in the unauthorized practice of law

although she is acting for a separate legal entity, she is the sole owner and stockholder of that entity. In effect, she is acting for herself . . .").

⁶⁶ *State Bar Ass'n v. Conn. Bank & Trust Co.*, 145 Conn. 222, 234-36, 140 A.2d 863, 870-71 (1958).

⁶⁷ For example, the court's injunctive order provided in part as follows:

In giving general information to customers and prospective customers on such matters as federal and state tax laws, inter-vivos and testamentary trusts, wills, etc., as well as reviewing existing wills, where the defendant gives no specific advice, charges no fee, and urges the customers to consult their own attorneys for advice on their specific situations and have them draw any necessary instruments, the defendant is not engaged in the illegal practice of law but is performing these acts as incident to its authorized fiduciary business.

State Bar Ass'n v. Conn. Bank & Trust Co., 146 Conn. 556, 563 n.3, 153 A.2d 453, 457 n.3 (1959).

The order also permitted certain activities by the defendant if the problems do not involve a solution that is commonly understood to be the practice of law. More specifically, the order provided:

In preparing and filing in the probate courts the various applications, petitions, accounts, inventories and distributions pertaining to estates and trusts, conservatorships and guardianships, the defendant is performing the ordinary and incidental services relative to estates and trusts assumed by it under the statutes authorizing it to act as fiduciary and is not engaged in the illegal practice of law unless the problems involved in the particular case are such that their solution is commonly understood to be the practice of law.

....
The work of preparing and filing tax returns for the defendant as fiduciary and dealing with, and appearing before, state and federal tax authorities in connection with taxes claimed to be due from the defendant as fiduciary may properly be done by regular employees of the defendant, either lawyers or laymen, to the extent that tax law problems of a type such that their solution would be commonly understood to be the practice of law are not involved.

Id.

⁶⁸ *In re Darlene C.*, 247 Conn. 1, 9-15, 717 A.2d 1242, 1247-50 (1998) (holding that sections 17a-6(n), 17a-112, and 46b-129 of the General Statutes of Connecticut and section 26-1(l) of the Connecticut Practice Book authorize this petition work by social workers employed and acting for the State Department of Children and Families).

is a court ordered injunction prohibiting further such conduct,⁶⁹ and with the possibility of the enjoined party being held in contempt if the injunction order is violated.⁷⁰ Criminal prosecution, with the possibility of a criminal sanction being imposed, is also a possibility but has rarely occurred.⁷¹

2. Attorneys

It is possible for attorneys to engage in conduct legally prohibited as the unauthorized practice of law and there are reported opinions by Connecticut courts so holding. Attorneys admitted to practice law in another state but not in Connecticut have been held by Connecticut courts to be engaged in the illegal practice of law when they provide legal services in or primarily in Connecticut for their clients. These services can include such out-of-court assistance to clients as legal advice, drafting of legal instruments, negotiating business acquisitions, and the formation of Connecticut corporations.⁷² However, on a showing of good cause, a Connecticut court will grant permission *pro hac vice* for an out-of-state attorney not admitted in Connecticut to appear before it in a designated case.⁷³ If granting such permission would thwart a legitimate state interest, permission will be de-

⁶⁹ See, e.g., *Statewide Grievance Comm. v. Patton*, 239 Conn. 251, 252-53, 683 A.2d 1359, 1360 (1996); *Grievance Comm. of Bar of Fairfield County v. Dacey*, 154 Conn. 129, 131-32, 148, 156, 222 A.2d 339, 341-42, 349, 352 (1966); *Conn. Bank & Trust Co.*, 153 A.2d at 457 n.3.

⁷⁰ See *Statewide Grievance Comm. v. Zadora*, 62 Conn. App. 828, 834, 772 A.2d 681, 684 (2001) (affirming a holding that the defendant was in contempt for violating an injunction prohibiting the practice of law).

⁷¹ For criminal convictions of nonlawyers for unauthorized practice of law, see, for example, *State v. Davis*, 2 Conn. Cir. Ct. 257, 257-59, 197 A.2d 668, 669-70 (1963). See also *State v. Thiede*, 4 Conn. Supp. 438 (Conn. Super. Ct. 1937) (imposing a fine of twenty-five dollars for the unauthorized practice of law).

⁷² See, e.g., *Perlah v. S.E.I. Corp.*, 29 Conn. App. 43, 48, 612 A.2d 806, 809 (1992) (holding that an attorney admitted in New York violated section 51-88 of the General Statutes of Connecticut when the attorney practiced in Connecticut prior to his admission to practice in Connecticut); *Taft v. Amsel*, 23 Conn. Supp. 225, 228, 180 A.2d 756, 757 (1962) (holding that a New York attorney violated section 51-88); see also *In re Peterson*, 163 B.R. 665, 675 (Bankr. D. Conn. 1994) (holding that a New York attorney not admitted to practice in Connecticut who had an office in Connecticut and restricted his practice to federal law matters was engaged in the unauthorized practice of law and violated section 51-88 of the General Statutes of Connecticut). The court ordered the attorney to return legal fees paid to him when he advised Connecticut debtors on bankruptcy-related matters, but the court noted that the attorney's activities would not have been the unauthorized practice of law if the services he rendered had been for those services "reasonably necessary and incident to the specific matter pending in this [bankruptcy] court" as he was authorized to practice in bankruptcy court. *Id.* at 675-77. *But c.f.* *Windover v. Sprague Techs.*, 834 F. Supp. 560 (D. Conn. 1993). In *Windover*, the court observed that *Connecticut Bank & Trust Co.*, 140 A.2d 863 (1958):

seems to imply that in-house counsel, who typically give legal advice to their corporate employer, would be engaged in the practice of law . . . in violation of § 51-88 . . . [y]et, the large number of in-house counsel working in Connecticut who are not members of the state bar tends to show either that this interpretation of the statute is incorrect or that the statute is not enforced.

Windover, 834 F. Supp. at 566.

⁷³ CONN. SUPER. CT. R. § 2-16.

nied.⁷⁴

Attorneys licensed to practice law in Connecticut are also prohibited by Connecticut law from engaging in or assisting in the unauthorized practice of law. This includes practicing law in another jurisdiction when not legally authorized to do so or assisting another person in the unauthorized practice of law.⁷⁵ There are few reported Connecticut judicial opinions on these kinds of conduct by Connecticut attorneys. A fairly recent Superior Court opinion holds that house counsel admitted to practice in Connecticut and employed full-time by an insurance company are not assisting the company in the unauthorized practice of law when the house counsel are representing insured persons in claims covered by the insurance company's policies.⁷⁶ As the interests of insurer and insured were not in conflict, there was no unauthorized practice of law and the representation was permissible.⁷⁷ A much earlier Connecticut Supreme Court case took a contrary position on the unauthorized practice of law issue when a bank's house counsel, admitted in Connecticut, represented the decedents' estates before Connecticut probate courts when the bank was a fiduciary of the estates involved.⁷⁸ The attorneys were enjoined from further engaging in such conduct.⁷⁹

Injunction is the sanction most likely to be imposed on attorneys, either Connecticut attorneys or out-of-state attorneys, when a court finds that they

⁷⁴ See, e.g., *Herrmann v. Summer Plaza Corp.*, 201 Conn. 263, 270, 513 A.2d 1211, 1215 (1986) (upholding denial of *pro hac vice* admission by the trial court because the out-of-state attorney had other commitments and could not try the case on the date set by the court; the court noted that this denial was a proper exercise of the trial court's discretion in furthering docket control and expeditious caseflow management); *Enquire Printing & Publ'g Co. v. O'Reilly*, 193 Conn. 370, 376-77, 477 A.2d 648, 652 (1984) (denying *pro hac vice* admission as the out-of-state attorney was expected to be called as a witness in the case, and if called the attorney could not continue his representation of the party without violating a section of the Code of Professional Conduct prohibiting conflict of interest); *State v. Reed*, 174 Conn. 287, 292-94, 386 A.2d 243, 247-48 (1978) (upholding the denial of *pro hac vice* admission because of the attorney's likely conflict of interest and scheduling problems if the admission was granted); cf. *Yale Literary Magazine v. Yale Univ.*, 4 Conn. App. 592, 605, 496 A.2d 201, 208 (1985) (reversing the denial of *pro hac vice* admission as denial would not further any legitimate state interest). But cf. *Williams v. Equitable Life Assurance Soc'y*, 24 Conn. L. Rptr. No. 15, 537 (Conn. Super. Ct. 1999) (denying a *pro hac vice* request because "[n]o suggestion is raised of defendant's inability to secure the services of skilled Connecticut counsel, nor is any claim advanced that . . . [the] denial of permission will affect the defendant's personal or financial welfare").

⁷⁵ See, e.g., CONN. R. OF PROF'L CONDUCT R. 5.5 (2003).

⁷⁶ See *King v. Guiliani*, 9 Conn. L. Rptr. 527 (Conn. Super. Ct. 1993). The house counsel in this case were working in a captive law firm, one in which all attorneys and staff were employees of the insurance company. *Id.* at 528. For the court's definition of a captive law firm, see *id.* at 535 n.3. But whether the attorneys were working in a captive law firm rather than a more traditional corporate law department apparently was of no significance to the decision in this case.

⁷⁷ *Id.* at 531.

⁷⁸ *State Bar Ass'n v. Conn. Bank & Trust Co.*, 146 Conn. 556, 563 n.3, 153 A.2d 453, 457 n.3 (1959).

⁷⁹ *Id.*

have engaged in the unauthorized practice of law. Regarding such conduct there also is case authority for reprimanding a Connecticut attorney⁸⁰ and preventing out-of-state attorneys from receiving or retaining legal fees for their unauthorized practice services.⁸¹

3. *Policy Arguments Justifying Unauthorized Practice Laws*

Connecticut courts in most of their reported opinions in unauthorized practice cases have not alluded to policy arguments.⁸² But when policy arguments have been considered in deciding unauthorized practice cases, they have been stated very briefly and in very general terms. An example of the latter is this statement by Connecticut's highest court in justifying the restriction of law practice to attorneys:

It is of importance to the welfare of the public that these manifold customary functions [typical lawyer services of litigation, instrument drafting and legal advice] be performed by persons possessed of adequate learning and skill and of sound moral character, acting at all times under the heavy trust obligation to clients which rests upon all attorneys.⁸³

In discussing the policy rationale for limiting the practice of law to attorneys, a Connecticut trial court stated:

[The] requirements for admission to the bar are to protect members of the public, clients and the courts. "The ultimate purpose of all regulations of the admission of attorneys is to assure the courts the assistance of advocates of ability, learning and sound character and to protect the public from incompetent and dishonest practitioners."⁸⁴

⁸⁰ See, e.g., *Haymond v. Statewide Grievance Comm.*, 45 Conn. Supp. 481, 481-82, 723 A.2d 821, 823 (1997), *aff'd*, 247 Conn. 436, 439, 723 A.2d 808, 809 (1999).

⁸¹ See, e.g., *In re Peterson*, 163 B.R. 665, 675-76 (Bankr. D. Conn. 1994) (ordering attorneys' fees paid for unauthorized practice services be repaid); *Perlah v. S.E.I. Corp.*, 29 Conn. App. 43, 48, 612 A.2d 806, 809 (1992) (holding that the plaintiff was prohibited from compensation for legal service occurring prior to his admission to the Connecticut bar); *Taft v. Amsel*, 23 Conn. Supp. 225, 227, 180 A.2d 756, 757 (1962) (stating that "[t]he law seems to be well settled that no one is entitled to recover compensation for services as an attorney at law unless he has been duly admitted to practice before the court").

⁸² A policy, as the term is used here, is a course of action to achieve one or more important social goals or values.

⁸³ *State Bar Ass'n v. Conn. Bank & Trust Co.*, 145 Conn. 222, 235, 140 A.2d 863, 870 (1958) (holding that a corporation cannot legally practice law). Similar language to the above appears in *Grievance Committee of the Bar of New Haven County v. Payne*, 128 Conn. 325, 330-31, 22 A.2d 623, 626 (1941), which held that a nonlawyer town clerk was engaged in the unauthorized practice of law when giving title opinions on real property.

⁸⁴ *King v. Guiliani*, 9 Conn. L. Rptr. 527, 530 (Super. Ct. 1993) (quoting *Rosenthal v. State Bar Examining Comm.*, 116 Conn. 409, 415, 165 A. 211, 213 (1933)).

Connecticut courts also have occasionally rejected policy arguments advanced by litigating parties in unauthorized practice cases. An example of this is a case in which the court considered whether salaried house counsel are practicing law.⁸⁵ On this issue the Connecticut Supreme Court said:

The appellant seems to claim that, as a matter of public policy, a salaried attorney for a single client could not qualify as being engaged in the practice of law because he would be subject to the control, through the power of discharge, of his one client, and consequently he would be under strong compulsion to do that client's bidding, whether in accordance with, or contrary to, applicable standards of ethical legal practice. We find little merit in this policy claim.⁸⁶

In another case, the Connecticut Supreme Court rejected the argument that the public policy against unauthorized practice of law is so strong that a taxpayer contracting for unauthorized practice services in appealing a local property tax assessment, if the services are found to be unauthorized, bars the taxpayer's right to appeal.⁸⁷ The court concluded that the public policy in favor of fair and accurate taxation should prevail and the unresolved assertion of unauthorized law practice should be addressed, if at all, by the statewide grievance committee, the arm of the judicial system that handles such matters.⁸⁸

Unlike academics, who in their legal analyses are prone to stress policy arguments, Connecticut courts in their reported unauthorized practice of law opinions, infrequently consider policy arguments, and when they do, these arguments rarely seem to be the controlling determinant of how cases are decided.

E. *Advisory Opinions on the Unauthorized Practice of Law*

Two committees of the Connecticut Bar Association on request issue advisory opinions on whether certain fact specific conduct violates the state's unauthorized practice laws. These committees are the Unauthorized Practice Committee and the Professional Ethics Committee.⁸⁹ Advisory opinions by these committees do not have the force of law and are not binding on the courts or the Statewide Grievance Committee. But they are useful guides to the law's meaning and Connecticut courts have sometimes

⁸⁵ *In re Hunt*, 155 Conn. 186, 191-92, 230 A.2d 432, 434 (1967).

⁸⁶ *Id.*

⁸⁷ *Robertson v. Town of Stonington*, 253 Conn. 255, 259, 750 A.2d 460, 463 (2000).

⁸⁸ *Id.* at 463-64.

⁸⁹ On procedures and requirements of the committees for issuance of advisory opinions, see CONN. BAR ASS'N COMM. ON UNAUTHORIZED PRACTICE OF LAW R. P. § III (on file with the Connecticut Law Review); CONN. BAR ASS'N COMM. ON PROF'L ETHICS, R. OF COMM. P. § I (2003) (on file with the Connecticut Law Review).

even cited them in support of their judicial opinions on troublesome issues.⁹⁰ It is also very unlikely that a lawyer who obtains an advisory opinion from one of the committees will be sanctioned for conduct that is in compliance with the opinion.

The Unauthorized Practice Committee holds meetings at the discretion of the committee chair, and the Professional Ethics Committee holds meetings approximately once a month.⁹¹ Members of each committee are members of the Connecticut Bar Association committee members are appointed annually by the president of the Connecticut Bar Association:⁹² and receive no compensation for their services. The Unauthorized Practice Committee currently has thirteen members and the Professional Ethics Committee currently has fifty-one members. The usual procedure of each committee in considering requests for opinions is for the committee chair to assign to one committee member the duty of drafting an opinion responding to the request and the member's draft is then considered and voted upon by the full committee membership.⁹³ As new requests come in, the committee chair rotates among the members the duty of preparing an initial draft so that eventually each member takes on this responsibility.⁹⁴

The Unauthorized Practice Committee will give an advisory opinion on any aspect of Connecticut unauthorized practice law.⁹⁵ The Professional Ethics Committee gives advisory opinions only on issues arising under the Rules of Professional Conduct adopted by the Connecticut Superior Court and relatively few of the Committee's opinions are concerned with issues of unauthorized practice.⁹⁶ On unauthorized practice matters involving compliance with the Rules of Professional Conduct the jurisdiction of the Unauthorized Practice and Professional Ethics Committees overlap some-

⁹⁰ See, e.g., *Haymond v. Statewide Grievance Comm.*, 45 Conn. Supp. 481, 484, 723 A.2d 821, 824 (1997) (citing Conn. Bar Ass'n Prof'l Ethics, Informal Op. 95-2, concerning requirements for advertising in Connecticut by a law firm with an office in Connecticut and requirements for providing legal services in Connecticut when a named partner of the firm is not a member of the Connecticut bar), *aff'd*, 247 Conn. 436, 439, 723 A.2d 808, 809 (1999).

⁹¹ CONN. BAR ASS'N COMM. ON UNAUTHORIZED PRACTICE OF LAW R. P. § II (on file with the Connecticut Law Review); CONN. BAR ASS'N COMM. ON PROF'L ETHICS, R. OF COMM. P. § III (2003) (on file with the Connecticut Law Review).

⁹² CONN. BAR ASS'N COMM. ON UNAUTHORIZED PRACTICE OF LAW R. P. § I (on file with the Connecticut Law Review); CONN. BAR ASS'N COMM. ON PROF'L ETHICS, R. OF COMM. P. § II (2003) (on file with the Connecticut Law Review).

⁹³ CONN. BAR ASS'N COMM. ON UNAUTHORIZED PRACTICE OF LAW R. P. § III (on file with the Connecticut Law Review); CONN. BAR ASS'N COMM. ON PROF'L ETHICS, R. OF COMM. P. § IV (2003) (on file with the Connecticut Law Review).

⁹⁴ CONN. BAR ASS'N COMM. ON UNAUTHORIZED PRACTICE OF LAW R. P. § III(C)(2) (on file with the Connecticut Law Review); CONN. BAR ASS'N COMM. ON PROF'L ETHICS, R. OF COMM. P. § IV(C)(1) (2003) (on file with the Connecticut Law Review).

⁹⁵ CONN. BAR ASS'N COMM. ON UNAUTHORIZED PRACTICE OF LAW R. P. § III(B) (on file with the Connecticut Law Review)

⁹⁶ PROFESSIONAL RESPONSIBILITY REFERENCE GUIDE i (Conn. Bar Ass'n 2000).

what. Advisory opinions when issued are matters of public record.⁹⁷ They generally are not subject to final approval by any other Connecticut Bar Association official or body.⁹⁸

Advisory opinions issued by the committees cover a wide variety of issues. Among relatively recent opinions of the Unauthorized Practice Committee is a 2002 opinion on house counsel. It states that house counsel not admitted to practice law in Connecticut, but whose principal office is in Connecticut, are engaged in the unauthorized practice of law when performing certain legal services in Connecticut for their employer.⁹⁹ Another recent advisory opinion of the committee concerns the practice rights of a person admitted to practice by an Indian tribe but not licensed as an attor-

⁹⁷ For a compilation through 1997 of all Professional Ethics Committee formal opinions since 1954 and informal opinions since 1986, see PROFESSIONAL RESPONSIBILITY REFERENCE GUIDE, *supra* note 96. For the Connecticut opinions and those of other state bars see also the annual volumes of the National Reporter on Legal Ethics and Professional Responsibility. Nat'l Rep. Legal Ethics (Univ. Pub. Am.).

The number of advisory opinions issued by the Professional Ethics Committee varies considerably over time. For example, in 1998 the Committee issued twenty-seven opinions, but only thirteen opinions in 2002. *Id.* at xv-xviii. During the past few years the Unauthorized Practice Committee has been issuing an average of only one or two advisory opinions each year.

⁹⁸ Opinions of the Unauthorized Practice Committee or the Professional Ethics Committee may be either informal or formal opinions, but most committee opinions are informal opinions. Formal opinions are for questions of unusual importance. In recent years the Professional Ethics Committee has occasionally issued formal opinions whereas the Unauthorized Practice Committee has issued none. Committee formal opinions may not be finally adopted until submitted to the Connecticut Bar Association ("CBA") Board of Governors for its comments and suggestions. If the Board of Governors has comments or suggestions, the submitting committee must then consider them at a subsequent meeting. At this meeting the committee has the option to adopt the opinion, with or without any changes. However, if twenty-five members of the CBA or a majority of the Board of Governors request a hearing following reconsideration and approval of the original opinion by the committee, the House of Delegates will hold such a hearing and determine if the opinion should be adopted as an official opinion of the CBA. Informal opinions, in contrast, are adopted and become final by committee action without required review by the Board of Governors. On requirements for formal and informal opinions by the two committees and procedures for their adoption, see CONN. BAR ASS'N BYLAWS, arts. IX, X (on file with the Connecticut Law Review); CONN. BAR ASS'N COMM. ON UNAUTHORIZED PRACTICE OF LAW R. P. § III(B) (on file with the Connecticut Law Review); CONN. BAR ASS'N COMM. ON PROF'L ETHICS, R. OF COMM. P. §§ IV-VI (2003) (on file with the Connecticut Law Review).

⁹⁹ This opinion is entitled *Unauthorized Practice of Law by Locally Unadmitted In-House Counsel* and includes the following statement: "Locally unadmitted in-house counsel are not authorized to practice law in Connecticut; and in Connecticut, when representing their employer, they cannot give legal advice on Connecticut law, draft legal documents that involve Connecticut law, or appear in Connecticut state courts." Opinion Letter on "Unauthorized Practice of Law by Locally Unadmitted In-House Counsel" (July 23, 2002) available at <http://www.ethicsandlawyering.com/Issues/files/ConnUPL.pdf> (last visited Nov. 17, 2003) (on file with the Connecticut Law Review). The opinion does note that some states specially authorize such in-house counsel to practice law representing their employer and that the Connecticut Bar Association House of Delegates in January 2000 unanimously recommended to the Superior Court Rules Committee that a rule be adopted authorizing such representation. *Id.* Subsequent to the opinion by the Unauthorized Practice Committee, the Superior Court Rules Committee ultimately rejected the recommendation. On the Rules Committee rejection, see Thomas B. Scheffey, *Setback for In-House Status*, CONN. LAW. TRIB., May 19, 2003, at 3.

ney by Connecticut law.¹⁰⁰ Among relatively recent opinions of the Professional Ethics Committee concerned with unauthorized practice issues are one advising that a nonresident attorney, not licensed to practice law in Connecticut, may be a named partner in a Connecticut law partnership;¹⁰¹ a law firm representing a seller of real estate may assign a nonattorney employee to attend the closing and communicate information and questions from an attorney in the firm to the buyer's attorney, but the nonattorney employee should not express an independent opinion on legal matters or supervise the closing;¹⁰² and out-of-state attorneys not licensed to practice law in Connecticut may advertise their federal immigration legal services in Connecticut and provide such services to Connecticut residents but their advertisements must clearly indicate that the out-of-state attorneys are not licensed to practice law in Connecticut.¹⁰³

Another important function of the Unauthorized Practice Committee and Professional Ethics Committee as to unauthorized practice matters is occasionally recommending to the Connecticut Bar Association House of Delegates approval or rejection of proposed Connecticut Superior Court rule changes pertaining to unauthorized practice of law. The House of Delegates then decides whether or not it will recommend to the superior court that the proposed rule changes be made or rejected. This occasional involvement of the committees in the law revision process expands still further their role in helping to shape and clarify the state's unauthorized practice laws.¹⁰⁴

¹⁰⁰ This opinion was adopted by the CBA Unauthorized Practice Committee in 2002. It states that a person could practice tribal law on tribal lands in Connecticut without being in violation of Connecticut unauthorized practice laws. Another 2002 opinion of the CBA Unauthorized Practice Committee concludes that an out-of-state attorney not admitted in Connecticut is engaged in the unauthorized practice of law when representing persons in an arbitration proceeding in Connecticut. Conn. Bar Ass'n Comm. on Unauthorized Practice of Law, Informal Op. 2002-02 (2002).

¹⁰¹ Conn. Bar Ass'n Comm. on Prof'l Ethics, Informal Op. 94-22 (1994).

¹⁰² Conn. Bar Ass'n Comm. on Prof'l Ethics, Informal Op. 96-16 (1996).

¹⁰³ Conn. Bar Ass'n Comm. on Prof'l Ethics, Informal Op. 98-1 (1998).

¹⁰⁴ Recently both committees gave extensive consideration to the ABA's changes to Rules 5.5 and 8.5 of the Model Rules of Professional Conduct—changes that if adopted as law by the state would have important implications for expanding and clarifying legally permissible multijurisdictional law practice by attorneys. Both committees approved the ABA's revised Rule 8.5 but refused to recommend, without qualification, the ABA's Rule 5.5 proposals. The Unauthorized Practice committee approved a modified version of Rule 5.5 and approved the comments with a major change in one of the comments. The Professional Ethics Committee also approved a modified version of Rule 5.5, a version recommended by the Connecticut Bar Association Task Force on Unauthorized Practice of Law

On another contentious unauthorized practice issue, multidisciplinary practice ("MDP"), a Connecticut Bar Association Study Committee on MDP issued a lengthy report in May 2000 following many months of consideration. In this report the committee recommended that the CBA oppose fully integrated MDPs and also recommended that the CBA continue to study the issue and monitor the developments in other states and by the ABA. Connecticut Bar Ass'n, Report of the Multidisciplinary Practice Study Committee 24-28 (2000) (on file with the Connecticut Law Review) [hereinafter CBA Multidisciplinary Report]. The Study Committee for a year or so after its May 2000 report did continue

F. *Ambiguity and Uncertainty in Connecticut Unauthorized Practice Law*

In every field of law there is some ambiguity and uncertainty, but given its importance to the justice system, the ambiguity and uncertainty in Connecticut unauthorized practice law is unusually great. One of the most important issues in Connecticut unauthorized practice law that has not been clearly resolved is whether or not, under the Connecticut Constitution, the courts have ultimate power, relative to the other two branches of government, to determine what is and is not the unauthorized practice of law. When the courts and the legislature or an executive agency are not in accord as to what constitutes the unauthorized practice of law, whose position prevails? The text of the Connecticut Constitution, typical of the texts of most state constitutions, does not explicitly answer this question. The Connecticut Constitution, as do most state constitutions, expressly provides for a separation of powers among the three branches of government but without stating which branch has power over unauthorized practice of law.¹⁰⁵ The Connecticut Constitution does say that the state's judicial power shall be vested in the courts and that the "powers and jurisdiction of these courts shall be defined by law" but it does not say which governmental branch shall have this lawmaking power.¹⁰⁶

Nor have the courts in interpreting the Connecticut Constitution unequivocally stated which branch has ultimate power to determine what is or is not the unauthorized practice of law. There is language in some older Connecticut judicial opinions that could possibly be construed as holding that the courts have exclusive power to determine what is the practice of law,¹⁰⁷ which could mean that any legislative enactments or executive agency regulations on the unauthorized practice of law are unconstitutional. But it is unlikely that present-day Connecticut courts would adopt this exclusive judicial power position on unauthorized law practice matters.

to monitor reactions elsewhere to the MDP problem but by 2002 became inactive, as concern over the problem had declined considerably.

¹⁰⁵ See CONN. CONST. art. II. On the evolution of the separation of powers doctrine in Connecticut, see WESLEY W. HORTON, *THE CONNECTICUT STATE CONSTITUTION: A REFERENCE GUIDE* 80-85 (1993).

¹⁰⁶ CONN. CONST. art. V.

¹⁰⁷ See, e.g., *Heiberger v. Clark*, 148 Conn. 177, 191, 169 A.2d 652, 659 (1961) (holding section 51-82 of the General Statutes of Connecticut concerning admission to practice in Connecticut of attorneys admitted in other states unconstitutional because "[a]ny attempt on the part of the legislative department to direct what the rules [for qualifications necessary for the practice of law and procedures for admission to practice law] shall be, and to determine what qualifications applicants for admission shall possess, transgresses the constitutional power of that department"); *Brown v. O'Connell*, 36 Conn. 432, 446 (1870) (stating that "[i]t should be borne in mind that no judicial power is vested by the constitution in the General Assembly, either directly or as an incident of the legislative power, and the General Assembly cannot confer it[,] but recognizing that under article 5 of the Connecticut Constitution the state legislature has the power to appoint judges but may not delegate this authority to another governmental body).

To do so would be inconsistent with many reported Connecticut judicial opinions, opinions that at least in part are based on section 51-88 of the General Statutes of Connecticut, which prohibits the practice of law by persons not admitted to practice in Connecticut.¹⁰⁸ Judicial reliance on a statute implies that the statute is constitutional and that the legislature had the constitutional authority to enact it. Although unfortunately it is still uncertain, the most likely position, when and if the Connecticut courts clearly resolve the matter, is that on issues of unauthorized practice all three governmental branches have concurrent constitutional power but ultimate power is in the courts. The courts' position will prevail if the courts and another branch are not in accord on any aspect of unauthorized practice law. This appears to be the majority position of state courts in this country that have clearly taken a position on the issue.¹⁰⁹

Another important and troublesome feature of Connecticut law of unauthorized practice that is more ambiguous and uncertain than it need be is the definition of the practice of law, those services that generally only attorneys admitted to practice in Connecticut may legally provide. No Connecticut statute or administrative regulation defines the practice of law and no Connecticut court rule or judicial opinion sets forth a comprehensive definition of practice of law. An early Connecticut judicial opinion notes that attempts to define the practice of law have not been particularly successful but then adds that the purpose of the statute prohibiting the unauthorized practice of law is to forbid those who are not attorneys from performing acts "commonly understood to be the practice of law."¹¹⁰ Some later Connecticut judicial opinions have also adopted and sought to apply in unauthorized practice cases this definition, a definition so vague as to be almost meaningless.¹¹¹ Other Connecticut judicial opinions have made a more rational attempt to define the practice of law in situations in which unauthorized practice has been alleged and have done so by identifying the general categories of activities that are the practice of law. These activities include giving legal advice, preparing of legal instruments, and appearing

¹⁰⁸ See, e.g., *Statewide Grievance Comm. v. Patton*, 239 Conn. 251, 255, 683 A.2d 1359, 1361 (1996); *Grievance Comm. v. Dacey*, 154 Conn. 129, 156, 222 A.2d 339, 352 (1966); *Perlah v. S.E.I. Corp.*, 29 Conn. App. 43, 48, 612 A.2d 806, 809 (1992); cf. *In re Peterson*, 163 B.R. 665, 671-72 (Bankr. D. Conn. 1994).

¹⁰⁹ See *infra* note 170 and accompanying text.

¹¹⁰ *Grievance Comm. of the Bar of New Haven County v. Payne*, 128 Conn. 325, 330, 22 A.2d 623, 626 (1941).

¹¹¹ There are many other Connecticut opinions in which the court relied, at least in part, on what is commonly known as the practice of law definition. See, e.g., *Patton*, 683 A.2d at 1361; *State Bar Ass'n v. Conn. Bank & Trust Co.*, 145 Conn. 222, 234, 140 A.2d 863, 871 (1958); *Taft v. Amsel*, 23 Conn. Supp. 225, 228, 180 A.2d 756, 757 (1962); see also *Windover v. Sprague Techs.*, 834 F. Supp. 560, 566 (D. Conn. 1993) (discussing the case by case approach taken by Connecticut in determining whether a particular act constitutes the "practice of law").

in court.¹¹² It has also been held by a Connecticut court that advertising one's availability to provide legal services, without more, is the practice of law and can constitute the unauthorized practice of law when engaged in by those not legally permitted to practice law.¹¹³ These very generalized listings of practice of law are helpful but do not set forth the many occupation by occupation or situation by situation exceptions or authorizations that a more comprehensive and detailed definition could, and perhaps should, provide.

But even without a more comprehensive and detailed definition of the practice of law it is possible to enhance the clarity and certainty in the Connecticut law of unauthorized law practice by adopting over time an extensive scattering of laws, each of which limits or authorizes particular law practice activities by a particular occupation or group other than attorneys licensed to practice in Connecticut. To some extent Connecticut has done this. For example, any individual may provide legal services to himself or herself, including self-representation in court;¹¹⁴ some persons holding certain government positions are expressly prohibited or restricted in the law practice activities they may provide to others;¹¹⁵ and out-of-state lawyers, subject to certain limitations, may appear *pro hac vice* in Connecticut courts.¹¹⁶ Also, the Connecticut caselaw on unauthorized law practice considers a variety of different occupations and sets forth certain situations in which a particular occupation may, or may not, provide legal services to others.¹¹⁷ But what is troubling about Connecticut unauthorized practice law is the extensive gaps as to what specific occupations or groups and what legal service activities are covered by this scattered set of laws. Moreover, market and other conditions have changed so much since some of the caselaw opinions were written that their validity today may be questionable. Advisory opinions of Connecticut Bar Association committees and others, especially the more recent advisory opinions, help in filling some of these gaps,¹¹⁸ but they are not binding law and also cover only a very limited number of occupations and situations. A serious deficiency in

¹¹² See, e.g., *Dacey*, 222 A.2d at 348-49 (holding that drafting wills and trusts and advising on them constitutes the practice of law prohibited by statute and what is commonly known as the practice of law definition, if adopted, does not make the statute prohibiting the unauthorized practice of law unconstitutional because it is unduly vague.); *Conn. Bank & Trust Co.*, 140 A.2d at 870 (stating that "[t]he practice of law consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces the giving of legal advice on a large variety of subjects and the preparation of legal instruments covering an extensive field.").

¹¹³ *Statewide Grievance Comm. v. Harris*, 239 Conn. 256, 683 A.2d 1362 (1996); *Statewide Grievance Comm. v. Zadora*, 62 Conn. App. 828, 833, 772 A.2d 681, 684 (2001).

¹¹⁴ See *supra* notes 8, 51-56 and accompanying text.

¹¹⁵ See *supra* notes 2-7, 9, 11 and accompanying text.

¹¹⁶ See *supra* notes 73-74 and accompanying text.

¹¹⁷ See, e.g., *supra* notes 52-57, 59-60 and accompanying text.

¹¹⁸ See *supra* notes 99-103 and accompanying text.

Connecticut unauthorized practice law continues to be its very extensive ambiguity and uncertainty.

G. *Enforcement and Compliance*

Connecticut court rules and statutes provide a structure and detailed procedures for enforcing the state's unauthorized practice laws. The statutes in many respects duplicate coverage of the court rules,¹¹⁹ but if a statute and court rule are inconsistent, there is doubt as to which legally prevails. The statewide grievance committee has also adopted rules of procedure for itself and for local grievance panels.¹²⁰ Responsibility for enforcing Connecticut unauthorized practice laws is assigned principally to these state agencies and officials: the statewide grievance committee,¹²¹ the statewide bar counsel,¹²² the disciplinary counsel,¹²³ local grievance panels,¹²⁴ and the statewide grievance counsel.¹²⁵

However, the work of these agencies and officials consists mostly of enforcing those Connecticut Rules of Professional Conduct that do not involve unauthorized practice activity. The statewide grievance committee, statewide bar counsel, and disciplinary counsel also have responsibility for enforcing section 51-88 of the General Statutes of Connecticut, the statute that prohibits unauthorized practice by anyone, an attorney or a nonattorney. But section 51-88 enforcement has added relatively little to the work burden of those with enforcement responsibility. The courts, especially the superior court, of course also have major responsibilities for enforcing unauthorized practice laws, both in deciding cases filed with them and issuing court rules on enforcement structure and procedures.

The statewide grievance committee is a twenty-one-member committee, at least seven of whom shall not be attorneys, and the remainder must

¹¹⁹ *E.g.*, compare, CONN. GEN. STAT. §§ 51-90 to -90h (2003), with CONN. SUPER. CT. R. §§ 2-29 to -38. The court rules on structure and procedures for enforcing the Connecticut Rule of Professional Conduct for attorneys are very comprehensive and detailed, while the statutes are less so. On Connecticut grievance procedures in attorney disciplinary cases, see also Kimberly A. Knox, *Understand the Grievance Process: It Could Happen to You*, CONN. LAWYER, March 1996, at 6-8.

¹²⁰ CONN. CT. R., STATEWIDE GRIEVANCE COMMITTEE RULES OF PROCEDURE R. 1 (these rules also include procedures for the reviewing committees of the statewide grievance committee); CONN. CT. R., GRIEVANCE PANEL RULES OF PROCEDURE R. 1.

¹²¹ CONN. GEN. STAT. § 51-90 (2003); CONN. SUPER. CT. R. § 2-33.

¹²² CONN. SUPER. CT. R. § 2-34.

¹²³ *Id.* § 2-34A.

¹²⁴ CONN. GEN. STAT. § 51-90b (2003); CONN. SUPER. CT. R. § 2-29.

¹²⁵ CONN. GEN. STAT. § 51-90d (2003); CONN. SUPER. CT. R. §§ 2-30, -31. State's attorneys also on occasion have responsibilities for enforcing unauthorized practice laws. See, e.g., CONN. GEN. STAT. § 51-90h(d) (2003); CONN. SUPER. CT. R. § 2-35(f). In addition, the court rules and statutes also provide for grievance investigators whose duties may involve investigating unauthorized practice complaints. CONN. GEN. STAT. § 51-90d(a) (2003); CONN. SUPER. CT. R. § 2-30(a). Currently there is only one such investigator and that person operates state-wide.

be attorneys who are members of the Connecticut bar.¹²⁶ Statewide grievance committee members are appointed for three-year terms by the judges of the superior court¹²⁷ and serve without pay. Among the duties of the statewide grievance committee in attorney disciplinary cases are holding hearings on probable cause findings of local grievance panels and then dismissing cases the committee concludes lack probable cause or, if the committee finds probable cause, imposing minor sanctions or conditions or directing disciplinary counsel to file presentments in superior court against the respondent attorneys.¹²⁸ Among other statewide grievance committee duties are investigating and dismissing or prosecuting those persons alleged to have violated section 51-88.¹²⁹ Probable cause hearings are rarely held by the full statewide grievance committee; this function most always is delegated to one of the three-member reviewing committees of the full committee.¹³⁰ The statewide bar counsel is appointed by the superior court judges.¹³¹ It is a full-time position that provides assistance to the statewide grievance committee and in addition, by court rule, is assigned a number of important administrative duties.¹³² Statewide bar counsel also is assigned the important enforcement function of receiving and initially processing complaints of attorney violation of the Connecticut Rules of Professional Conduct.¹³³

The position of disciplinary counsel is very new and was established recently by court rule in accord with recommendations of a Commission to Study the Attorney Grievance Process.¹³⁴ The Disciplinary Counsel essen-

¹²⁶ CONN. SUPER. CT. R. § 2-33(a); *cf.* CONN. GEN. STAT. § 51-90 (2003) (establishing a statutory requirement for a fifteen-member committee, at least four of whom shall not be attorneys).

¹²⁷ CONN. SUPER. CT. R. § 2-33(a), (b). A committee member may be reappointed for a second three-year term, but then may be reappointed only after a lapse of one year. *Id.* § 2-33(b).

¹²⁸ *Id.* § 2-35(c), (e). *See id.* § 2-37 (outlining sanctions and conditions that the statewide grievance committee or its reviewing committees may impose). Reprimand is the usual sanction imposed.

¹²⁹ CONN. GEN. STAT. § 51-90a (2003); CONN. SUPER. CT. R. § 2-33(c)(1); CONN. R. CT., STATEWIDE GRIEVANCE COMM. R. 8.

¹³⁰ *See* CONN. SUPER. CT. R. §§ 2-35, -37; CONN. GEN. STAT. § 51-90g (2003); CONN. R. CT., STATEWIDE GRIEVANCE COMM. R. 6 (on the membership and duties of reviewing committees).

¹³¹ CONN. GEN. STAT. § 51-90c(a) (2003); CONN. SUPER. CT. R. § 2-34(a).

¹³² CONN. SUPER. CT. R. § 2-34(b).

¹³³ *Id.* § 2-32(a); CONN. R. CT., STATEWIDE GRIEVANCE COMM. R. 2.

¹³⁴ The Commission members were appointed by the Chief Justice of the Connecticut Supreme Court in 1999 and the Commission issued its final report in 2002. In addition to recommending the position of disciplinary counsel, the Commission proposed a number of other rule changes pertaining to the attorney disciplinary process. *See* Final Report of Commission to Study the Attorney Grievance Process (2002), [hereinafter REPORT OF COMMISSION] available at <http://www.jud.state.ct.us/external/news/archive.html> (last visited Oct. 26, 2003) (on file with the Connecticut Law Review). *See also* Robert I. Berdon, *Protecting the Public and Attorneys*, CONN. LAWYER, May 2003, at 8. Justice Berdon chaired the study commission. REPORT OF COMMISSION, *supra*, Notice page. It is estimated that when staffing to implement the new rule changes is fully completed, there will be five full-time assistant disciplinary counsel to assist the chief disciplinary counsel and the number of full-time assistant bar counsel will be reduced from five to three, at a net additional cost to the system of approxi-

tially is a prosecutor and is responsible for preparing and presenting cases against violators of attorney disciplinary rules in proceedings before the statewide grievance committee, superior court, or in some cases before local grievance panels, and for investigating and prosecuting in court complaints against any violators of section 51-88, either attorneys or nonattorneys.¹³⁵ Disciplinary counsel also may negotiate disposition of cases against respondent attorneys who have conditionally admitted to misconduct, dispositions that then must be approved by a court or a reviewing committee of the statewide grievance committee.¹³⁶ The new position of disciplinary counsel takes over most of the prosecutorial duties formerly assigned to the statewide bar counsel,¹³⁷ adding some additional powers and duties. The new position expands the state's efforts to enforce the attorney disciplinary rules and, as well, section 51-88. One of the expected results of this is a more favorable public opinion of the enforcement system, particularly by complainants, as under the new rules those filing complaints of attorney disciplinary misconduct will in many instances receive disciplinary counsel assistance at the local grievance panel level.¹³⁸ The new position of disciplinary counsel also relieves the heavy work burden on the statewide bar counsel and enables statewide bar counsel to give more time and attention to that position's nonprosecutorial duties.

Local grievance panels and local grievance counsel can be part-time and they are appointed by the superior court judges.¹³⁹ Panel members are unpaid; grievance counsel are paid by the state.¹⁴⁰ There are one or more grievance panels in each judicial district of the state¹⁴¹ and currently there are eight local grievance counsel. Each local panel has three members, two attorneys and one nonattorney.¹⁴² The panels consider complaints referred to them of violations by attorneys of the Connecticut Rules of Professional

mately \$550,000. Berdon, *supra*, at 10 n.3. The position of disciplinary counsel and several related rule changes were to become effective on July 1, 2003. CONN. SUPER. CT. R. § 2-83. However, due to lack of available funding, this was postponed until October 1, 2003 and subsequently postponed further to January 1, 2004.

¹³⁵ See CONN. SUPER. CT. R. §§ 2-29(f), -34A, -47 (setting forth the powers and duties of disciplinary counsel).

¹³⁶ *Id.* §§ 2-34A(b)(2), -82.

¹³⁷ Compare CONN. SUPER. CT. R. § 2-34 (repealed July 1, 2003) (charging the statewide bar counsel with certain duties), with *id.* §§ 2-34, -34A (transferring those duties to the newly created disciplinary counsel).

¹³⁸ On this and other benefits of the new rules see Berdon, *supra* note 134, at 8.

¹³⁹ CONN. SUPER. CT. R. §§ 2-29(a), -30(a); CONN. GEN. STAT. §§ 51-90b(a), -90d(a) (2003).

¹⁴⁰ CONN. GEN. STAT. § 51-90d(a) (2003); CONN. SUPER. CT. R. § 2-30(a).

¹⁴¹ CONN. GEN. STAT. § 51-90b(a) (2003); CONN. SUPER. CT. R. § 2-29(a).

¹⁴² CONN. GEN. STAT. § 51-90b(a) (2003); CONN. SUPER. CT. R. § 2-29(a).

Conduct.¹⁴³ The grievance counsel investigates complaints received by local panels and assists the panels in their consideration of these complaints.¹⁴⁴

A very important feature of the attorney disciplinary and unauthorized practice enforcement process administered by the state enforcement agencies and officials in Connecticut is that it relies almost entirely on complaints from the bar or other outside sources for the enforcement agencies and officials to become involved in cases of alleged violation of the law.¹⁴⁵ The annual number of attorney disciplinary violation complaints received by statewide bar counsel alleging violations by attorneys of the Connecticut Rules of Professional Conduct has remained high, in each of the last seven years ranging between a total of 1,100 and 1,358 new complaints each year.¹⁴⁶ However, relatively few of these complaints have involved disciplinary rule violations alleging unauthorized practice, probably no more than two or three such complaints a year. Unauthorized practice complaints involving alleged violations of section 51-88 received by statewide bar counsel, the official who has been responsible for receiving these complaints, likewise have been relatively few in number, averaging at about forty each year. The number of unauthorized practice complaints, both those alleging attorney disciplinary rule unauthorized practice violations and those alleging section 51-88 violations, could go up substantially in the future if the organized bar or others make a major effort to achieve compliance with unauthorized practice laws.¹⁴⁷

¹⁴³ CONN. GEN. STAT. § 51-90f(a) (2003); CONN. SUPER. CT. R. § 2-29(e)(1); *see also* CONN. R. CT., GRIEVANCE PANEL R. P. 1 (2003) (setting forth procedures for grievance panel investigation, hearing and determination of complaints).

¹⁴⁴ CONN. SUPER. CT. R. § 2-31; CONN. GEN. STAT. § 51-90d(b) (2003).

¹⁴⁵ Involvement of the enforcement agencies against a violator, except as a result of an outside complaint filed with the statewide bar counsel, is rare. A local grievance panel may take action on its own motion. CONN. GEN. STAT. § 51-90e(a) (2003); CONN. SUPER. CT. R. §§ 2-29(e)(1), -32(a). This, however, has seldom occurred. Presumably the statewide grievance committee and statewide bar counsel may also take enforcement action on their own motion.

¹⁴⁶ *See* Statewide Grievance Committee and Office of the Statewide Bar Counsel, Statistics: 7/1/1997-6/30/2003 [hereinafter Statistical Report 1997-2003] (on file with the Connecticut Law Review).

The most common attorney disciplinary offenses alleged in the year 7/1/02-6/30/03 were neglect (397), lack of communication (237), excessive fee (79), misrepresentation (66) and conflict of interest (55). State of Connecticut Barmaster, Grievance Statistical Report for 7/01/2002-6/30/2003: Nature of Complaint (on file with the Connecticut Law Review).

The principal Connecticut Rule of Professional Conduct prohibiting unauthorized practice and related conduct by Connecticut attorneys is Rule 5.5, a rule that prohibits attorneys from either practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction or from assisting nonlawyers in conduct that constitutes the unauthorized practice of law. CONN. R. PROF'L CONDUCT R. 5.5.

¹⁴⁷ An alternative to a member of the bar seeking compliance with unauthorized practice laws by filing a complaint with the statewide bar counsel is for a member of the bar to bring an action in superior court to restrain violation of section 51-88. CONN. GEN. STAT. § 51-88(c) (2003) (authorizing such

Complaints of attorney misconduct involving possible violations of the Connecticut Rules of Professional Conduct are initially reviewed by state-wide bar counsel and most of these complaints are then referred to local grievance panels for consideration.¹⁴⁸ When a local panel receives a complaint, it makes an investigation and then a probable cause determination,¹⁴⁹ usually without holding a formal hearing. If no probable cause is found, the case is dismissed.¹⁵⁰ Dismissal is final.¹⁵¹ If probable cause is found, it is reported to the statewide grievance committee¹⁵² and one of its reviewing committees will then hold a hearing on the matter.¹⁵³ If the reviewing committee finds probable cause, it imposes a sanction or conditions on the violator,¹⁵⁴ or it directs disciplinary counsel to file a presentment in superior court against the respondent attorney.¹⁵⁵

If the sanction imposed by a reviewing committee is a reprimand, this may be appealed by the respondent attorney to the superior court.¹⁵⁶ If a presentment is filed with the superior court, this could result in the court

an action by any member of the state bar in good standing). Another alternative is provided by section 2-47(c) of the Connecticut Superior Court Rules. This rule permits a petition seeking to restrain any person from engaging in the practice of law to be filed with the superior court. CONN. SUPER. CT. R. § 2-47(c). The petition apparently can be filed by anyone, following which the state's attorney, disciplinary counsel or any member of the bar may prosecute the complaint at the direction of the court. *Id.*

¹⁴⁸ See CONN. SUPER. CT. R. § 2-32(a), (a)(1); CONN. R. CT., STATEWIDE GRIEVANCE COMM. R. 2 (authorizing this review and referral).

¹⁴⁹ See CONN. SUPER. CT. R. § 2-32(f), (i). On investigations and determinations by grievance panels see also section 51-90(f) of the Connecticut General Statutes.

Local grievance panel investigations and proceedings are confidential unless the attorney under investigation requests that they be made public. CONN. GEN. STAT. § 51-90f(b) (2003); CONN. SUPER. CT. R. § 2-32(g). But determinations by the panels are matters of public record. CONN. GEN. STAT. § 51-90f(d) (2003); CONN. SUPER. CT. R. § 2-32(k). Hearings in attorney disciplinary cases held by the statewide grievance committee or any of its reviewing committees are public and decisions by these bodies are matters of public record. CONN. GEN. STAT. §§ 51-90g(b), (f), (g), -90h(c) (2003); CONN. SUPER. CT. R. §§ 2-35(c), (e), (i), -36.

Decisions of the statewide grievance committee or of its reviewing committees that issue reprimands or order presentments against attorneys for violation of the Rules of Professional Conduct are periodically summarized by the Connecticut Bar Association's Professional Discipline Committee and published in *Connecticut Lawyer*.

¹⁵⁰ CONN. SUPER. CT. R. § 2-32(i).

¹⁵¹ *Id.* However, if the complaint alleges commission of a crime by the accused attorney, the panel's finding of no probable cause, together with supporting documentation, must be submitted to the statewide grievance committee for further consideration. *Id.*

¹⁵² CONN. GEN. STAT. § 51-90f(d) (2003); CONN. SUPER. CT. R. § 2-32(i).

¹⁵³ CONN. SUPER. CT. R. § 2-35(c). On review of panel determinations, see also sections 51-90g and 51-90h of the Connecticut General Statutes.

The full grievance committee may review and hold hearings on panel determinations. CONN. SUPER. CT. R. § 2-35(c). But these actions by the full committee are rare.

¹⁵⁴ *Id.* § 2-35(e).

¹⁵⁵ *Id.*; *cf.*, CONN. GEN. STAT. § 51-90g(d), (e) (2003) (making no mention of disciplinary counsel).

¹⁵⁶ CONN. SUPER. CT. R. § 2-38.

imposing a reprimand, suspension, disbarment, or some other sanction on the attorney if the court finds sufficient cause.¹⁵⁷

Not all complaints of attorney violation of the Connecticut Rules of Professional Conduct initially received by statewide bar counsel are referred to local grievance panels. About twenty percent of these complaints are screened out by statewide bar counsel and disposed of by statewide bar counsel in conjunction with others, without local panel participation.¹⁵⁸ Most of these screened out complaints are dismissed.¹⁵⁹ Of the more than one thousand complaints of violation of the Connecticut Rules of Professional Conduct that the statewide grievance committee, its reviewing committees and statewide bar counsel decide each year, about eighty-five to ninety percent of them are dismissed for lack of clear and convincing evidence.¹⁶⁰ Nearly all of those in which probable cause is found result in a grievance committee or reviewing committee reprimand or a presentment to the superior court for determination as to whether a more serious sanction should be imposed. The annual number of statewide grievance committee and reviewing committee reprimands recently has averaged about fifty and the annual number of presentments has been about seventy-five.¹⁶¹

Until January of 2004, statewide bar counsel was responsible for investigating and prosecuting complaints of section 51-88.¹⁶² When statewide bar counsel received a complaint of section 51-88 violation, he investigated it and recommended to the statewide grievance committee what action should be taken. Then, following review by the statewide grievance committee, the complaint is either dismissed, a warning letter sent to the accused, or proceedings for a restraining order brought in superior court. Apparently the statewide bar counsel's duties relative to complaints of sec-

¹⁵⁷ CONN. GEN. STAT. § 51-90g(e) (2003); CONN. SUPER. CT. R. § 2-47(a).

¹⁵⁸ Statistical Report 1997-2003, *supra* note 146. Statewide bar counsel, in initially reviewing all complaints, screens out those not alleging violation of any Rule of Professional Conduct or otherwise not meriting local panel referral. Then statewide bar counsel, in conjunction with two other persons designated by court rule, reviews these complaints and dismisses those considered appropriate for dismissal. CONN. SUPER. CT. R. § 2-32(a)(2); CONN. GRIEVANCE COMM. R. 2B, 2C. Complainants may appeal dismissals to a reviewing committee. *Id.* 2D. Such of the complaints as allege fee disputes, if the fees are not clearly excessive or improper, may be stayed pending arbitration or other action. CONN. SUPER. CT. R. § 2-32(a)(3).

¹⁵⁹ See Statistical Report 1997-2003, *supra* note 146.

¹⁶⁰ See *id.*

¹⁶¹ *Id.* In addition to reprimands and presentments, the statewide grievance committee or its reviewing committees also impose a few conditions on respondent attorneys each year. *Id.* On conditions that may be imposed, see Connecticut Superior Court Rule section 2-37.

¹⁶² See CONN. SUPER. CT. R. § 2-34(b)(1) (repealed 2003) (the duties of statewide bar counsel include investigation and prosecution of complaints involving "violation by any person of General Statutes § 51-88").

Data is not available on what ultimate disposition was made of all the complaints filed with the statewide grievance committee in recent years alleging section 51-88 violations.

tion 51-88 violations now will be taken over by disciplinary counsel.¹⁶³ A court rule also permits the superior court to order prosecution of section 51-88 cases by the state's attorney or any member of the bar.¹⁶⁴ And section 51-88 also permits any member of the Connecticut bar in good standing to petition the superior court to restrain unauthorized practice conduct prohibited by that statutory section.¹⁶⁵ Data is unavailable on the exact number of cases that have been filed in court to enforce section 51-88 or the earlier Connecticut statutes similar to section 51-88. But as is indicated by the cases cited above in the Connecticut caselaw section,¹⁶⁶ there has been a scattering of such cases over time resulting in reported opinions that have helped in clarifying what is and is not prohibited by section 51-88 and its antecedents.

Despite the structure and process that the state provides for enforcing Connecticut unauthorized practice laws, noncompliance with those laws is extensive. Violations are prevalent by some attorneys, both Connecticut attorneys and out-of-state attorneys not authorized to practice law in Connecticut, and by some nonattorneys. Many of the violators are blatantly disregarding laws that clearly prohibit unauthorized practice conduct. The conduct of others is less obviously illegal because of ambiguity in the Connecticut unauthorized practice laws pertaining to some kinds of legal services and some kinds of legal service providers.

Although precise data is lacking on the extent of unauthorized practice violations, among the more common and prevalent violations appear to be these: Connecticut attorneys providing legal services in states where they are not admitted; out-of-state attorneys not admitted in Connecticut providing such services in Connecticut; house counsel not admitted in Connecticut, but whose principal office is in Connecticut, providing legal services in Connecticut to their employer; and much of the legal advice, legal document preparation and transaction negotiation by certain nonattorneys, most particularly real estate brokers, accountants and accounting firms. The incidence of unauthorized practice violation also may be considerable among other nonattorney Connecticut occupations and businesses, among them commercial banks, savings and loan companies, accounting firms, real estate brokers, document preparation services, immigration consultants, collection agencies, and some paralegals while working for law firms. Given the significance that Connecticut unauthorized practice laws are intended to have on the quality of legal services and the trustworthiness of

¹⁶³ *See id.* §§ 2-34A(b)(8), -47(c). However, it should be noted that a Connecticut statute is still in effect stating that “[s]tate-Wide Bar Counsel shall investigate and prosecute complaints involving the violation by any person of any provision of section 51-88.” CONN. GEN. STAT. § 51-90c(b) (2003).

¹⁶⁴ CONN. SUPER. CT. R. § 2-47(c).

¹⁶⁵ CONN. GEN. STAT. § 51-88(c) (2003).

¹⁶⁶ *See supra* discussion Part I.D.

legal service providers, extensive lack of compliance with these laws may have very negative consequences on the effectiveness of the legal order in Connecticut.

II. SOME OPTIONS FOR MAKING CHANGES IN CONNECTICUT UNAUTHORIZED PRACTICE LAWS

Over time all fields of law need change and Connecticut unauthorized practice law is no exception to this inevitable need. The purpose of this section is to point out some of the options that may be considered of merit when lawmakers or advocates are contemplating making or proposing change in Connecticut unauthorized practice laws. Most but not all of the options set out below have been adopted as law by one or more states. Many factors may lead to change in a field of law, among them change in the economy, change in prevailing social values and change in the political influence of affected interest groups. Pressure for change may be intensified by a single well-publicized event that creates widespread concerns and demands for legal change. An example of this in the unauthorized practice field is the California Supreme Court's decision in the *Birbrower* case,¹⁶⁷ a case that received extensive publicity and focused the attention of attorneys in all states on their vulnerability to being sanctioned for unauthorized practice of law if they engaged in multijurisdictional law practice in states where they were not admitted to practice. Another example is the recent recommendations of an ABA Commission on MDP for changes in the law that would, if adopted, drastically increase the legal rights of business firms and nonlawyer professional firms to move into the legal services field and provide legal services to clients.¹⁶⁸

The need to make changes in Connecticut unauthorized practice law is particularly great given the extensive ambiguity and uncertainty in that law. But even Connecticut unauthorized practice law that is relatively clear no doubt is believed by many to be in need of change, with some favoring the easing of existing unauthorized practice restrictions and others favoring broadening and intensifying them. Connecticut courts have an important and unique responsibility to determine what changes should be made in unauthorized practice law as they not only have an important role in shaping that law by court rules and caselaw but in all likelihood also have the constitutional power to determine what that law ultimately shall be.

¹⁶⁷ *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 949 P.2d 1 (Cal. 1998).

¹⁶⁸ On the Commission's recommendations and the responses *see infra* note 240.

A. *Clarifying the Scope of Judicial Power Over the Unauthorized Practice of Law*

The Connecticut courts should clearly and unequivocally resolve the constitutional question of the scope of their power over unauthorized practice of law. This is too important a question to be left unresolved. The probability is that when the Connecticut courts do clearly resolve this question, based on their past decisions, they probably will conclude that their power over unauthorized law practice is concurrent with the other two governmental branches but that the courts have ultimate power and their determinations on unauthorized practice of law matters will prevail if not in accord with those of either of the other two branches.¹⁶⁹ This appears to be the majority position of state courts that have clearly decided this question.¹⁷⁰ A small minority of state courts have adopted one or the other of two alternative positions. One of these alternative positions is that a state's courts have exclusive power over what is or is not the practice of law and any statute or administrative regulation on unauthorized practice of law is per se unconstitutional.¹⁷¹ The other position, that apparently a few states have adopted, is that the courts and the legislature have concurrent constitutional power over the unauthorized practice of law but the legislature's determinations prevail if the courts and the legislature are not in accord.¹⁷² However, in a substantial minority of states, the position is similar to that of Connecticut: The courts have not clearly resolved this important power allocation problem.¹⁷³

B. *Providing a More Comprehensive and Detailed Definition of the Practice of Law*

No Connecticut statute or court rule adequately defines the practice of

¹⁶⁹ See *supra* text accompanying note 108.

¹⁷⁰ See, e.g., *Eckles v. Atlanta Tech. Group*, 485 S.E.2d 22, 25-26 (Ga. 1997); *Reed v. Labor & Indus. Relations Comm'n.*, 789 S.W.2d 19, 20 (Mo. 1990); *Hulse v. Criger*, 247 S.W.2d 855, 857 (Mo. 1952); *In re Unauthorized Practice of Law Rules*, 422 S.E.2d 123, 124 (S.C. 1992); *In re Burson*, 909 S.W.2d 768, 773-75 (Tenn. 1995).

Charles Wolfram, a leading academic authority on the professional responsibility of lawyers, is opposed to this position, at least as it applies to state legislative enactments, because it enables the courts to invalidate action of the state's legislature, a branch of government more democratic and responsive to the citizenry. See CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS* 834-35 (1986).

¹⁷¹ See, e.g., *In re Creasy*, 12 P.3d 214, 216, 219 (Ariz. 2000); *In re Opinion No. 26 of the Comm. on the Unauthorized Practice of Law*, 654 A.2d 1344 (N.J. 1995). However, the legislature may criminalize certain conduct that constitutes the unauthorized practice of law. *Id.* at 1354.

¹⁷² See, e.g., *State Bar v. Cramer*, 249 N.W.2d 1, 6-7 (Mich. 1976); cf. *Birbrower*, 949 P.2d at 9 (deferring to the legislature to determine whether arbitration constitutes practice of law under state statute).

¹⁷³ See, e.g., *Unauthorized Practice Comm. v. Cortez*, 692 S.W.2d 47, 50-51 (Tex. 1985); *State Bar v. Summerhayes & Hayden*, 905 P.2d 867, 871 n.1 (Utah 1995) (declining to address the power allocation issue).

law. Some Connecticut caselaw, as previously mentioned in this article, has made some attempt at such a definition but these efforts are too general to be of much assistance in resolving unauthorized practice problems.¹⁷⁴ A more useful definition is needed applicable to unauthorized practice situations, and models exist for such a definition. Among these models are court rules of a few states, of which Washington Supreme Court General Rule 24 is an excellent example.¹⁷⁵ Some state statutes also include defini-

¹⁷⁴ See *supra* notes 110-13 and accompanying text.

¹⁷⁵ Washington Supreme Court General Rule 24 provides as follows:

Definition of the Practice of Law

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a court house facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order..

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Nonlawyer Assistants: Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

tions of the practice of law¹⁷⁶ and an ABA Task Force has recently proposed such a definition.¹⁷⁷ Adoption in Connecticut of a definition similar to the Washington one merits serious consideration. The Washington definition is comprehensive, appears in one readily available rule, and some of the more difficult unauthorized practice problems are resolved in the listing that follows the more general description of activities that constitute the practice of law. No definition can resolve or should attempt to resolve all possible unauthorized practice problems but a combined broad and detailed definition makes available the high degree of clarity, certainty and notice to affected interests that the law of unauthorized law practice very much needs.

C. Options for Adding Nonattorney Exemptions or Restrictions to Connecticut Unauthorized Practice Laws

An alternative to a definitional law that broadly defines the practice of law that nonattorneys may not engage in and then adds a comprehensive list of exemptions and restrictions is to add these exemptions and restrictions in a series of separate laws over time. All states to some extent have adopted this latter approach, with many of the separate laws being directed at only one particular nonattorney occupation. Caselaw opinions have been the most common form of these separate and more particularized laws but many states have also adopted a scattering of separate and narrowly-focused statutes, court rules and executive agency regulations, each law

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

WASH. CT. R., R. GEN. APP. R. 24 (emphasis omitted); *cf.* ARIZ. R. SUP. CT. R. 31 (a general definition and extensive list of exceptions; also defines unauthorized practice of law); D.C. CT. APP. R. 49(a)-(c) (a general definition of practice of law followed by exceptions to prohibited activities and then comments helping to explain the rule's meaning); VA. SUP. C. R. 6:1-6-1 (providing a more detailed listing of what constitutes the unauthorized practice of law than does the Washington rule).

¹⁷⁶ See, e.g., ALA. CODE, § 34-3-6 (2002); MINN. STAT. ANN. § 481.02 (West 2002) (stating legal service activities restricted to attorneys licensed in Minnesota, then followed by an extended list of exceptions and some additional restrictions).

¹⁷⁷ MODEL DEFINITION OF THE PRACTICE OF LAW (Draft 9/18/02), available at http://www.abanet.org/cpr/model_def_definition.html (last visited Nov. 13, 2003) (on file with the Connecticut Law Review). The Department of Justice and the Federal Trade Commission have opposed the ABA task force's definition as anticompetitive and anticonsumer. See Jenna Greene, *Practice of Law Definition Sparks Ire*, CONN. L. TRIB., Feb. 3, 2003, at 1.

The ABA task force eventually did not recommend its definition to the ABA. ABA TASK FORCE ON THE MODEL DEFINITION OF THE PRACTICE OF LAW, REPORT TO THE ABA HOUSE OF DELEGATES 3 (Aug. 2003) available at http://www.abanet.org/cpr/model-def/taskforce_rpt_803.pdf (last visited Sept. 24, 2003) (on file with the Connecticut Law Review). The Task Force eventually concluded that the necessary balancing test for determining who should be permitted to provide services that are included within the definition of the practice of law is best done at the state level The Task Force acknowledges that each jurisdiction will weigh the factors provided in the framework in a manner that is best suited to resolving the harm/benefit equation for its citizens.

Id.

applicable to only one nonattorney occupation or to only certain limited law practice activities. This approach provides almost endless options for filling in the gaps in unauthorized practice laws and for deleting or revising unauthorized practice laws that lawmakers consider in need of change. It is, however, less likely to consistently and appropriately balance broader regulatory needs than would the definitional approach discussed in the section just above.¹⁷⁸ Also, because of the restricted coverage of each separate law and the sporadic nature of the adoption process, the more comprehensive and detailed definitional approach probably has more potential for filling in unauthorized practice law gaps.

Over the years Connecticut lawmakers have adopted a rather skimpy set of laws providing limited and particularized exceptions and restrictions as to unauthorized practice of law by nonattorneys. The most common and important source of these Connecticut laws is the reported judicial opinions of Connecticut courts. Some exceptions and restrictions have come from other sources but surprisingly few as to nonattorneys and almost none by statute or court rule.¹⁷⁹ Given the extent of legal service activity in Connecticut in apparent violation of Connecticut unauthorized practice laws and the variety of legal service providers, the number of reported Connecticut judicial opinions involving alleged unauthorized practice of law by nonattorneys has been relatively small—fewer than two dozen such opinions exist. And, as noted earlier, some of the older opinions also are of questionable authority today due to changed conditions and changes in prevailing values since the opinions were decided.¹⁸⁰

One obvious means of providing needed clarification and revision to Connecticut unauthorized practice laws concerning nonattorney legal service activities is for Connecticut lawmakers to adopt an expanded number of more particularized exceptions and revisions to the state's unauthorized practice laws. There are numerous options available for enriching these Connecticut laws in this manner. The courts, the legislature, and many state administrative agencies may make contributions to this clarification and revision.¹⁸¹ But if the courts take action, the court rule approach has a major advantage over the judicial opinion approach in that for the courts to

¹⁷⁸ See *supra* discussion Part II.B.

¹⁷⁹ For an example of a court rule exception to unauthorized practice by nonattorneys, see Connecticut Superior Court Rules sections 3-14 to -21, which limit the court appearance rights granted to law students. On nonlawyer exceptions and restrictions by Connecticut executive agency regulations, see *supra* notes 47-51 and accompanying text.

¹⁸⁰ See *supra* discussion Part I.D.1.

¹⁸¹ The Connecticut courts eventually may unequivocally conclude that their constitutional power over unauthorized practice of law is concurrent but ultimately superior to that of the other two branches of government. See *supra* notes 105-109 and accompanying text. This would mean that any unauthorized practice of law clarifications and revisions by the legislature or executive agencies would be subject to invalidation by the courts if the courts disagreed with them.

act it is not necessary to wait for a case to be filed that raises a nonattorney unauthorized practice problem.¹⁸²

Considered below are some of the detailed unauthorized practice law restriction and exception options that Connecticut lawmakers may conclude merit adoption when clarification or revision of Connecticut unauthorized practice laws applicable to nonattorneys is being contemplated. Most of the options described below have been adopted as law in one or more states. A few have been proposed by concerned interest groups or respected commentators. In some states options are included in the same court rule or statute that defines the practice of law.¹⁸³

1. *Exemptions Frequently Granted to Major Nonlawyer Service Occupations*

In many states certain major nonattorney service occupations whose work often includes legal services are given special exemptions from the states' unauthorized practice laws. Among major service occupations that frequently have been granted such exemptions are accountants, real estate brokers and salespersons, title insurance companies, insurance adjusters, and paralegals. Connecticut law has almost no unauthorized practice special exemptions for any of these major service occupations.¹⁸⁴ Obviously, exemptions of this kind are an important option available to Connecticut lawmakers when in the future they consider making changes in the state's unauthorized practice laws. A policy justification that has been advanced for granting such exemptions is that from their experience, training, and standards of work performance, the exempted occupations are qualified to provide some legal services to others and to do so in a competent and trustworthy manner.¹⁸⁵ As to several of the occupations, state licensing or certifying adds to the likelihood that the legal services work they perform will be at an acceptable level of competence and trustworthiness.¹⁸⁶ A sig-

¹⁸² New Jersey has an unusual procedure that has increased the number of important unauthorized practice cases brought before the New Jersey Supreme Court. Pursuant to a court rule, the New Jersey Supreme Court appoints members of an Unauthorized Practice Committee that, among other duties, issues advisory opinions on unauthorized practice to anyone requesting such an opinion. Any aggrieved person may then obtain review of that opinion by petitioning the Supreme Court. The New Jersey Attorney General is charged with responding and opposing the review petition. N.J. R. GEN. APP. R. 1:22-1(a), -2(a), -3A. There is a similar committee for professional ethics, with similar review of its advisory opinions by the New Jersey Supreme Court. *Id.* 1:19.

¹⁸³ See *supra* discussion Part II.B.

¹⁸⁴ *But see* Kiniry v. Degutis, 18 Conn. Supp. 186 (Conn. Super. Ct. 1953) (holding an accountant not to have engaged in the practice of law when negotiating a federal government tax claim settlement and holding the accountant entitled to a fee for his services).

¹⁸⁵ See, e.g., *In re* N.J. Soc'y of CPAs, 507 A.2d 711, 717 (N.J. 1986) (considering the exemption of CPAs).

¹⁸⁶ See, e.g., VA. SUP. C. R. 6:1-5-8 (referring only to CPAs).

nificant contributing factor to the above-listed occupations receiving some special exemption from many states' unauthorized practice laws presumably is the political influence of these occupations. All of the above listed exempted occupations, except paralegals, can assert considerable political pressure in efforts to achieve their goals and most exemptions for paralegals are likely to be backed by attorneys, another politically influential group.

The legal exemptions from state unauthorized practice laws granted to major nonattorney service occupations in some states are generally quite specific and limited. There are many examples of this. For instance, by the law of some states, real estate brokers are expressly authorized to draft or fill in certain legal documents pertaining to real estate transactions in which they are acting as brokers.¹⁸⁷ Some state laws also expressly permit real estate brokers to close those real estate transactions in which they are acting as brokers.¹⁸⁸ Similar legal document drafting or form completion authorization that some states expressly grant to real estate brokers are extended to title insurance companies in a few states.¹⁸⁹ And there are state

¹⁸⁷ See, e.g., ARIZ. CONST. art. XXVI, § 1 (authorizing licensed real estate brokers to fill out essential documents for real estate transactions when acting as brokers, salespersons or agents); MINN. STAT. ANN. § 481.02(3a) (West 2002) (stating that a real estate broker may draft "papers incident to the sale, trade, lease, or loan of property[;]" they also may charge for these services except as provided by the state supreme court but the state supreme court has imposed no charging restrictions); VA. SUP. CT. R. 6:1-6-103(3) (stating that "[a] real estate agent, or his regular employee, involved in the negotiation of a transaction and incident to the regular course of conducting his licensed business, may prepare a contract of sale, exchange, option or lease with respect to such transaction, for which no separate charge shall be made"); WASH. CT. R. ADMISSION TO PRACTICE R. 12(d) (permitting nonattorneys, upon passing a special examination, to be certified as closing officers who may "select, prepare and complete documents in a form previously approved by the [Limited Practice] Board for use in closing a loan, extension of credit, sale or other transfer of real or personal property"); Pope County Bar Ass'n v. Suggs, 624 S.W.2d 828 (Ark. 1981) (holding that a real estate broker may fill in the blanks of standardized printed forms in connection with simple real estate transactions for which the form preparer is acting as broker and is not charging for filling in the blanks, provided that the broker's principal has declined to hire a lawyer and provided that the broker does not render advice about the legal effects of such forms); cf. *In re Opinion No. 26 of the Comm. on the Unauthorized Practice of Law*, 654 A.2d 1344 (N.J. 1995) (holding that a real estate broker may conduct closing and settlement proceedings without the presence of attorneys as long as the broker notifies the parties of the potential conflict of interest). The New Jersey Supreme Court's carefully reasoned *Opinion 26* decision is concerned only with real estate brokers and title companies but the approach it takes—informed consent following a detailed notice prescribed by law—could be extended to other occupations as well. So extended, and if widely adopted by U.S. states, it would have a tremendous effect on unauthorized practice law in this country. Much of what is now unauthorized practice would be exempted from unauthorized practice restrictions if consent by the clients occurred following prescribed notice to the clients.

¹⁸⁸ E.g., *In re Opinion No. 26 of the Comm. on the Unauthorized Practice of Law*, 654 A.2d at 1361-62; cf., OR. REV. STAT. § 9.166(2) (stating that licensed real estate brokers in arranging real estate transactions are not engaged in the unauthorized practice of law).

¹⁸⁹ E.g., *In re Opinion No. 26 of the Comm. on the Unauthorized Practice of Law*, 654 A.2d at 1358 n.4; *State Bar v. Guardian Abstract & Title Co.*, 587 P.2d 1338 (N.M. 1978) (holding that a title insurance and abstract company can legally fill in blanks in statutory and other land transaction forms

laws expressly exempting accountants, particularly certified public accountants, from state unauthorized practice laws for certain legal service activities, especially state or local government tax return preparation and appearances before a state or local government nonjudicial tax adjudicatory body.¹⁹⁰ The federal government has authorized many accountants and others, in their representation of clients, to appear before the U.S. Internal Revenue Service and the U.S. Tax Court. Insurance adjusters are still another major service occupation that some states have expressly granted limited exemption from the state's unauthorized practice laws.¹⁹¹ Paralegals, sometimes referred to as legal assistants, are another important nonattorney legal service occupation often granted unauthorized practice exemp-

prepared by attorneys but the company cannot give legal advice as to the language of the forms or which form should be used).

¹⁹⁰ *E.g.*, R.I. GEN. LAWS § 11-27-11(7) (2002) states that:

Nothing in §§ 11-27-5 [to] 11-27-11 [unauthorized practice sections] shall be construed to limit or prevent: . . . (7) Any certified public accountant or member of the American Institute of Accountants from appearing or acting as a representative of another person before any federal, state, or municipal department, board, division, department, commission, agency or any body other than a court, authorized or constituted by law to determine any question of fact, affecting the imposition or adjustment of taxes or regarding any financial or accounting matter, or from preparing for or on behalf of another person any federal, state, or municipal return or report of any nature or description, or advising another person in relation to the preparation of any such return or report.

Id.; see also *id.* § 11-27-11(9) (2002) (stating that a public accountant may advise a taxpayer in connection with the imposition or adjustment of taxes and extensive authority is granted to public accountants and others to prepare on behalf of taxpayers federal, state or municipal personal income tax returns); VA. SUP. CT. R. 6:1-5-8 (extensively restricting nonattorneys as to permissible tax practice). The rule adds:

Nothing herein is intended to modify or limit the right of a certified public accountant to certify, attest or express an opinion that financial data comply with conditions established by law or contract. Certified public accountants are members of a profession regulated by law who must meet certain minimal education requirements and observe certain rules of professional conduct. As such, certified public accountants engaged in the practice of their profession are entitled to a greater degree of latitude in the resolution of issues involving overlapping legal and accounting principles.

Id.; *In re* N.J. Soc'y of CPAs, 507 A.2d 711, 716-17 (N.J. 1986) (holding that, subject to certain restrictions, certified public accountants may prepare New Jersey inheritance tax returns); see also 31 C.F.R. § 10.3 (2003) (stating that attorneys, certified public accountants, enrolled agents, and enrolled actuaries may practice before the U.S. Internal Revenue Service). Although the states have no legal right to control who may appear before federal agencies or courts, there are states that have included among the exemptions from their unauthorized practice laws such representation before federal tax bodies by certain persons. See, e.g., VA. SUP. CT. R. 6:1-5-101; *cf.*, R.I. GEN. LAWS § 11-27-11(7) (2002).

¹⁹¹ Insurance adjusters licensed or certified by the state, on behalf of an insurer, policyholder or claimant, may direct the investigation, negotiation or settlement of an insurance policy claim in some states. *E.g.*, IND. STATS. ANN. § 27-1-27-1, -2 (Michie 1999); 63 PA. CONS. STATS. ANN. §§ 1601, 1602 (West 1996) (allowing for settlement but the statute does not entitle a licensed public adjuster to negotiate settlements on behalf of insured claimants against alleged tortfeasors or their insurers); UTAH CODE ANN. § 31A-26-102, -201 (2001); VA. SUP. CT. R. 6:1-2 (setting forth a detailed listing of services that lay adjusters may and may not provide their principals, including limited investigations, settlement negotiation and document preparation). *But see* IND. CODE ANN. § 27-1-9(1) (Michie 1999) (stating that a certified public adjuster may not practice law).

tions.¹⁹² But paralegals are unique in the scope of their exemption from unauthorized practice laws if they are working for attorneys. Most all paralegals work for one or more attorneys, are supervised by the attorneys, and the attorneys assume responsibility for the paralegals' work performance.¹⁹³

Paralegals are the attorneys' legal assistants. As legal assistants, paralegals are legally authorized to perform nearly all legal services except court appearances and appearances before most administrative agencies. But to be exempt from unauthorized practice laws they must be adequately supervised by an attorney and the supervising attorney must be responsible for their work.¹⁹⁴ The obvious reason for paralegals being granted such extensive exemption from unauthorized practice laws is that the required supervision and responsibility assumption by the attorney is considered sufficient assurance that the legal services provided by the paralegals will be competent. A supplemental reason is that a client's legal fees will often

¹⁹² For a definition of a legal assistant see New Mexico Court Rule 20-102A. A mid-1980s study of paralegals estimated that at that time, in U.S. law offices, there was on average one paralegal for every eight attorneys working in those offices. QUINTIN JOHNSTONE & MARTIN WENGLINSKY, *PARALEGALS: PROGRESS AND PROSPECTS OF A SATELLITE OCCUPATION* 4 (1985). If this ratio is still in effect, and something close to it probably is, there are at least 100,000 paralegals providing legal services in U.S. law offices today. On growth of the paralegal profession, see AMERICAN BAR ASSOCIATION COMMISSION ON NONLAWYER PRACTICE, *NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS* 51-52 (1995).

¹⁹³ In the 1990s there was a movement with substantial support to legally permit paralegals, independently of attorneys, to provide extensive legal services to others in designated fields of law. Bills were introduced in a dozen or so state legislatures permitting independent practice by paralegals. Under most of the proposals the paralegals, usually referred to as legal technicians, were required to pass an examination in a particular field of law to be qualified to practice independently in that field. None of these bills passed except one in 1991 in Minnesota which authorized "delivery of legal services by a specialized legal assistant in accordance with a specialty license issued by the supreme court before July 1, 1995." MINN. STAT. ANN. § 481.02(3)(14) (West 2002). The Minnesota Supreme Court has not issued any licenses pursuant to the statute. *What Ever Happened in Minnesota*, FACTS AND FINDINGS, Vol. 21, No. 4, at 50 (1994). A California statute authorizing nonattorneys to be state certified as document preparation assistants or unlawful detainer assistants permits some legal services for others to be performed by persons who could be categorized as paralegals. See CAL. BUS. & PROF. CODE § 6400 (West 2003).

Considerable support still exists in some quarters for permitting qualified paralegals, operating independently of attorneys, to practice in some fields of law. On the independent paralegal movement, see Deborah Chalfie & James N. Parson, *Should Legal Technicians be Allowed to Practice Independently?*, A.B.A. J., Mar. 1991, at 40; Quintin Johnstone, *Lawyer Obligations to Moderate-Income Persons*, 21 CAP. U. L. REV. 845, 847-52 (1992); Diane Patrick, *The State of Regulation*, LEGAL ASSISTANT TODAY, May-June 1993, at 90; Carl M. Selinger, *The Retention of Limitations on the Out-of-Court Practice of Law by Independent Paralegals*, 9 GEO. J. LEGAL ETHICS 879 (1996) (recommending that paralegals specialize in a single area of the law in an effort to regulate nonlawyer practice).

¹⁹⁴ On an attorney's responsibility for the conduct of nonlawyer assistants, see Model Rules of Professional Conduct Rule 5.3 (2003). For a more detailed consideration of this responsibility, see, for example, *State v. Barrett*, 483 P.2d 1106 (Kan. 1971) (disbarring lawyer for not properly supervising his lay staff members and other violations of professional conduct); N.M. CT. R. 20-101, -114 (governing legal assistant services).

be lower if some of the legal work for the client is performed by paralegals rather than attorneys.¹⁹⁵ A few state courts have provided an extensive list of permissible and prohibited paralegal legal services.¹⁹⁶ Such a list aids both attorneys and paralegals in ascertaining the legal scope of services that paralegals may legally perform, assuming proper attorney supervision and assumption of responsibility for the paralegals' work.

2. *Miscellaneous Exemptions*

A miscellany of limited exemptions from unauthorized practice laws has been adopted by some states, exemptions other than those adopted in Connecticut or discussed in the preceding section. None of these exemptions has been adopted by more than a few states. Examples appear below. From this varied set of exemptions, lawmakers in Connecticut may conclude that some of these merit adoption in Connecticut. Most of the exemptions have been adopted by state statute or court rule. A number of them permit designated nonattorney occupations or businesses to provide specified legal services without being in violation of unauthorized practice laws. Examples are these: any bona fide labor organization may give legal advice to its members in matters arising out of the members' employment;¹⁹⁷ lending institutions may prepare deeds of trust or mortgages on real estate securing payment of their loans;¹⁹⁸ an arresting police officer may prosecute traffic offenses in a magistrate's or municipal court;¹⁹⁹ and legislative lobbyists are not engaged in the unauthorized practice of law when acting as lobbyists.²⁰⁰ Additional examples are that state registered document preparation assistants and unlawful detainer assistants are exempted from unauthorized practice laws when performing their authorized duties;²⁰¹ newspapers may publish legal questions and answers made by a

¹⁹⁵ For a judicial statement supportive of this reason, New Mexico's Rules Governing Legal Assistant Service consider:

[i]ncreasing the availability of legal services to the public at a cost the public can afford is a goal of the legal profession The employment of legal assistants is a particularly significant means by which lawyers can render legal services more economically, in greater volume and with maximum efficiency while maintaining the quality of legal services.

N.M. R. GOV. LEGAL ASST. SER. R. 20-101.

¹⁹⁶ *E.g.*, CAL. BUS. & PROF. CODE § 6450 (West 2003) (effective Jan. 1, 2004); N.H. SUP. CT. R., ADMINISTRATIVE RULES R. 35; Provisional Order No. 18, 454 A.2d 1222 (R.I. 1983); *cf.* ABA MODEL GUIDELINES FOR THE UTILIZATION OF LEGAL ASSISTANT SERVICES GUIDELINE 2, cmt. (1991).

¹⁹⁷ *E.g.*, MINN. STAT. ANN. § 481.02(3)(5) (West 2002).

¹⁹⁸ *E.g.*, VA. SUP. CT. R. 6:1-6-103 (but no separate charge shall be made for this service).

¹⁹⁹ *E.g.*, *In re* Unauthorized Practice Rules, 422 S.E.2d 123, 125 (S.C. 1992).

²⁰⁰ *E.g.*, WASH. CT. R., GEN. R. 24(b)(7).

²⁰¹ *E.g.*, CAL. BUS. & PROF. CODE § 6400 (West 2003).

licensed attorney;²⁰² and nonattorney real property managers may represent landlords in uncontested evictions for nonpayment of rent for residential properties.²⁰³ In some states, too, nonattorney officers or designated employees of certain organizations, such as corporations, may represent the organization in certain court proceedings,²⁰⁴ or prepare legal instruments for use by the organization.²⁰⁵ Another set of exemptions applies to anyone who performs certain kinds of legal services—no specified occupational, employment or licensing restrictions as to the service provider. Examples are serving as an arbitrator or mediator;²⁰⁶ participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements;²⁰⁷ limited oral communications to assist a person in the completion of blanks on a legal form approved by the state's supreme court;²⁰⁸ and drafting a will for a person faced with imminent death when there is not sufficient time available to seek the drafting services of an attorney.²⁰⁹

A special comment is in order here on relieving the serious shortage of legal services available to the poor by permitting nonattorneys to provide these services.²¹⁰ One important way of encouraging nonattorneys to pro-

²⁰² *E.g.*, MINN. STAT. ANN. § 481.02(3)(11) (West 2002).

²⁰³ *See, e.g.*, Florida Bar re Nonlawyer Representation, 627 So. 2d 485 (1993) (holding that real property managers are those persons responsible for day-to-day management of residential rental property).

²⁰⁴ *See, e.g.*, MD. CODE ANN., BUS. OCC. & PROF. § 10-206(b)(4) (2000); *cf.* MINN. STAT. ANN. § 481.02(3)(15) (West 2000) (stating that sole shareholders of a corporation may appear on behalf of the corporation in court); N.Y. JUD. CT. ACTS LAW § 478 (McKinney 2003); N.Y. NOT-FOR-PROFIT CORP. LAW § 1403 (McKinney 1997) (stating that officers of societies for prevention of cruelty to animals may prefer complaints in any court or tribunal for violation of any law concerning cruelty to animals and may aid in presenting the law and facts to such court or tribunal).

²⁰⁵ *E.g.*, VA. SUP. CT. R. 6:1-6-103.

²⁰⁶ *E.g.*, WASH. CT. R., GEN. R. 24(b)(4).

²⁰⁷ *E.g.*, *id.* R. 24(b)(5).

²⁰⁸ *E.g.*, FLA. BAR REG. R. 10-2.1(a) (noting that a disclosure form must be signed by the nonattorney and the assisted person whenever such aid is provided).

²⁰⁹ *E.g.*, MINN. STAT. ANN. § 481.02(3)(11) (West 2002).

²¹⁰ On the unmet civil legal needs of low-income households in Connecticut, see a recent statistical study, University of Connecticut Center for Survey Research and Analysis, *Civil Legal Needs Among Low-Income Households in Connecticut* (April 2003), available at <http://www.cbf.ctbar.org/LNSreport.pdf> (last visited Nov. 13, 2003) (on file with the Connecticut Law Review). The study was sponsored by the Connecticut Bar Foundation. The study is based on extended telephone interviews with a sample of 401 heads of households in Connecticut with incomes at or below 125 percent of the federal poverty level. Based on responses from these interviews, the study's findings, among others, were that in the last year low-income Connecticut households had an average of 2.7 civil legal problems and legal help from an attorney was obtained by these households for only ten percent of the legal problems encountered. Of those seeking outside legal help, one-third contacted a legal aid organization. Thirty percent of all the households with legal problems were unaware of the availability of legal aid. The civil legal problems reported by households and the percentage of households reporting each type of problem were problems related to housing (e.g., discrimination, utility cutoffs, landlord neglect to make repairs), thirty-five percent; consumer law (e.g., credit card payments, harassment by credi-

vide such services is exempting them from unauthorized practice restrictions when providing legal services to the poor. There is some support for this approach²¹¹ but little adoption in the law. In a few communities such help is legally available and utilized by a large number of poor people, especially in making assistance available so that these people may better represent themselves pro se.²¹² Also, certain of the exemptions from unauthorized practice laws that some states have adopted presumably are aimed in part at enhancing available legal assistance to the underrepresented poor.²¹³ The major argument against legally authorizing nonattorneys to provide legal services to the poor is the risk of inferior representation, even if the services are provided gratuitously. There also is the concern that if the nonattorneys charge clients for the services rendered, many of the clients, especially those with no familiarity with the legal services market, will be grossly overcharged. One means of alleviating the shortage of legal services available to the poor is legally authorizing and then expanding limited attorney assistance to persons representing themselves pro se. Under this format individuals represent themselves but receive some guidance or other help from attorneys in doing so.²¹⁴

3. *More Explicit Restrictions*

Exemptions are not the only option available to Connecticut lawmakers in amplifying and clarifying Connecticut unauthorized practice laws. Connecticut lawmakers may also take the opposite approach and add express legal restrictions on the legal service activities of nonattorneys. There are several possible benefits to such explicit legal restrictions. They can be helpful in setting conceptual boundary lines between what is and is not the

tors), thirty percent; employment (e.g., pay or benefits, job discrimination), twenty-four percent; livelihood issues (e.g., social security, retirement, food stamps), twenty-one percent; elderly and disabled issues (e.g., disability benefits, will preparation), sixteen percent; family issues (e.g., child support, divorce), fifteen percent; health care (e.g., Medicaid, Medicare), twelve percent; children at risk (e.g., child expelled or suspended from school, child neglect investigation), nine percent; immigration, two percent. *Id.* at 6, 26.

²¹¹ See, e.g., *Recommendations of the Conference on the Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues*, 67 *FORDHAM L. REV.* 1751, 1762-66 (1999).

²¹² See Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 *FORDHAM L. REV.* 2241, 2241-42 (1999); cf. Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants*, *JUDICATURE*, July-Aug. 1998, at 13 (including a consideration of how courts and the bar are and should be assisting pro se litigants).

²¹³ See, e.g., CAL. BUS. & PROF. CODE § 6401 (West 2003) (listing unauthorized practice exemptions for state registered document preparation assistants and unlawful detainer assistants); FLA. BAR REG. R. 10.2.1(a) (noting that it is not the unauthorized practice of law to orally aid others in filling out certain legal forms).

²¹⁴ On the reasons for pro se litigation and possibilities for attorney assistance short of full representation, see William Hornsby, *Defining the Role of Lawyers in Pro Se Litigation*, *JUDGES J.*, Fall 2002, at 5 (noting that pro se litigants are not always poor, but may have other reasons for choosing to represent themselves).

unauthorized practice of law; they can act as both reminders and warnings to those persons engaging in or contemplating engaging in certain activities that are the unauthorized practice of law; and they can greatly facilitate the process of enforcing unauthorized practice laws.

There are numerous examples of more explicit restrictions on nonattorney legal service activities in the laws of other states that in their explicit form do not appear in the laws of Connecticut. A listing that is not exhaustive appears below. Some of these may merit consideration by Connecticut lawmakers when contemplating changing or clarifying Connecticut unauthorized practice laws. Many of the restrictions are directed at particular major occupations and businesses and prohibit these occupations and businesses from providing certain specified legal services to their clients. Examples are that title insurance companies may not engage in title searches and preparation of title documents without their work being directly supervised by attorneys,²¹⁵ nonattorney financial planners may not give legal advice to their clients or prepare legal documents for their clients,²¹⁶ nonattorney insurance adjusters may not engage in third-party insurance adjusting,²¹⁷ and first-party insurance adjusters (public adjusters) may not provide services requiring legal skill.²¹⁸ Among other occupations and businesses on which explicit legal service restrictions have been imposed by the laws of some states are immigration consultants or assistants,²¹⁹ debt collectors,²²⁰ and independent paralegals—those paralegals not supervised by an

²¹⁵ *E.g.*, *Doe v. McMaster*, 585 S.E.2d 773, 776-77 (S.C. 2003).

²¹⁶ *E.g.*, *Trumbull County Bar Ass'n. v. Hanna*, 684 N.E.2d 329 (Ohio 1997).

²¹⁷ *See, e.g.*, *Utah State Bar v. Summerhayes & Hayden*, 905 P.2d 867, 870 (Utah 1995) (stating that “[i]n third-party adjusting, an adjuster represents an injured client in making a claim under a liability insurance contract against an insurance company that insures or indemnifies a third person who is or may be liable for the injury caused to the adjuster’s client”). To adequately serve the client’s interests, the third party adjuster must have knowledge of the law to determine damage liability and make settlement calculations. *Id.*

²¹⁸ *See, e.g.*, *Linder v. Insurance Claims Consultants*, 560 S.E.2d 612, 615, 621 (S.C. 2002) (holding that, in first party adjusting, the adjuster represents the insured in a claim for insurance, and may not interpret the policy for their clients, advise clients on acceptance of insurance company settlement offers, be involved in policy coverage disputes or engage in advertising indicating they provide services requiring legal skill).

²¹⁹ *E.g.*, ILL. STATS. COMP. ANN. 505/2AA(j)(5) (West 1999) (stating that those providing immigration services shall not give “any legal advice concerning an immigration matter”); OR. REV. STATS. § 9.280 (2001); *Florida Bar v. Matus*, 528 So. 2d 895, 896 (Fla. 1988).

²²⁰ *E.g.*, W. VA. CODE ANN. § 46A-2-123 (Michie 1999) (stating that nonattorney debt collectors may not engage in conduct deemed the practice of law, including giving legal advice); *State ex rel Norvell v. Credit Bureau of Albuquerque, Inc.*, 514 P.2d 40, 49-50 (N.M. 1973) (holding that a collection agency engaged in the illegal practice of law by taking assignments of claims not for the purpose of acquiring title and ownership, but rather to facilitate the furnishing of legal services for consideration); *cf. Pisarello v. Adm’r Serv. Corp.*, 464 So. 2d 917, 919 (La. App. 1985) (holding that nonattorney debt collectors may not give advice, and the defendant collection agency was not liable in damages to the creditor-client for not informing him that an account submitted for collection was no longer valid because doing so would have been the illegal practice of law).

attorney and for whose work no attorney is responsible.²²¹ Some states have also explicitly imposed unauthorized practice restrictions on nonattorneys representing parties in arbitration proceedings²²² and on notaries public completing legal forms.²²³

D. *Adding Attorney Unauthorized Practice Exemptions or Restrictions*

Many attorneys provide legal services in states where they are not licensed to practice. This multijurisdictional practice includes many out-of-state attorneys rendering services in Connecticut and many Connecticut attorneys rendering such services in other states. If court appearances are required by the attorney, *pro hac vice* requirements are usually sought and obeyed. For other kinds of services, such as consultation, negotiation or taking of depositions, the attorney acting where not admitted is often in violation of unauthorized practice laws. The 1998 *Birbrower* decision in California became a wake-up call to the bar everywhere that legal restrictions on multijurisdictional practice may be enforced.²²⁴

Not long after the *Birbrower* decision, the American Bar Association, through an ABA Commission on Multijurisdictional Practice, began consideration of proposals for legally expanding permissible multijurisdictional law practice, proposals it hoped would receive widespread support by state bar associations and state courts. The proposals that the Commission ultimately came up with include major changes in Rule 5.5 of the ABA's Model Rules of Professional Conduct that, when and if adopted by

²²¹ See, e.g., *Sussman v. Grado*, 746 N.Y.S.2d 548, 550-53 (2002) (holding that an independent paralegal engaged in unauthorized practice of law in drafting a legal document and giving legal advice without the supervision of an attorney); *Cleveland Bar Ass'n v. Coats*, 786 N.E.2d 449 (Ohio 2003) (holding that an independent paralegal engaged in the unauthorized practice of law by representing others before the Ohio Bureau of Employment services and drafting divorce complaints and judgment entries for pro se litigants); cf. *Florida Bar v. Neiman*, 816 So. 2d 587 (Fla. 2002) (holding that a nonattorney engaged in the unauthorized practice of law by performing, without attorney supervision, all of the legal work except court appearances in numerous cases—in 1995 alone his salary for law-related activities was \$1.4 million).

²²² See, e.g., *Florida Bar re Nonlawyer Representation*, 696 So.2d 1178, 1181 (Fla. 1997) (holding that compensated nonattorney representation in securities arbitration is the unauthorized practice of law).

²²³ See, e.g., *Lorain County Bar Ass'n v. Kennedy*, 766 N.E.2d 151, 151-52 (Ohio 2002) (holding that a notary public engaged in unauthorized practice of law by filling out quitclaim deed forms).

²²⁴ See *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 949 P.2d 1, 8-10, 13 (Cal. 1998). On multijurisdictional practice see also Symposium, *Ethics and the Multijurisdictional Practice of Law*, 36 S. TEX. L. REV. 657 (1995); William T. Barker, *Extrajurisdictional Practice of Lawyers*, 56 BUS. LAW. 1501, 1502-03, 1511-15 (2001); Quintin Johnstone, *Multijurisdictional Practice of Law: Its Prevalence and Its Risks*, 74 CONN. B.J. 343, 343-47, 358-59 (2000) (reviewing a Connecticut Bar Foundation Symposium on multijurisdictional practice); Gary A. Munneke, *Multijurisdictional Practice of Law: Recent Developments in the National Debate*, 27 J. LEGAL PROF. 91, 99-112 (2002-3).

the states, would enhance and to some extent clarify the legal services that out-of-state attorneys can legally perform in states where they are not licensed to practice law. In mid-2002 the ABA House of Delegates adopted the Commission's proposed changes in Model Rule 5.5 and recommended that these changes be adopted as binding law by the states.²²⁵ No doubt some states will adopt the revisions in Rule 5.5 and others will not.²²⁶ The issue is highly controversial within the bar. In Connecticut the ultimate decision on adoption will be made by the Connecticut Superior Court judges. The ABA's revision of Model Rule 5.5 is not the only possible change that can be made in that rule. Other variations in the rule are possible that are more or less restrictive than the ABA's revision.²²⁷ There also are a few states with court rules or statutes that long have permitted some limited out-of-state attorney legal service activity in the state, other than court appearances requiring *pro hac vice* admission, without that activity constituting the unauthorized practice of law.²²⁸

An important subsidiary problem in multijurisdictional law practice in-

²²⁵ MODEL RULES OF PROF'L. CONDUCT R. 5.5 (2003). The ABA's 2002 adoption of revisions in R. 8.5, among other changes to that rule, adds this language: "A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." *Id.* R. 8.5(a).

²²⁶ As of November 2003 the following states had adopted Rule 5.5 in the same or very similar language to that of ABA Model Rule 5.5, as revised in 2002: Colorado, Delaware, Nevada (but requires registration), New Jersey, North Carolina and South Dakota. E-mail from John Holtaway, ABA Center for Professional Responsibility (Nov. 18, 2003, 3:17 EST) (on file with the Connecticut Law Review). Many other states have adoption of Rule 5.5 under active consideration. *Id.*

²²⁷ See, e.g., *supra* note 104 (stating the variations proposed by CBA committees and those by a CBA task force).

²²⁸ See, e.g., MICH. COMP. LAWS ANN. § 600.916 (West 2001) (stating that "[a] person shall not practice law . . . unless the person is regularly licensed and authorized to practice law in this state. . . . This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter."); R.I. GEN. LAWS § 11-27-13 (2002). This Rhode Island law states that the unauthorized practice of law:

shall not apply to visiting attorneys at law, duly authorized to practice law before the courts of record in another state, while temporarily in this state on legal business, or while permitted to conduct or argue any case in this state according to the rules of practice of the supreme court, but no visiting attorney shall issue or indorse, as attorney, any writ of any court of this state.

Id. See also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 3(3) (2000) (stating that out-of-state lawyers may provide legal services to clients "at a place within a jurisdiction in which the lawyer is not admitted to the extent that the lawyer's activities arise out of or are otherwise reasonably related to the lawyer's practice" in the jurisdiction where admitted). There are additional examples of limited law practice permitting some out-of-state attorneys. See, e.g., FLA. BAR REG. R. 13-1.1 (authorizing attorneys licensed to practice law in jurisdictions other than Florida to be certified to practice in Florida for up to one year while employed by a legal aid organization); N.M. R. GOV. ADMISS. BAR R. 15-303 (authorizing a law professor admitted to practice in another state but who is not a member of the New Mexico bar to practice law to the extent necessary to supervise law students in a clinical program at the University of New Mexico School of Law); WASH. APR 8(g) (asserting that full-time military officers admitted to practice law in another state but not Washington may, upon application and approval, appear and practice law before the Washington courts representing designated active duty military personnel in most any noncriminal matter, litigation, or administrative proceeding).

volves the practice of law by house counsel. Many employers of house counsel, especially large corporations whose business activities extend regionally or nationally, often find it necessary for their house attorneys to represent them in many states. Many large corporations also fairly frequently find it necessary to move the principal office base of some of their house attorneys to a company office located in another state. These moves may be temporary, which deters house counsel from seeking admission to practice in the state where presently based when, as is typical, admission may be a slow and protracted process. The result is that, unless otherwise exempted, the incidence of violation of unauthorized practice laws by in-house attorneys is high. However, in over one-fourth of the states, an exemption from unauthorized practice laws is now available to house counsel employed in the state who become specially certified by the state.²²⁹ To qualify for certification, an in-house attorney must be licensed to practice law in another state, generally must be a full-time employee of the client, and court appearances generally are not permitted without express *pro hac vice* court permission. The ABA's recent revision of Model Rule 5.5 also expressly considers house counsel. It permits these counsel to provide legal services to their employer in states where not admitted to practice and the rule does not mandate special state certification.²³⁰ Both house counsel certification and Rule 5.5 house counsel exemptions have recently been under adoption consideration by the authorities in Connecticut. A house

²²⁹ For a listing of these states as of 2000, see Carol A. Needham, *Permitting Lawyers to Participate in Multidisciplinary Practices: Business as Usual or the End of the Profession as We Know It?*, 84 MINN. L. REV. 1315, 1356-57 (2000). The exemption in nearly all of these states is by court rule. *Id.* See OR. SUP. CT. R., RULES REGULATING ADMISSION TO PRACTICE LAW IN OREGON, R. 16.05 (stating a post-2000 exemption of house counsel).

²³⁰ MODEL RULES OF PROF'L CONDUCT R. 5.5(d)(1) (2000):

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission.

Id.

The comments to Model Rule 5.5 include the following:

(16) Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

(17) If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

MODEL RULES OF PROF'L CONDUCT R. 5.5 cmt. 16-17 (2000).

counsel certification proposal recommended by the Connecticut Bar Association's House of Delegates was recently rejected by the Rules Committee of the Connecticut Superior Court but the Chief Justice of the Connecticut Supreme Court has indicated that this rejection may later be reconsidered.²³¹

Admission on motion as a fully licensed attorney without taking a state's regular bar examination is another possible solution to the multi-jurisdictional practice problem, both for some house counsel and some other lawyers. Admission on motion is available in Connecticut and many other states to some out-of-state attorneys.²³² However, admission on motion requirements are so restrictive as to who may qualify that relatively few attorneys apply for this type of admission. Common restrictions that limit who may qualify are a required substantial period of law practice in a reciprocal state prior to applying for admission on motion and that the applicant must intend to practice law actively and continuously in the state where admitted on motion.²³³ The restrictions do vary among the states and some states limit this form of admission more extensively than does Connecticut, but other states restrict less extensively.²³⁴ Some states do not permit admission on motion as a fully licensed attorney but permit out-of-state lawyers with extensive law practice experience to be admitted on passing a special examination.²³⁵ Other states have no admission on mo-

²³¹ On the rejection, see Thomas B. Scheffey, *Setback for In-House Status*, CONN. LAW TRIB., May 19, 2003, at 3. On the possible reconsiderations, see Thomas B. Scheffey, *Safe-Harbor for Unlicensed In-Housers on Hold*, CONN. LAW TRIB., Oct. 20, 2003, at 1 (stating that Chief Justice Sullivan said that the rejection may later be reconsidered once certain foreign trade rules concerning foreign lawyers' rights to practice law in Connecticut and other states have been clarified and if a reciprocity requirement is added to the right of house counsel unadmitted in Connecticut to provide legal services in Connecticut for their employers).

²³² On admission on motion in Connecticut, see *supra* notes 17-20 and accompanying text.

²³³ See, e.g., CONN. SUPER. CT. R. § 2-13 (the applicant must have practiced law in a jurisdiction offering reciprocal benefits and have so practiced for five of seven years immediately prior to application for admission on motion and intends, if admitted on motion, to practice law actively in Connecticut and to devote a major portion of his or her working time to such practice).

²³⁴ Some states have somewhat more extensive limitations. See, e.g., R.I. SUP. CT. R. art. II, R. 2 (an out-of-state attorney applicant for admission on motion must have actively practiced law in the state of the applicant's admission for at least five of the last ten years and must pass the essay portion of the Rhode Island bar examination).

Other states have less extensive limitations than those in Connecticut. See, e.g., MICH. COMP. LAWS § 600.946(3) (1996) (requiring applicants for admission on motion to have practiced law for only three of five years immediately preceding application); MINN. R. CT., RULES FOR ADMISSION TO THE BAR, R. 7(B) (providing for admission without further examination permitted if applicant received a scaled score of 145 or above on the Multistate Bar Examination taken as part of and at the same time as the written bar examination given by another jurisdiction); cf. WIS. SUP. CT. R. 40.03 (2003) (stating that graduates of Wisconsin law schools that are fully accredited by the ABA will be admitted to the Wisconsin bar without taking the Wisconsin bar examination).

²³⁵ E.g., CAL. BUS. & PROF. CODE § 6062 (stating that only out-of-state lawyers who have been active members in good standing of the bar of a sister state for at least four years prior to the examination may take the special examination).

tion possibilities and no special examination for admission of out-of-state attorneys.²³⁶ Connecticut has amended its admission on motion rule many times.²³⁷ If and when further changes are being considered in Connecticut, some of the admission on motion provisions adopted in other states may be helpful models.

MDP is another type of practice in which attorneys may be engaged in the unauthorized practice of law. In this type of practice the attorneys' conduct may be illegal even though, as is usually the case, the attorneys are admitted to practice law in the state where they are doing most of their legal services work. In the most controversial form of MDP, a nonattorney organization makes legal services available to its clients and relies typically on attorney employees to do much or all of the legal services work. If the nonattorney organization is engaged in the unauthorized practice of law, its attorney employees are too, as the attorneys are assisting the organization in violating the law. Different forms of MDP are possible and proposals have been made legally to validate one or more of these forms, where not currently legally permissible. No Connecticut law has expressly approved any of the MDP options. Most of the options are set forth in the 1999 report of the ABA Commission, the Commission on MDP,²³⁸ that made an extensive study of MDP.²³⁹ The Commission describes four models of

²³⁶ E.g., N.M. CT. R. 15-201 (stating that all applicants to the New Mexico Bar must pass the New Mexico bar exam). But attorneys from another state may be granted a nonrenewable license to represent public defender clients or a government entity. *Id.* R. 15.301.1; cf. OR. SUP. CT. R., RULES REGULATING ADMISSION TO PRACTICE LAW IN OREGON, R. 15.05 (permitting attorneys from Idaho and Washington to be admitted on motion in Oregon if they have had three or more years of practice experience immediately preceding their application). This is a reciprocity rule and Idaho and Washington have similar rules. In these states, admission on motion is not permitted except pursuant to their reciprocity exception.

²³⁷ See 1 HORTON & KNOX, *supra* note 15, at 190 (commenting following superior court rule section 2-13).

²³⁸ American Bar Association, Commission on MDP, Report to the House of Delegates (1999), available at <http://www.abanet.org/cpr/mdprecommendation.html> (last visited Nov. 13, 2003) (on file with the Connecticut Law Review).

²³⁹ Following the ABA Commission's 1999 report, a vast amount of literature emerged on MDP. See, e.g., Report, Conn. Bar Ass'n, Study Committee on MDP (May 2000) CBA Multidisciplinary Report, *supra* note 104; N.Y. State Bar Ass'n, Special Committee on the Law Governing Firm Structure and Operation, Preserving the Core Values of the American Legal Profession, *The Place of Multidisciplinary Practice in the Law Governing Lawyers* (April 2000), available at <http://www.law.cornell.edu/ethics/mdp.htm> (last visited Oct. 13, 2003) (on file with the Connecticut Law Review); Symposium, *The Future Structure and Regulation of Law Practice*, 44 ARIZ. L. REV. 521 (2002); The Jonathan M. Ault Symposium, *Professional Responsibility and Multi-Disciplinary Practice*, 52 CASE W. RES. L. REV. 861 (2002); Symposium, *The Future of the Profession: A Symposium on Multidisciplinary Practice*, 84 MINN. L. REV. 1083 (2000); Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217 (2000); John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83 (2000); Lawrence J. Fox, *Old Wine in Old Bottles: Preserving Professional Independence*, 72 TEMP. L. REV. 971 (1999).

MDP: the fully-integrated model, the command and control model, the law-related services/ancillary business model, and the contract model.²⁴⁰ Under the fully integrated model, the most controversial of the four models although approved by the Commission with certain provisos,²⁴¹ an organization owned and controlled by nonattorneys provides its clients with both legal and nonlegal services, and typically much or all of the legal services work is performed by attorney employees of the firm. If a nonattorney organization operating under this model is engaged in the unauthorized practice of law, its attorney employees are too, as the attorneys are assisting the organization in the unauthorized practice of law.²⁴² Under the three other models a law firm shares in the benefits of MDP by developing a special nonemployee relationship with one or more nonattorney providers of legal services. The relationship may be a partnership,²⁴³ ownership,²⁴⁴ or a contractual relationship.²⁴⁵

²⁴⁰ See ABA, COMM'N ON MULTIDISCIPLINARY PRACTICE, REPORT TO THE HOUSE OF DELEGATES, app. C (Aug. 1999) [hereinafter ABA COMM'N ON MDP], available at <http://www.abanet.org/cpr/mdpappendixc.html> (last visited Oct. 14, 2003) (on file with the Connecticut Law Review). The four models are also described in an article by the reporter for the Commission. See Daly, *supra* note 239, at 224-225. See also John S. Dzienkowski & Robert J. Peroni, *supra* note 239, at 153-74.

The Commission also notes a fifth model, the cooperative model, based on law firm or client employment or retention of nonattorneys to provide services under direct supervision of the law firm's attorneys. ABA COMM'N ON MDP, *supra*, at app. C. This is permissible in most states but the Commission report states that it is not MDP by the Commission's definition of that term. *Id.*

For a different categorization of MDP operations, see Bryant G. Garth & Carole Silver, *The MDP Challenge in the Context of Globalization*, 52 CASE W. RES. L. REV. 903, 910-917 (2002) (categorizing MDP operations as "captive law firms", "stealth MDPs", and "formal referral relationships").

²⁴¹ On Commission approval, see ABA COMM'N ON MDP, *supra* note 240, available at <http://www.abanet.org/cpr/mdpfinalrep2000.html> (last visited Oct. 14, 2003) (on file with the Connecticut Law Review); *cf.* Daly, *supra* note 239, at 226 & 273.

²⁴² Compare MODEL RULES OF PROF'L CONDUCT R. 5.5(b) (2000), with MODEL RULES OF PROF'L CONDUCT R. 5.5(a) (2003) (before and after 2002 revision). One or the other of these versions of Model Rule 5.5 is currently in effect in nearly all states.

²⁴³ Under the command and control model, nonattorneys as well as attorneys may be partners in the law firm and both attorney and nonattorney partners may share legal fees. ABA COMM'N ON MDP, *supra* note 240, at app. C. This model is permitted in the District of Columbia. D.C. RULES OF PROF'L CONDUCT R. 5.4. But the partnership must have as its sole purpose providing legal services to clients. *Id.* at R. 5.4(b)(1).

²⁴⁴ Under the law-related services/ancillary business model, the law firm operates an ancillary subsidiary organization that is partly owned and controlled by the law firm's partners. ABA COMM'N ON MDP, *supra* note 240. This model, with certain limitations, is permitted by ABA Model Rules of Professional Conduct, Rule 5.7, a rule that has not been adopted in Connecticut, although in the same or similar form, it has been adopted in a few other states. For states that have adopted Rule 5.7, see STEPHEN GILLERS & ROY D. SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS 368-69 (2003). For a listing of large law firms in the United States operating ancillary businesses, many of them in states that have not adopted Model Rule 5.7, see Lowell J. Noteboom, *Professions in Convergence: Taking the Next Step*, 84 MINN. L. REV. 1359, 1365-74 (2000).

²⁴⁵ Under the contract model, a law firm creates a long-term contract affiliation with an independent professional services firm engaged in providing nonlegal services and in which neither the law

MDP is a highly contentious issue, especially the fully-integrated model of MDP. What makes the issue more difficult and troublesome is that it is quite apparent that many nonattorney organizations and their attorneys, most particularly the larger accounting firms and their attorney employees, operating under the fully-integrated model, are regularly and extensively involved in providing legal service work to others, much of which no doubt violates existing unauthorized practice laws. This unauthorized practice activity by MDPs occurs in all states but apparently is most prevalent in states with very large urban centers. The pro-MDP proposals of the ABA Commission on MDP generated great concern nationally within the bar everywhere in this country. The controversy subsided after the ABA House of Delegates in 2002 rejected its Commission's proposals, and it subsided still more following the Enron and similar scandals involving big accounting firms. But market pressures for MDP remain strong, with resulting intense competitive pressures on private law firms from nonattorneys and their organizations that are or will be providing legal services to others. The competitive pressure is not only on the big private law firms but can readily extend to medium and small private law firms as well. Lawmaking bodies in Connecticut and the other states sooner or later are going to find it necessary to face up to the MDP issue, consider the arguments for and against it, and decide if they are going to legally validate some or all forms of MDP. If existing legal restrictions on fully-integrated MDP are eliminated, the result could be a drastic restructuring of the legal profession with very negative consequences for the legal order in this country, Connecticut included.

III. CONCLUSIONS

Unauthorized practice laws are essential to our legal system as in major respects they determine who may or may not practice law or otherwise provide legal services to the provider or others. These laws also constitute a separate and complex body of law, with many subtleties and shadings. This complexity is inevitable given the variety of possible legal services, the wide range of possible legal service providers, the differences in competency and trustworthiness of available legal service providers, and the diverse legal service needs of the many different kinds of consumer groups. Adding to the complexity is that unauthorized practice law is predominantly a field of state law, rather than federal law, and there are extensive

firm nor its partners have an ownership interest. Pursuant to the contract, the two firms may refer matters to one another, the law firm agrees to purchase goods and services from the professional services firm, and the law firm advertises the relationship. See ABA COMM'N ON MDP, *supra* note 240, at app. C. The law of no state explicitly validates the contract model but some commentators claim that a limited version of the model is permissible under the current rules of professional conduct. See Dzienkowski & Peroni, *supra* note 239, at 164.

variations among the states in the scope and detail of their unauthorized practice laws. These variations among the states are causing additional complications in unauthorized practice laws as the geographically expanding economy is resulting in more legal problems that need multijurisdictional legal services.

Connecticut's unauthorized practice laws are a patchwork of statutes, court rules, caselaw, and executive agency regulations, but with extensive voids and many ambiguities and uncertainties. Among the many serious uncertainties is the scope of the state courts' constitutional power over unauthorized practice matters and whether the courts have ultimate constitutional power over such matters when their determinations are not in accord with the state's statutes or executive agency regulations.²⁴⁶

A highly important and very troublesome aspect of Connecticut unauthorized practice laws is the extensive lack of compliance with these laws. The prevalence of noncompliance is unusual for a field of law as important as this one. Many of the unauthorized practice violations are of laws that are quite clear; others are somewhat questionable given the ambiguity in the relevant laws. The high incidence of violations are obvious indications that reforms in these laws are needed, eliminating the more serious ambiguities and perhaps easing, or even tightening, some existing legal restrictions.

There are many possible options available to Connecticut lawmakers for reforming Connecticut unauthorized practice laws.²⁴⁷ This article provides a large sampling of such options. The state's courts and the state legislature are primarily responsible for making reforms in the state's unauthorized practice laws and arguably the courts are best qualified to make many of the changes. Comprehensive reforms by the state's lawmakers are needed. Action is long overdue.

²⁴⁶ See *supra* discussion Part I.F.

²⁴⁷ See *supra* discussion Part II.

