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Introduction: This Advisory Opinion addresses whether a Washington lawyer, in the course of representing their own client, violates RPC 5.5(a) or RPC 8.4(a) by knowingly assisting another in engaging in the unauthorized practice of law in Washington ("UPL") if the lawyer knows that the adverse party in the matter is represented by someone who is not authorized to practice law in Washington.

Summary: A Washington lawyer's representation of a client who is adverse to a party that is known by the lawyer to be represented by someone engaging in UPL in a matter not in litigation does not by itself violate RPC 5.5(a) or RPC 8.4(a). [n.1] This does not mean, however, that there are no risks of other RPC violations. In matters in litigation, the lawyer must at a minimum notify the court of the known UPL.

Cited Rules: 1.0A(f), 1.0A(m), 1.1, 1.4, 1.16, 4.1, 5.5(a), 5.8, 8.3, 8.4, 8.5(b)

Detailed Analysis

A. The Lawyer's Background Obligation to Consult with the Client about the UPL

Before addressing UPL-related questions themselves, we note that lawyers owe their own clients duties of competent representation and communication under RPC 1.1 and 1.4. [n.2] Since the fact that an adverse party is represented by someone engaged in UPL could reasonably affect the lawyer's own client at some point in time (because, for example, the adverse party might subsequently claim that the lawyer and the client took unfair advantage of the adverse party), a lawyer who knows of the UPL by the adverse party's representative must inform their own client before proceeding. In the discussion which follows, we assume that the lawyer will either act in accordance with the client's directions as limited by the RPCs or withdraw under RPC 1.16.

B. The Lawyer's Knowledge of the Existence of UPL

UPL and the exceptions to what would otherwise constitute UPL are defined in Washington in GR 24 and in multiple Washington judicial decisions. [n.3] Although a complete discussion and definition of what constitutes the authorized or unauthorized practice of law is beyond the scope of this Advisory Opinion and the authority of this Committee, we will assume for purposes of this opinion that it is or at least may be UPL for someone to represent another in a matter that requires significant legal skill and training. [n.3]

Before a lawyer could be said to violate RPC 5.5(a) or RPC 8.4(a) solely by representing the lawyer's own client when the adverse party's representative is engaging in UPL, a lawyer would first have to have actual knowledge of the existence of the UPL [n.4] RPC 1.0A(f) provides that "'knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances."

It will often be difficult for a lawyer to "know" that the adverse party's representative is engaged in UPL especially when the adverse party's representative is expressly authorized to practice in one or more jurisdictions. *See, e.g.,* RPC 5.5(c) (allowing for the temporary practice of law in Washington by lawyers licensed elsewhere in various circumstances); RPC 5.5(d) (allowing for the practice of law by a non-Washington lawyer if permitted by federal preemption). In addition, ABA Formal Op. 23-504, *Choice of Law*, makes plain that there are many circumstances in which the choice of professional responsibility law will be less than clear in multistate matters. Whether UPL exists may also be unclear at times even when the adverse party's representative is not expressly authorized to practice in any jurisdiction. For example, it is not always clear when or to what extent practitioners of other professions including, for example, accountants and insurance agents, may permissibly advise their clients on law-related matters, and we express no opinion on the extent to which this may be so. *See e.g. Jones v. Allstate Ins. Co*., 146 Wash.2d 29, 45 P.3d 1068 (2002) (noting that the Washington Supreme Court may in some instances allow nonlawyers to engage in what might otherwise have been considered UPL). Thus, it will often be true that a lawyer may suspect or think, but not actually know, that an opposing party's representative is engaging in UPL. Nonetheless, there will be times when the lawyer actually knows that that adverse party's representative is doing so.

C. "Assisting" UPL Under RPC 5.5(a) and 8.4(a)

RPCs 5.5(a) provides that "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so." RPC 8.4(a) provides that it is professional misconduct for a lawyer to "knowingly assist or induce another to [engage in UPL] or do so through the acts of another." Neither rule is violated unless the lawyer has actual knowledge (as defined above) of UPL by the adverse party's representative. If that knowledge is present, the key question becomes whether that knowledge, in and of itself, is sufficient to constitute "assist[ing]" another in UPL, "induc[ing]" another to do so, or "do[ing] so through the acts of another." Although there is no Washington authority on all fours, we conclude that no UPL is present based on mere knowledge of the existence of the UPL.

As used in RPC 5.5(a) and RPC 8.4(a), the word "assist" is generally understood and interpreted according to its ordinary meaning as connoting some degree of affirmative cooperation, help, facilitation, guidance, or aid, as opposed to a failure to intervene—at least where the lawyer has no other affirmative ethical duty to supervise the conduct. *See generally* ABA Annotated Model Rules of Professional Conduct 593-96, 765-66 (10th ed. 2023) (commenting that Rule 5.5(a) prohibits a lawyer from "helping" someone else engage in UPL and referencing as examples of this misconduct lending legitimacy to unlicensed individuals or disbarred or suspended lawyers, working with and on the same side as unauthorized out of state lawyers, and failing to adequately supervise nonlawyer subordinates).

Similarly, Hazard, Hodes, Jarvis & Thompson, *The Law of Lawyering* § 47.02 (4th ed. 2025-2 Supp.) provides that "because one of the obligations of a lawyer is to avoid assisting UPL (Rule

5.5(a)), lawyers must take affirmative steps to ensure that lay persons *subject to their control*, such as paralegal workers, secretaries, or investigators, do not cross over the line into UPL" (emphasis added). The treatise then contrasts a lawyer's need to supervise the nonlawyer's own nonlawyer employees with the situation of a lawyer who happens to represent a party to a proposed transaction in which the adverse party is represented by a person engaged in UPL. In the latter situation, the lawyer "is not thereby impermissibly assisting *that person* in UPL." Hazard, Hodes, Jarvis & Thompson, *The Law of Lawyering* § 47.07 (4th ed. 2025-2 Supp) (emphasis in original). The treatise also cites to and quotes from N.Y. State Bar Ass'n Ethics Op. 809 (2007) which concludes:

> We do not believe that merely continuing to represent one's *own* client-in a transaction into which a third party, *not under the lawyer's (or client's) control*, has chosen to introduce a non-lawyer who is engaging in UPL-is aiding that non-lawyer in UPL. Absent any affirmative intent or desire to substantially assist the non-lawyer in UPL, or some direct financial or other benefit to the lawyer from the non-lawyer's engaging in UPL (other than the ordinary benefit arising from completing the transaction for which the lawyer was engaged), the lawyer is not aiding UPL. All the lawyer is doing is representing a client; *the incidental effect* of that proper act is that the non-lawyer is able to engage in UPL.

(Footnote omitted.) [n.5]

This approach is consistent with the leading published Washington State case in this general area—*In re Disciplinary Proceeding Against Shepard*, 169 Wash. 2d 697, 239 P.3d 1066 (2010). In *Shephard*, the lawyer "assisted" in UPL because he was an active participant in a scheme in which nonlawyers operated a living trust mill: "By allowing his name and title to be used to add legitimacy to the sale of the [living trust documents], Shepard aided [a nonlawyer] in the unauthorized practice of law." *Id.* at 712. In other words, some affirmative action or involvement for the purpose of helping someone engage in involvement must exist before the lawyer representing a client in a matter can be said to be assisting UPL or otherwise violating RPC 5.5(a) or 8.4(a). [n.6]

This also makes sense because a lawyer's duties run primarily to the lawyer's own client and not to the adverse party. For example, a lawyer who knows that an adverse party's lawyer has performed incompetently when representing the adverse party does not owe duties of competence and communication to the adverse party equal to what the lawyer owes the lawyer's own client.

In conclusion, no violation of RPC 5.5(a) or RPC 8.4(a) exists solely because a lawyer knows that the adverse party's representative is engaged in UPL.

D. <u>Other RPC Risks to the Lawyer</u>

This does not mean, however, that a lawyer who knows that the adverse party is being represented by someone engaging in UPL is free from other RPC-related risks.

Suppose, for example, that the matter in question involves litigation. "When an unlicensed advocate knowingly appears in court without a court's permission or proper licensure from the bar, they commit a fraud on the court …." *Matter of Lewis*, 200 Wash.2d 848, 874, 523 P.3d 760 (2023) (emphasis in original). Most courts are likely to conclude that a lawyer's silence in the face of the adverse party's representation by someone known by the lawyer to be engaging in UPL—and a lawyer's participation in, for example, such ministerial acts as submitting documents to the court which reflect signatures by the" attorneys" for each party—violate court rules or the duty of candor owed to the court and therefore constitute, "mak[ing] "a false statement of fact or law to a tribunal" in violation of RPC 3.3(a), making "a false statement of material fact or law to a third person" in violation of RPC 4.1(a), "conduct involving dishonesty, fraud, deceit or misrepresentation" in violation of RPC 8.4(c), or "conduct that is prejudicial to the administration of justice" in violation of RPC 8.4(d). [n.7]

In addition, a lawyer with knowledge of the UPL by the representative of the adverse party would also need to avoid any conspiracy or plan with the representative to defraud the adverse party. Cf. *In re Smith*, 170 Wash.2d 721, 246 P.3d 1224 (2011)(disbarring lawyer following conviction for conspiracy to commit securities fraud). [n.8]

Lastly, a lawyer with knowledge of the UPL may wish to consider whether they should report the misconduct under RPC 8.3, albeit subject to any limitations based on the duty of confidentiality to their client under RPC 1.6. [n.9]

Endnotes:

1. In this opinion, we assume that the lawyer is not otherwise profiting from, supporting, or aiding and abetting the representative of the adverse party who is engaged in UPL. *Cf.* RPC 5.8(b) and RCW 2.48.220(9), quoted in note 6 below.

2. RPC 1,1 provides that:

   > A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

   RPC 1.4 provides in pertinent part that:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0A(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the *representation.*

3. GR 24(a) provides as a general definition that:

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).

GR 24(b) then provides a list of exceptions and inclusions to what would or might otherwise constitute UPL.

4. *See, e.g.,* Nancy J. Moore, *Mens Rea Standards in Lawyer Disciplinary Codes*, 23 Geo. J. Legal Ethics 1, 3 (2010) ("I suggest the following default mens rea standards for disciplinary provisions: negligence in rules designed to protect clients and knowledge in rules designed to protect courts and third parties.") (Footnotes omitted.)

5. The footnote to the New York opinion states that the opinion is "limited to transactional situations and does not encompass situations involving litigation, in which there may be, for example, special duties to the court." *Id*. at note 1. As noted further in text below, we agree.

6. This interpretation is also consistent with RPC 5.8(b) and RCW 2.48.220(9). RPC 5.8(b) provides that:

> A lawyer shall not engage in any of the following with a lawyer or LLLT who is disbarred or suspended or who has resigned in lieu of disbarment or discipline or whose license has been revoked or voluntarily cancelled in lieu of discipline:
>
> (1) practice law with or in cooperation with such an individual;
>
> (2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;
>
> (3) permit such an individual to use the lawyer's name for the practice of law;
>
> (4) practice law for or on behalf of such an individual; or
>
> (5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

RCW 2.48.220(9) provides that an attorney may be disciplined for:

> Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney or with any person not a licensed attorney.

Both provisions require additional support or involvement by a lawyer above and beyond the knowledge that an adverse party's representative is engaging in UPL before the lawyer can be said to be acting impermissibly.

7. RPC 1.0A(m) defines tribunals as including more than just courts:

> "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Because the rules of non-court tribunals vary widely, we express no opinion on whether the rules of non-court tribunals would require a lawyer to disclose the lawyer's knowledge of UPL by the adverse party's representative.

8. It is not necessary to consider whether the lawyer might have a duty to report the adverse party's representative to the bar under RPC 8.3 because the Washington version of this rule is not mandatory.

9. Unlike many other jurisdictions, Washington RPC 8.3(a) uses the phrase "should inform the appropriate authority" rather than "shall" or "must." Thus, this is a permissive duty rather than a mandatory one. Even so, lawyers are encouraged to report serious RPC violations when it is consistent with RPC 1.6 to do so. *See* cmt. [1] to RPC 8.3.