

Chapter 10

Avoiding the Unauthorized Practice of Law

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As librarians, when we receive a reference question, we often try our best to be as helpful to the patrons as possible, which includes looking for the “right” answer. However, when a reference question concerns legal concepts, a response to a reference question can sometimes lead to what is called the “unauthorized practice of law,” which Illinois generally prohibits. This chapter will discuss what the unauthorized practice of law is and how reference librarians can avoid it.

The Law

In every state, the practice of law is regulated. Every state regulates who can practice law and prohibits the unauthorized practice of law. While the definition of the practice of law is “established by law and varies from one jurisdiction to another,” the goal of prohibiting the unauthorized practice of law is to protect the public from receiving legal services from unqualified persons.⁸

In Illinois, the laws that govern the admission of attorneys to the Illinois state bar and the practice of law in Illinois are the [Attorney Act, 705 Ill. Comp. Stat. § 205/0.01 et seq.](#),⁹ and the [Illinois Supreme Court Rules, Article VII, Rules on Admission & Discipline of Attorneys](#).¹⁰ Section 1 of the Attorney Act states: “No person shall be permitted to practice as an attorney or counselor at law within [Illinois] without having previously obtained a license for that purpose from the Supreme Court of this State.”¹¹ Neither the Attorney Act nor the Illinois Supreme Court Rules define the phrase “unauthorized practice of law,” and the Illinois Supreme Court has not provided an exhaustive list of activities that constitute the practice of law. When the court determines whether an action constitutes the practice of law, it looks to the character of the action itself.¹² The crux of the issue is “whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent.”¹³ This means that the practice of law is not limited to appearing in

⁸ American Bar Association, Model Rules of Professional Conduct, Rule 5.5 Comment 2. For more information about the unauthorized practice of law geared toward members of the public, see Illinois State Bar Association, “ISBA and the Unauthorized Practice of Law – What the Public Needs to Know,” available at <https://www.isba.org/sites/default/files/committees/upl/uplfaq.pdf> (last visited on July 10, 2020).

⁹ The Attorney Act (705 ILCS 205/0.01 et seq.) is available at <https://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1853&ChapterID=50>.

¹⁰ The Illinois Supreme Court Rules of Professional Conduct are available at http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VII/default.asp.

¹¹ 705 Ill. Comp. Stat. § 205/1.

¹² Illinois State Bar Association Advisory Opinion on Professional Conduct, No. 95-07 (citing [Chicago Bar Association v. Quinlan & Tyson, Inc.](#), 214 N.E.2d 771 (Ill. 1966)).

¹³ [In re Discipio](#), 645 N.E.2d 906, 910 (Ill. 1994).

court and preparing pleadings—it involves using knowledge of the law. However, if the action requires using common knowledge, such as filling in factual information on a standard form, it is not considered practicing law.

Additionally, the prohibition of the unauthorized practice of law does not infringe upon a person's right to represent themselves either in a criminal case¹⁴ or a civil case.¹⁵

What Does This Mean for Reference Librarians?

Reference librarians can provide research assistance, but the scope of the assistance must be limited. The threshold question is whether responding to the research inquiry requires using legal knowledge and skill.¹⁶ In essence, when answering a reference inquiry, the goal is to provide information without providing an interpretation of the law.

For instance, if a patron comes to the reference desk to ask where they can find information about the Americans with Disabilities Act, the law librarian can respond by informing the patron about any treatises involving disability law, which would discuss the Americans with Disabilities Act. The reference librarian can also demonstrate for the patron how to search for bills by their popular name in certain databases and find the underlying statute. The reference librarian could also demonstrate how to search for case law and regulations using various databases.

However, the reference librarian could not provide advice that would require an interpretation of the law or the use of legal knowledge. For instance, the reference librarian could not tell the patron about seminal cases concerning the Americans with Disabilities Act. The reference librarian also could not tell the patron which cases were still good case law or Shepardize case law for the patron. The reference librarian also could not advise the patron on whether they have completed their research of the issue. The reference librarian also could not help the patron draft a complaint claiming a violation of the Americans with Disabilities Act. All of these actions could be the unauthorized practice of law because performing them requires interpreting the law and utilizing legal knowledge.

Another example is if a patron comes to the reference desk with a form and asks for the reference librarian's assistance. If the patron asks the reference librarian to help them fill in the form, and if filling in the form requires understanding and interpreting legal concepts as opposed to merely entering in factual data, then the reference librarian would be practicing law if they assisted. Conversely, if the patron does not have a form and asks for help finding one, the reference librarian could direct the patron to secondary sources that contain forms, such as *Causes of Action* or a self-help book. However, the reference librarian could not advise the patron on which form would be best suited for their purpose because that would require interpreting the law and utilizing some legal knowledge.

¹⁴ The Sixth Amendment right to represent oneself in criminal cases was established in Faretta v. California, 422 U.S. 806 (1975).

¹⁵ "Plaintiffs shall have the liberty of prosecuting, and defendants of defending in their proper persons." 705 Ill. Comp. Stat. § 205/11.

¹⁶ See *supra* note 5.

Conclusion

As the keepers of legal information, the line between unauthorized practice of law and good librarianship can seem difficult to navigate. Because we know how confusing and unintuitive the legal landscape can be, it is only natural to want to provide as much assistance as possible to library patrons. What is important to remember is that if addressing a reference inquiry requires any legal analysis or use of knowledge about the law, the best course of action is to refer the patron to an attorney. The [Chicago Bar Association](#)¹⁷ and the [Illinois State Bar Association](#)¹⁸ both have services that can help connect patrons to affordable legal representation. [Illinois Legal Aid Online](#)¹⁹ is another excellent resource for connecting patrons with legal assistance. It is also important to remember that the assistance reference librarians can provide (*e.g.*, referral to these organizations, access to secondary sources, and information about how to use databases for research) is still useful for the uninitiated.

¹⁷ Information about the Chicago Bar Association's Lawyer Referral Service is available at <https://lrs.chicagobar.org/>. The Lawyer Referral Service connects people in Chicago with lawyers, including free and low-cost representation, with different backgrounds. This service is free.

¹⁸ Information about the Illinois State Bar Association's Lawyer Illinois Lawyer Finder service is available at <https://www.isba.org/public/illinoislawyerfinder>. This is another free service that connects Illinoisans with legal representation. The webpage also provides information about obtaining free and low-cost legal service in Illinois.

¹⁹ Information about Illinois Legal Aid Online is available at <https://www.illinoislegalaid.org/>. Illinois Legal Aid Online is a reputable resource that provides self-help tools on Illinois law, including forms that can be used to create complaints and petitions as well as guidance on different aspects of the law such as landlord-tenant law.