



**Supplemental Report on Proposed Texas Supreme Court Policies on Assistance to
Court Patrons by Clerks and by Court Personnel
Submitted by the Texas Access to Justice Commission**

November 27, 2017

Background

The Texas Access to Justice Commission ("Commission") submitted two policies to the Texas Supreme Court to that deal with assistance to court patrons by court clerks and by court personnel ("Policies") on November 1, 2016. The Policies were referred to the Judicial Administration subcommittee ("Subcommittee"). On July 6, 2017, the Commission submitted a detailed report on the Policies, outlining the need for the policies and process involved in developing them. The Supreme Court Advisory Committee ("SCAC") discussed the Policies during the August 11, 2017 meeting and asked the Subcommittee to review the Policies further. Questions about the unauthorized practice of law ("UPL") arose during a Subcommittee meeting, and the Commission volunteered to review the policies through an UPL lens. This supplemental report contains much of the same information in the initial report and includes a discussion of potential UPL concerns.

Supreme Court Policies

The Commission proposed two policies to address interaction between court patrons and court clerks/court personnel that differ only in audience: the Texas Supreme Court Policies on Assistance to Court Patrons by Court Personnel is directed towards to court personnel subject to a judge or judicial administrator's direction and control, such as court staff, bailiffs, law librarians and staff, and court volunteers, while the Texas Supreme Court Policies on Assistance to Court Patrons by District and County Clerks focuses exclusively on court clerks. Based on feedback from a few clerks and because many clerks are elected officials, we felt that that clerks would respond more positively to a policy directed solely to them.

The Policies are exactly the same. For discussion purposes, we will only be referencing the Policy for court personnel in this supplemental report. The original version of that Policy is attached in Exhibit 1.¹ The current version of the Policy, which was revised due to UPL concerns and after discussion with the Subcommittee members, can be found in Exhibit 2.²

When drafting the original proposals, the Commission reviewed policies governing interaction between court patrons and court that exist in state Codes of Ethics promulgated by judicial councils (California), by circuit court administrative order (Florida), for municipal court clerks (Georgia), through Supreme Court

¹ Original version of court policies on the treatment of court patrons.

² Current version of court policies on the treatment of court patrons.

Order (Colorado, Illinois, North Carolina), in model codes of conduct for court/judicial employees (Michigan, Nevada, North Dakota, Ohio), and in Codes of Judicial Conduct (Maine).³

The Illinois Supreme Court Policy on Assistance to Court Patrons by Circuit Clerks, Court Staff, Law Librarians, and Court Volunteers⁴ served as the template for our proposed policies. We maintained many of the permitted and prohibited assistance but augmented it with more precise definitions and eliminated redundancies. For explanation only, we included footnotes showing which other states have similar items permitted or prohibited in their policies, guidelines, or codes of conduct.

The crux of both the proposed Policies on Assistance to Court Patrons is the definition of “legal information” found in Section (b)(3):

"Legal information" means neutral information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance based on legal skills or knowledge regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.

This definition briefly outlines the permissible information a clerk or other court personnel can convey to any court patron. It highlights that legal information is neutral and does not require analysis of a patron's facts and circumstances. For concrete examples of the definition, section (c) of the policy delineates permitted assistance that are examples of providing legal information. The list is intended to be illustrative and permissive rather than requirements. To provide further clarity, section (d) lists prohibited forms of assistance. This section contains examples of legal advice that clerks and court personnel should not give under any circumstances.

During the course of giving presentations throughout the state, it became clear that there were varying beliefs on whether such simple things as telling people where to file their pleadings was information or advice, let alone whether assisting someone in finding the appropriate pleading was information or advice. These are issues that are constantly discussed among court staff, law librarians, and clerks. Aside from basic things, such as the provision of signage and giving directions within the courthouse building, there is no true consensus on any one issue. Knowing that specificity would cut through the debate and uncertainty, the Commission decided it would be best to provide a longer list of specific examples of what constituted legal information versus legal advice instead of a shorter list of general examples.

Unauthorized Practice of Law

After the submission of the original proposed Policies, the Commission took a closer look at places where they may appear to cross the line into the unauthorized practice of law. The relevant statute discussing the UPL is [Section 81.101](#) of the Texas Government Code.⁵ This section is concerned with preparation of documents, managing legal actions, giving advice, and rendering service that requires legal skills or knowledge, and states:

(a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the

³ See Exhibit 3 for excerpts of relevant provisions

⁴ See Exhibit 4

⁵ See Exhibit 5

giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

Application of Statute to Policies

The Policies permit providing information, encouraging patrons to get advice from a lawyer, offering educational classes, recording information verbatim, reviewing for completeness, assisting self-guided research, and several areas around forms: assisting in identifying, providing, explaining information needed, and informing patrons no form exists.

Most of the items delineated in section (c) of the Policies can be construed solely as providing legal information, which is not UPL. However, a closer look was given to five items that could be construed as UPL. The current version of the Policies were revised based on the recommendations below and further discussion with the Subcommittee members on the overall Policies.⁶

1. Assistance with Forms:

Although Gov. Code §81.101(c) specifically allows the distribution and display of forms, the Court stated in [*Unauthorized Practice Committee v. Cortez*](#), 692 S.W.2d 47 (Tex. 1985)⁷, that the act of determining whether a specific immigration form should be filed at all does require special legal skills. Three Policies discuss how court personnel can assist court patrons with forms:

- (6) Assisting court patrons in identifying and providing forms and related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;
- (7) Explaining the nature of the information required to fill out the forms;
- (8) Informing court patrons if no approved form exists to accomplish the request and directing the court patron to other legal resources;

⁶ See Exhibit 2

⁷ See Exhibit 7

Due to *Cortez*, item 6 should be reworded. Assisting court patrons in identifying which forms are necessary could be UPL if there were multiple forms to choose from in a practice area – i.e. choosing a transfer on death deed vs. a will. We propose the following edit:

- (6) ~~Assisting~~ **Helping** court patrons **locate forms** ~~in identifying and providing forms and~~ related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;

Items 7 should be struck from the list of permitted actions. This does not provide a safe harbor for questioning court personnel to provide assistance and may lead to impermissible actions.

Item 8 should be struck as duplicative. Directing court patrons to forms is covered in subsection (c)(6) while directing court patrons to other resources is covered in subsection (c)(11).

2. Requiring the Use of Legal Skill or Knowledge:

Two items should be reviewed closely for “requiring the use of legal skill or knowledge.” The items were initially numbered “10” and “11”, but due to the proposed strikes above, will be renumbered to (8) and (9) in the comments below.

- (10) Reviewing documents and forms for clerical completeness, such as checking for signature, notarization, correct county name, and case number, and if incomplete, stating why the document or form is incomplete;
- (11) Providing assistance to court patrons pursuing self-guided research;

Item 10 should be renumbered to item (8) and be reworded to preclude a reading that would allow/require clerks to review for legal sufficiency instead of ensuring a pleading met the requirements for filing. The Commission proposes the following edit:

- (8) Reviewing documents and forms for **clerical** completeness, such as checking for signature, notarization, correct county name, ~~and~~ case number, **and other items necessary for filing**, and if incomplete, stating why the document or form is incomplete;

Additionally, we added “(2) Refuse to file documents and forms because they are incomplete or otherwise insufficient;” under prohibited assistance in subsection (d)(2).

Item 11, renumbered to (9), is essential for non-attorney personnel at law libraries and self-help centers, so the Commission proposes the following edit in order to clarify the permissible form of assistance:

- (9) ~~Providing assistance to~~ **Directing** court patrons ~~pursuing (who are conducting~~ self-guided research) **to resources**;

**PROPOSED TEXAS SUPREME COURT POLICY
ON ASSISTANCE TO COURT PATRONS
BY DISTRICT AND COUNTY CLERKS AND THEIR STAFF**

(a) Purpose and Scope.

The purpose of this policy is to provide guidance to district and county clerks and personnel subject to their direction and control as to what services may and may not be offered to assist court patrons to achieve fair and efficient resolution of their cases.

Services permitted under this policy should be provided in the same manner to all court patrons. No court patron should be denied these services on the basis of being a self-represented litigant.

(b) Definitions.

- (1) "Court patron" means any person, such as an attorney, self-represented litigant, or member of the public, who is accessing the judicial system.
- (2) "Self-represented litigant" means any individual accessing the judicial system who is not represented by an attorney.
- (3) "Legal information" means neutral information about the law and the legal process. Legal information includes information regarding court procedures and records, forms, pleadings, practices, due dates and legal authority provided in statutes, cases, or rules. Legal information is different from legal advice, which involves giving guidance regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.

(c) Permitted Services. Clerks and their staff may provide legal information to court patrons, including assisting them as follows:

- (1) Providing information about court rules, court terminology and court procedures, including, but not limited to, requirements for service, filing, scheduling hearings, and compliance with local procedure;¹
- (2) Informing court patrons of legal resources and referrals if available, including, but not limited to:²
 - a. Pro bono legal services;

¹ Arizona, California, Colorado, Florida, Illinois, Nevada, North Carolina

² Arizona, California, Colorado, Illinois, Nevada, North Carolina

- b. Low-cost legal services;
 - c. Limited scope legal services;
 - d. Legal aid programs and hotlines;
 - e. Law and public libraries;
 - f. Non-profit alternative dispute resolution services;
 - g. Lawyer referral services;
 - h. Internet-based resources;
 - i. Court-sponsored or court-affiliated educational classes, including parenting education and traffic safety classes and alternative dispute resolution services;
 - j. Units or departments of government; or
 - k. Domestic violence resources.
- (3) Encouraging self-represented litigants to obtain legal advice from a lawyer;³
 - (4) Providing information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations, and other courthouse offices;⁴
 - (5) Offering educational classes and informational materials;⁵
 - (6) Assisting court patrons in identifying and providing forms and related instructions based on the court patron's description of what he or she wants to request from the court. Clerks and their staff must provide forms for the waiver of filing fees or other forms as required by law;⁶
 - (7) Explaining the nature of the information required to fill out the forms;
 - (8) Informing court patrons if no approved form exists to accomplish the request and directing the court patron to other legal resources;
 - (9) Recording on forms verbatim information provided by the self-represented litigant if that person is unable to complete the forms due to language, disability or literacy barriers;⁷
 - (10) Reviewing documents and forms for completeness, such as checking for signature, notarization, correct county name, and case number, and if incomplete, stating why the document or form is incomplete;⁸
 - (11) Providing assistance to court patrons pursuing self-guided research;⁹
 - (12) Providing docket information, including but not limited to:¹⁰
 - a. Stating whether an order has been issued;
 - b. Explaining how to get a copy if one was not provided;

³ Colorado, Illinois, Nevada

⁴ Illinois

⁵ Colorado, Illinois, Nevada

⁶ Arizona, Colorado, Illinois, Nevada, North Carolina

⁷ Colorado, Illinois, Nevada, North Carolina

⁸ Colorado, Illinois

⁹ California, Illinois, North Carolina

¹⁰ Arizona, Colorado, Illinois, Nevada, North Carolina

- c. Reading the order to the individual if requested; or
- d. Providing instructions about how to access such information.
- (13) Informing court patrons of the process for requesting a foreign language or sign language interpreter;¹¹
- (14) Instructing a court patron on how to obtain access to a case file that has not been restricted by statute, rule or order, and provide access to such a file;¹²
- (15) Providing the same services and information to all parties to an action, as requested;¹³ or
- (16) Providing other services consistent with the intent of this policy.¹⁴

(d) Prohibited Services. Clerks and their staff shall not:

- (1) Recommend whether a case should be brought to court or comment on the merits of a pending case;¹⁵
- (2) Give an opinion about what will happen if a case is brought to court;¹⁶
- (3) Represent court patrons in court;¹⁷
- (4) Provide legal analysis, strategy or advice to a court patron;¹⁸
- (5) Disclose information in violation of the law;¹⁹
- (6) Deny a self-represented litigant access to the court, the court docket, or any services provided to other court patrons;²⁰
- (7) Tell a court patron anything he or she would not repeat in the presence of any other party involved in the case;²¹
- (8) Refer a court patron to a specific lawyer or law firm, except for as provided by section (c)(2);²² or
- (9) Otherwise engage in the unauthorized practice of law.²³

(e) Unauthorized Practice of Law and Privilege. Services provided in accordance with section (c) of this policy do not constitute the unauthorized practice of law and do not create an attorney-client relationship. Information exchanged in accordance with section (c) of this policy is neither confidential nor privileged, except as otherwise protected by law.

¹¹ Colorado, Illinois

¹² Arizona, Colorado, Illinois

¹³ Colorado, Illinois

¹⁴ Colorado, Illinois

¹⁵ Colorado, Illinois, North Carolina

¹⁶ Colorado, Illinois, North Carolina

¹⁷ Colorado, Illinois

¹⁸ Illinois, Nevada, North Carolina

¹⁹ Colorado, Illinois, Nevada

²⁰ Colorado, Illinois

²¹ Colorado, Illinois

²² Colorado, Florida, Illinois

²³ Illinois

**PROPOSED TEXAS SUPREME COURT POLICY
ON ASSISTANCE TO COURT PATRONS
BY COURT STAFF, LAW LIBRARIANS, AND COURT VOLUNTEERS¹**

(a) Purpose and Scope.

Court personnel are encouraged to provide assistance and legal information to all court patrons. This policy is intended to provide guidance to court personnel subject to a judge or judicial administrator's direction and control, such as court staff, bailiffs, law librarians and staff, and court volunteers, as to what assistance may and may not be offered to court patrons to achieve fair and efficient resolution of their cases.

Assistance permitted under this policy should be provided in the same manner to all court patrons. No court patron should be denied assistance on the basis of being a self-represented litigant.

(b) Definitions.

- (1) "Court patron" means any person, such as an attorney, self-represented litigant, or other member of the public, who is accessing the judicial system.
- (2) "Self-represented litigant" means any individual accessing the judicial system who is not represented by an attorney.
- (3) "Legal information" means neutral information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance based on legal skills or knowledge regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances.

(c) Permitted Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, may provide assistance and legal information to court patrons as follows:

- (1) Providing information about court rules, court terminology and court procedures, including, but not limited to, requirements for service, filing, scheduling hearings, and compliance with local procedure;
- (2) Informing court patrons of legal resources and referrals if available, including, but not limited to:
 - a. Pro bono legal services;
 - b. Low-cost legal services;
 - c. Limited scope legal services;

¹ Current as of 11/27/2017.

- d. Legal aid programs and hotlines;
 - e. Law and public libraries;
 - f. Non-profit alternative dispute resolution services;
 - g. Lawyer referral services;
 - h. Internet-based resources;
 - i. Court-sponsored or court-affiliated educational classes, including parenting education and traffic safety classes and alternative dispute resolution services;
 - j. Units or departments of government; or
 - k. Domestic violence resources.
- (3) Encouraging self-represented litigants to consult a lawyer;
 - (4) Providing information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations, and other courthouse offices;
 - (5) Offering educational classes and informational materials;
 - (6) Helping court patrons locate court forms and related instructions based on the court patron's description of what he or she wants to request from the court. Court personnel must provide forms for the waiver of filing fees or other forms as required by law;
 - (7) Recording on forms verbatim information provided by the self-represented litigant if that person is unable to complete the forms due to language, disability or literacy barriers;
 - (8) Reviewing documents and forms for clerical completeness, such as checking for signature, notarization, correct county name, case number, and other items necessary for filing, and if incomplete, stating why the document or form is incomplete;
 - (9) Directing court patrons (who are conducting self-guided research) to resources;
 - (10) Providing docket information, including but not limited to:
 - a. Stating whether an order has been issued;
 - b. Explaining how to get a copy if one was not provided;
 - c. Reading the order to the individual if requested; or
 - d. Providing instructions about how to access such information.
 - (11) Informing court patrons of the process for requesting a foreign language or sign language interpreter;
 - (12) Instructing a court patron on how to obtain access to a case file that has not been restricted by statute, rule or order, and provide access to such a file;
 - (13) Providing the same assistance and information to all parties to an action, as requested; or
 - (14) Providing other assistance consistent with the intent of this policy.

(d) Prohibited Assistance. Court personnel, acting in a non-lawyer capacity on behalf of the court, shall not:

- (1) Recommend whether a case should be brought to court or comment on the merits of a pending case;
- (2) Refuse to file documents and forms because they are incomplete or otherwise insufficient;
- (3) Give an opinion about what will happen if a case is brought to court;
- (4) Represent court patrons in court;
- (5) Provide legal advice, analysis, or strategy to a court patron;
- (6) Disclose information in violation of the law;
- (7) Deny a self-represented litigant access to the court, the court docket, or any assistance provided to other court patrons;
- (8) Tell a court patron anything he or she would not repeat in the presence of any other party involved in the case;
- (9) Refer a court patron to a specific lawyer or law firm, except as provided by section (c)(2); or
- (10) Otherwise engage in the unauthorized practice of law.

(e) Unauthorized Practice of Law and Privilege. Assistance provided in accordance with section (c) of this policy does not constitute the unauthorized practice of law and does not create an attorney-client relationship. Information exchanged in accordance with section (c) of this policy is neither confidential nor privileged, except as otherwise protected by law.

(f) Code of Judicial Conduct. Assistance provided in accordance with section (c) of this policy does not violate the Code of Judicial Conduct.

Judicial Employee Interaction with Court Patrons
Selected Excerpts from Codes of Conduct/Ethics and Court Orders
Compiled 11/8/2017

[Arizona Code of Conduct for Judicial Employees](#)

RULE 2.6 Assistance to Litigants

A judicial employee shall assist litigants to access the courts by providing prompt and courteous customer service and accurate information consistent with the employee's responsibilities and knowledge and the court's resources and procedures while remaining neutral and impartial and avoiding the unauthorized practice of law. Employees are authorized to provide the following assistance:

- (A) Explain how to accomplish various actions within the court system and provide information about court procedures, without recommending a particular course of action;
- (B) Answer questions about court policies and procedures, without disclosing confidential or restricted information as provided in Rule 3.2;
- (C) Explain legal terms, without providing legal interpretations by applying legal terms and concepts to specific facts;
- (D) Provide forms and answer procedural questions about how to complete court papers and forms with factual information by the court customer, without recommending what words to put on the forms;
- (E) Provide public case information, without providing confidential case information as provided in Rule 2.5;
- (F) Provide information on various procedural options, without giving an opinion about what remedies to seek or which option is best;
- (G) Cite statutes, court rules or ordinances a judicial employee knows in order to perform the employee's job, without performing legal research for court customers;
- (H) When asked to recommend a legal professional such as an attorney, a legal document preparer, or process server, refer the customer to a resource like a directory or referral service, without recommending a specific legal professional; and
- (I) Provide scheduling and other information about a case, without prejudicing another party in the case or providing information to or from a judge that is impermissible ex parte (one party) communication about a case.

Comment: For fuller explanation see the [Guide to Court Customer Assistance: Legal Advice - Legal Information Guidelines for Arizona Court Personnel, Administrative Office of the Courts, Court Services Division, 2007](#) upon which this rule is based.

[Code of Ethics for the Court Employees of California](#)

Guideline for Tenet Seven PROHIBITION AGAINST GIVING LEGAL ADVICE

Given the experience and visibility of court employees, it is natural for those who deal with the court, including attorneys and litigants as well as the general public, to ask questions such as: "Should I fight this?" "How do I fight this?" "To whom should I go for legal assistance?" "What does the law say?" Court employees can and should provide information that is within their own level of professional training and experience, so long as the information does not compromise the neutrality of the court or the court's appearance of neutrality. For example, court employees can and should patiently explain how to file forms and pay fines, and should clarify legal language and the court's policies attendant to procedural due process and assist self-represented litigants in

court self-help centers. They should provide litigants with information about non-profit legal services agencies, certified lawyer referral service programs and court-based self-help assistance. They must not, however, cross the line separating court employees, whether licensed attorneys or not, from attorneys practicing law in the community. Court employees must not give any legal or procedural information that tends to favor one side of a case. Court employees should cite this tenet when pressed by those seeking legal advice.

Colorado

Chief Justice Directive 13-01 Concerning Colorado Courts' Self-Represented Litigant Assistance

Role of Self-Help Personnel

(a) Basic Services. Self-Help Personnel may provide the following services:

- (1) Provide general information about court procedures and logistics, including requirements for service, filing, scheduling hearings and compliance with local procedure;
- (2) Provide, either orally or in writing, information about court rules, terminology, procedures, and practices;
- (3) Inform Self-Represented Litigants of available pro bono legal services, low cost legal services, unbundled legal services, legal aid programs, alternative dispute resolution services including mediation and services offered by the Office of Dispute Resolution, lawyer referral services, and legal resources provided by state and local libraries;
- (4) Encourage Self-Represented Litigants to obtain legal advice without recommending a specific lawyer or law firm;
- (5) Explain options within and outside the court system, including providing information about community resources and services;
- (6) Provide information about domestic violence resources;
- (7) Offer educational sessions and materials, as available, and provide information about classes, such as parenting education classes;
- (8) Assist Self-Represented Litigants in selecting the correct forms, and instructions on how to complete forms, based on the Self-Represented Litigant's description of what he or she wants to pursue or request from the court, including, but not limited to, providing forms for the waiver of filing fees. Where no form exists to accomplish the Self-Represented Litigant's request, Self-Help Personnel should inform the litigant of that fact;
- (9) Record information provided by the Self-Represented Litigant on approved forms if that person cannot complete the forms due to disability, language, or literacy barriers;
- (10) Assist Self-Represented Litigants to understand what information is needed to complete filling in the blanks on approved forms; Chief Justice Directive 13-01 3
- (11) Review finished forms to determine whether forms are complete, including checking for signatures, notarization, correct county name, and case number;
- (12) Assist in calculating child support using the standardized computer-based program, based on financial information provided by the Self-Represented Litigant;
- (13) Answer general questions about how the court process works;
- (14) Answer questions about court timelines;
- (15) Provide docket information;
- (16) Provide information concerning how to get a hearing scheduled;
- (17) Inform Self-Represented Litigants of the availability of interpreter and sign language assistance and process requests for such services;
- (18) At the direction of the court, review Self-Represented Litigants' documents prior to hearings to determine whether procedural requirements have been met;
- (19) Assist Self-Represented Litigants with preparation of proposed court orders based upon the parties' agreement or stipulation for signature of judge or magistrate;

- (20) Answer questions about whether an order has been issued, where to get a copy if one was not provided, and read the order to the individual if requested;
- (21) Provide a Self-Represented Litigant with access to information from a case file that has not been restricted by statute, rule or directive, including CJD 05-01;
- (22) Provide assistance based on the assumption that the information provided by the Self-Represented Litigant is accurate and complete;
- (23) Provide the same services and information to all parties to an action, as requested;
- (24) Provide language and/or citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the situation;
- (25) Provide other services consistent with the intent of this Chief Justice Directive and the direction of the court, including programs in partnership with other agencies and organizations.

(b) Prohibited Services. Self-Help Personnel shall not:

- (1) Recommend whether a case should be brought to court; Chief Justice Directive 13-01 4
- (2) Give an opinion about what will happen if a case is brought to court;
- (3) Represent litigants in court;
- (4) Tell a Self-Represented Litigant that Self-Help Personnel may provide legal advice;
- (5) Provide legal analysis, strategy, or advice;
- (6) Disclose information in violation of a court order, statute, rule, chief justice directive, or case law;
- (7) Deny a Self-Represented Litigant access to the court;
- (8) Tell the Self-Represented Litigant anything Self-Help Personnel would not repeat in the presence of the opposing party, or any other party to the case;
- (9) Refer the Self-Represented Litigant to a specific lawyer or law firm for fee-based representation.

Florida

Eighth Judicial Circuit of Florida
Administrative Order No. 10.06

Section Two: Confidentiality

B) Court staff are not precluded from responding to inquiries concerning court procedures, but a court staff shall not within the course of their job description give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, should be summarized in writing and made available to litigants. All media requests for information should be referred to the court staff designated for that purpose.

Section Five: Performance of Duties

F) No court employee shall give legal advice or recommend the names of private attorneys.

Prohibition against Giving Legal Advice

Given the experience and visibility of court staff, it is natural for those who deal with the court, including attorneys and litigants as well as the general public, to ask questions such as: "Should I fight this?" "How do I fight this?" "To whom should I go for legal assistance?" "What does the law say?" Court staff can and should patiently explain how to file forms and pay fines, and should clarify legal language and the court's policies attendant to procedural due process. They must not, however, cross the line separating court staff from a licensed legal practitioner by giving their opinion on the law or, worse, giving their opinion as the law unless given in the context of their job description. Court staff should cite this tenet when pressed by those seeking gratuitous legal advice.

Model Code of Conduct for Judicial Employees in the State of Nevada

1.7 Assisting Litigants

Nevada Supreme Court Rule 44 authorizes judicial employees to provide information to pro per litigants under certain circumstances. Judicial employees who are employed by a governmental entity and working within a governmental environment and who are not supervised by a licensed Nevada attorney are authorized to do the following:

- A. Encourage persons to obtain legal advice from a licensed Nevada attorney outside of the qualifying public entity;
- B. Provide information about available pro bono, free/low cost civil legal services, legal aid programs and lawyer referral services;
- C. Provide information about available forms/pleadings/instructions without providing advice or recommendations as to any specific course of action;
- D. Engage in oral communications to assist persons in the completion of blanks on forms;
- E. Provide orally or in writing definitions of legal terminology from widely accepted legal dictionaries or other dictionaries without advising whether or not a particular definition is applicable to the situation of the requesting person;
- F. Provide orally or in writing citations, constitutions, statutes, administrative/court rules, and case law without providing legal research as defined below or advising whether or not a particular provision is applicable to the situation of the requesting person;
- G. Provide information on docketed cases;
- H. Provide general information about court process, procedure and practice;
- I. Provide information about mediation, parenting courses and/or courses for children of divorcing parents;
- J. Provide orally or in writing information on local court rules and/or administrative orders; and
- K. Provide general information about community resources.

No person or entity described in this rule and not licensed to practice law in Nevada or being supervised by a Nevada licensed attorney may do any of the following:

- A. Provide orally or in writing any interpretation by application of the following to specific facts: legal terminology, constitution, statutes, or administrative/court rules or case law;
- B. Provide orally or in writing information that must be kept confidential by statute, administrative/court rule or case law;
- C. Create content on documents not provided by self-represented litigants;
- D. Perform direct legal research for any litigant by applying the law to specific facts, expressing an opinion regarding the applicability of any constitutional provisions, statutes, administrative/court rules or case law to the particular circumstances of the requesting person; and
- E. Lead persons to believe they are the legal representatives of anyone in any capacity or induce the public to rely on them for legal advice.

North Carolina

Order Adopting Guidelines for Court Staff Providing Legal Information to the Public

III. Authorized Information and Assistance: Court staff may do all of the following:

- A. Provide public information contained in any of the following:
 - 1. Dockets or Calendars
 - 2. Case files
 - 3. Indexes

- B. Provide a copy of, or recite, any of the following:
 - 1. State and local court rules
 - 2. Court procedures
 - 3. Applicable fees and costs
- C. Inform an individual where to find statutes and rules without advising whether a particular statute or rule is applicable.
- D. Identify and provide applicable forms and written instructions without providing recommendations as to any specific course of action.
- E. Answer questions about how to complete forms, such as where to write in particular types of information, but not questions about how the individual should phrase his or her responses on the forms.
- F. Define terms commonly used in court processes.
- G. Provide phone numbers for lawyer referral services, local attorney rosters, or other assistance services, such as the AOC website and other attorney association websites, known to the court staff.
- H. Provide appropriate aids and services for individuals with disabilities to the extent required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

IV. Unauthorized Information and Assistance: Court staff may not do any of the following:

- A. Provide legal advice or recommend a specific course of action for an individual.
- B. Apply the law to the facts of a given case, or give directions regarding how an individual should respond or behave in any aspect of the legal process.
- C. Recommend whether to file a complaint or other pleading.
- D. Recommend phrasing for or specific content of pleadings.
- E. Fill in a form, unless required by the Americans With Disabilities Act of 1990.
- F. Recommend specific persons against whom to file complaints or other pleadings.
- G. Recommend specific types of claims or arguments to assert in pleadings or at trial.
- H. Recommend what types or amounts of damages to seek or the specific individuals from whom to seek damages.
- I. Recommend specific questions to ask witnesses or parties.
- J. Recommend specific techniques for presenting evidence in pleadings or at trial.
- K. Recommend which objections to raise regarding an opponent's pleadings or motions at trial or when and how to raise them.
- L. Recommend when or whether an individual should request or oppose a continuance.
- M. Recommend when or whether an individual should settle a dispute.
- N. Recommend whether an individual should appeal a judge's decision.
- O. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
- P. Perform legal research.
- Q. Predict the outcome of a particular case, strategy, or action.



Illinois Supreme Court Policy

On Assistance to Court Patrons by Circuit

Clerks, Court Staff, Law Librarians, and Court

Volunteers

Effective April, 2015

ILLINOIS SUPREME COURT POLICY ON ASSISTANCE TO COURT PATRONS
BY CIRCUIT CLERKS, COURT STAFF, LAW LIBRARIANS, AND COURT
VOLUNTEERS

(a) Purpose and Scope.

The purpose of this policy is to provide guidance to circuit clerks, court staff, law librarians, and court volunteers acting in a non-lawyer capacity as to what services may and may not be offered to assist court patrons to achieve fair and efficient resolution of their cases.

No court patron should be denied services permitted under this policy on the basis of being a self-represented litigant. Services to court patrons should be provided in a nondiscriminatory manner to all applicants without regard to race, color, religious creed, ancestry, national origin, age, sex, disability, sexual orientation or any category prohibited by federal or Illinois law.

(b) Definitions.

- (1) "Court patron" means any individual who seeks information to file, pursue or respond to a case on his or her own behalf or on the behalf of another.
- (2) "Self-represented litigant" means any individual who seeks information to file, pursue or respond to a case on his or her own behalf where a licensed attorney has not filed an appearance on behalf of that individual.
- (3) "Legal information" means general factual information about the law and the legal process. Legal information is different from legal advice, which involves giving guidance regarding an individual's legal rights and obligations in light of his or her particular facts and circumstances. Legal information is neutral.
- (4) "Approved forms" mean standardized forms and related instructions that have been approved pursuant to Supreme Court Rule 10-101; forms included in the Illinois Supreme Court Rules; and local circuit court forms adopted to facilitate local case-processing procedures.

(c) Prohibited Services. Circuit clerks, court staff, law librarians, and court volunteers—acting in a non-lawyer capacity on behalf of the court—shall not:

- (1) Recommend whether a case should be brought to court or comment on the merits of a pending case;
- (2) Give an opinion about what will happen if a case is brought to court;
- (3) Represent litigants in court;
- (4) Provide legal analysis, strategy or advice to a court patron, or perform legal research other than assistance in self-guided legal research for any court patron;

- (5) Disclose information in violation of a court order, statute, rule, case law or court directive;
- (6) Deny a self-represented litigant access to the court or any services provided to other court patrons.
- (7) Tell a litigant anything he or she would not repeat in the presence of any other party involved in the case;
- (8) Refer a litigant to a specific lawyer or law firm for fee-based representation; or
- (9) Otherwise engage in the unauthorized practice of law as prohibited by law.

(d) Permitted Services. To assist court patrons, circuit clerks, court staff, law librarians, and court volunteers—acting in a non-lawyer capacity on behalf of the court—may, as resources and expertise permit:

- (1) Provide legal information about court rules, court terminology and court procedures, but not limited to providing information regarding; requirements for service, filing, scheduling hearings and compliance with local procedure;
- (2) Inform court patrons of legal resources and referrals if available,, including but not limited to:
 - a. Pro bono legal services;
 - b. Low-cost legal services;
 - c. Limited scope legal services;
 - d. Legal aid programs and hotlines;
 - e. Law and public libraries;
 - f. Non-profit alternative dispute resolution services;
 - g. Lawyer referral services;
 - h. Internet-based resources;
 - i. Court-sponsored or -affiliated educational classes, including, but not limited to, parenting education and traffic safety classes and alternative dispute resolution services;
 - j. Units or departments of government; or
 - k. Domestic violence resources.
- (3) Encourage self-represented litigants to obtain legal advice from a lawyer;
- (4) Provide information about security protocols at the courthouse and directions around the courthouse, including, but not limited to, photocopier and telephone locations, children's waiting room locations and other courthouse offices;
- (5) Offer educational classes and informational materials;
- (6) Assist court patrons in identifying approved forms and related instructions based on the court patron's description of what he or she wants to request from the court, including but not limited to, providing approved forms for the waiver of filing fees. When necessary, explain the nature of the information required to fill out the approved forms. Where no approved form exists to accomplish the court patron's request, inform the litigant of that fact and direct him or her to other legal resources;

- (7) Record verbatim information provided by the self-represented litigant on approved forms if that person is unable to complete the forms due to disability or literacy barriers;
- (8) Review finished forms to determine whether forms are complete, including checking for signature, notarization, correct county name and case number;
- (9) Provide assistance to litigants pursuing self-guided research;
- (10) Provide docket information, including but not limited to:
 - a. Stating whether an order has been issued
 - b. Explaining how to get a copy if one was not provided
 - c. Reading the order to the individual if requested
 - d. Providing instructions about how to access such information;
- (11) Inform court patrons of the process for requesting a foreign language or sign language interpreter;
- (12) At the direction of the court, review documents for completeness prior to hearing;
- (13) Provide a court patron with access to a case file that has not been restricted by statute, rule or order, or instructions about how to obtain such access;
- (14) Provide the same services and information to all parties to an action, as requested;
- (15) Provide services based on the assumption that the information provided by the court patron is accurate and complete;
- (16) Provide other services consistent with the intent of this policy.

(e) Unauthorized Practice of Law and Privilege.

Services provided in accordance with section (d) of this policy do not constitute the unauthorized practice of law. Information exchanged in accordance with section (d) of this policy is neither confidential nor privileged, except as otherwise protected by law. Services provided in accordance with section (d) of this policy do not create an attorney-client relationship. It should be communicated through the use of signage or a direct, in-person disclosure to court patrons that information and services provided in accordance with section (d) of this policy are not confidential, privileged or create an attorney-client relationship.

(f) Rules of Professional Conduct. Circuit clerks, court staff, law librarians, and court volunteers—who are licensed attorneys, licensed law student interns and other persons working under the supervision of an attorney—must abide by all applicable Rules of Professional Conduct when providing services and information in accordance with section (d) of this policy.

(g) Copy Fees. Court patrons may be required to pay a reasonable printing or reproduction fee for forms and instructions. However, the fee may be reduced or waived for persons who are otherwise eligible to sue or defend without cost pursuant to the Code of Civil Procedure.

TEXAS GOVERNMENT CODE
SUBCHAPTER G. UNAUTHORIZED PRACTICE OF LAW

Sec. 81.101. DEFINITION. (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 799, Sec. 1, eff. June 18, 1999.

Sec. 81.1011. EXCEPTION FOR CERTAIN LEGAL ASSISTANCE. (a) Notwithstanding Section 81.101(a), the "practice of law" does

not include technical advice, consultation, and document completion assistance provided by an employee or volunteer of an area agency on aging affiliated with the Texas Department on Aging who meets the requirements of Subsection (b) if that advice, consultation, and assistance relates to:

(1) a medical power of attorney or other advance directive under Chapter 166, Health and Safety Code; or

(2) a designation of guardian before need arises under Section 679, Texas Probate Code.

(b) An employee or volunteer described by Subsection (a) must:

(1) provide benefits counseling through an area agency on aging system of access and assistance to agency clients;

(2) comply with rules adopted by the Texas Department on Aging regarding qualifications, training requirements, and other requirements for providing benefits counseling services, including legal assistance and legal awareness services;

(3) have received specific training in providing the technical advice, consultation, and assistance described by Subsection (a); and

(4) be certified by the Texas Department on Aging as having met the requirements of this subsection.

(c) The Texas Department on Aging by rule shall develop certification procedures by which the department certifies that an employee or volunteer described by Subsection (a) has met the requirements of Subsections (b)(1), (2), and (3).

Added by Acts 2001, 77th Leg., ch. 845, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.102. STATE BAR MEMBERSHIP REQUIRED. (a) Except as provided by Subsection (b), a person may not practice law in this state unless the person is a member of the state bar.

(b) The supreme court may promulgate rules prescribing the procedure for limited practice of law by:

- (1) attorneys licensed in another jurisdiction;
- (2) bona fide law students; and
- (3) unlicensed graduate students who are attending or have attended a law school approved by the supreme court.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987.

Sec. 81.103. UNAUTHORIZED PRACTICE OF LAW COMMITTEE. (a) The unauthorized practice of law committee is composed of nine persons appointed by the supreme court.

(b) At least three of the committee members must be nonattorneys.

(c) Committee members serve for staggered terms of three years with three members' terms expiring each year.

(d) A committee member may be reappointed.

(e) Each year the supreme court shall designate a committee member to serve as chairperson.

(f) All necessary and actual expenses of the committee should be provided for and paid out of the budget of the state bar.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 795, Sec. 25, eff. Sept. 1, 1991.

Sec. 81.104. DUTIES OF UNAUTHORIZED PRACTICE OF LAW COMMITTEE. The unauthorized practice of law committee shall:

(1) keep the supreme court and the state bar informed with respect to:

(A) the unauthorized practice of law by lay persons and lay agencies and the participation of attorneys in that unauthorized practice of law; and

(B) methods for the prevention of the unauthorized practice of law; and

(2) seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of suits in the name of the committee.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987.

Sec. 81.105. LOCAL COMMITTEES. This chapter does not prohibit the establishment of local unauthorized practice of law committees to assist the unauthorized practice of law committee in carrying out its purposes.

Added by Acts 1987, 70th Leg., ch. 148, Sec. 3.01, eff. Sept. 1, 1987.

Sec. 81.106. IMMUNITY. (a) The unauthorized practice of law committee, any member of the committee, or any person to whom the committee has delegated authority and who is assisting the committee is not liable for any damages for an act or omission in the course of the official duties of the committee.

(b) A complainant or a witness in a proceeding before the committee or before a person to whom the committee has delegated authority and who is assisting the committee has the same immunity that a complainant or witness has in a judicial proceeding.

Added by Acts 1991, 72nd Leg., ch. 795, Sec. 26, eff. Sept. 1, 1991.

**UNAUTHORIZED PRACTICE COMMITTEE, STATE BAR OF TEXAS,
Petitioner, v. EDDIE CORTEZ ET UX, INDIVIDUALLY AND d/b/a CORTEZ
AGENCY, Respondents**

No. C-3380

SUPREME COURT OF TEXAS

692 S.W.2d 47; 1985 Tex. LEXIS 922; 28 Tex. Sup. J. 407

May 8, 1985

SUBSEQUENT HISTORY:

[1]**

Rehearing Denied June 19, 1985.

PRIOR HISTORY:

From Dallas County, Fifth District.

JUDGES:

Spears.

OPINIONBY:

SPEARS

OPINION:

[*48] This is an injunction case in which the Unauthorized Practice of Law Committee (the Committee) of the State Bar of Texas seeks to enjoin Eddie and Rita Cortez (the Cortezes) from engaging in certain acts alleged to be the practice of law. The trial court rendered judgment n.o.v. for the Unauthorized Practice Committee and issued a permanent injunction against the Cortezes. The court of appeals reversed the trial court judgment and dissolved the temporary injunction. 674 S.W.2d 803. We reverse the judgment of the court of appeals and affirm the trial court judgment.

Mr. and Mrs. Cortez are engaged in the business of providing immigration and bookkeeping services. Neither Mr. or Mrs. Cortez is a licensed attorney at law. Mrs. Cortez provides assistance to persons who are seeking to obtain immigration visas and permanent residency. The undisputed evidence at trial showed that the most common practice performed by Mrs. Cortez is the selection and completion of the I-130 form (Petition

to Classify Status of Alien Relative for Issuance of Immigrant Visa) [****2**] for customers, by interviewing them, and filling out the form according to the instructions provided by the Immigration and Naturalization Service. Mrs. Cortez testified that normally a form G-325A (Biographical Information) and a form I-485 (Petition to Acquire Residency) were also required and she prepared these as well. She also completed several other forms less frequently, such as the I-140, I-600, N-600, and OF-230.

The Cortezes charged a fee, usually \$400, for preparing these forms, gathering and storing the supporting documentation, and seeing that the alien has all documents necessary for his embassy interview. They have solicited customers by advertising in a Spanish- language newspaper. The translation of the ad reads, "The Cortez Agency has had 35 years of experience in every kind of immigration case. Consultation of Immigration by Cortez."

The Committee brought suit to enjoin the immigration activities of the Cortez Agency, and trial was before a jury. The sole special issue, submitted without objection, asked:

Do you find from a preponderance of the evidence that the Cortez Agency has given advice or rendered service requiring the use of legal skill and knowledge [****3**] in interviewing persons and advising them as to whether or not to file a petition or application under the Immigration and Naturalization Act to secure a benefit for the client or relative of the client which require a careful determination of the facts, conclusions and legal consequences involved?

The jury answered, "We do not."

The Committee moved for and obtained a judgment n.o.v. which permanently enjoined the Cortezes from advising customers whether or not to file particular petitions, from preparing for customers any [*49] petition or application under the immigration laws, and from soliciting clients or customers through advertisements which suggest expertise and competence to handle immigration problems or cases.

Although the Committee vigorously argued that what the Cortezes were doing was undisputed, thus leaving a question for the court, the court of appeals dissolved the injunction holding that different inferences could be drawn from the undisputed testimony regarding the Cortezes' activities, thus creating a fact issue for the jury. The court of appeals further held that the determination of whether an activity required legal skill or knowledge was also [**4] a question for the jury. Therefore, the court of appeals held the jury finding was binding on the trial court. 674 S.W.2d at 807-08.

The Committee brings three points of error alleging that the trial court was correct in disregarding the jury verdict. First, the Committee argues that the activities of the Cortezes have been indisputably determined; therefore, no jury is needed to resolve a factual dispute. Second, the Committee contends that whether the undisputed activities constitute the unauthorized practice of law is a question of law for the court and not one for the jury. Third, the Committee argues that the undisputed activities of the Cortezes do constitute the practice of law. We will examine these questions together because of the interdependence among them.

We begin with the legislative expression of what constitutes the practice of law in Texas. The State Bar Act, *Tex. Rev. Civ. Stat. Ann. art. 320a-1*, § 19(a)(Vernon Supp. 1985) defines the practice of law as follows:

For purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on [**5] behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

This definition contains two major parts, one encompassing services rendered in connection with legal proceedings and one encompassing services rendered out of court.

The parties have focused upon both major parts of this definition to determine whether the Cortezes are practicing law. First, the statute specifically characterizes the preparation of pleadings incident to legal proceedings as the practice of law. The Committee argues that because the I-130 form, commonly filled out by Mrs. Cortez for others, constitutes the initial document petitioning the government for a preferential [**6] immigration status, its preparation falls within the statutory definition. The Cortezes' expert witness, Mr. Saucedo, an attorney, stated that he did not consider the form I-130 to be a "petition," as attorneys would say, to start an action in a lawsuit. Second, the parties have focused upon the portion of the definition relevant to out-of-court matters by inquiring whether the preparation of these immigration forms required the use of legal skill or knowledge and whether the legal effect of the forms must be carefully determined. This question was the gist of the special issue submitted to the jury, which found that the Cortezes activities did not require the use of legal skill and knowledge. We do not decide whether the forms such as the I-130 constitute pleadings within the meaning of section 19(a) of the State Bar Act. Rather, we decide the case on the portion of the section dealing with out-of-court services.

The evidence of Mrs. Cortez's activities in interviewing customers and filling out [**50] forms to be filed with the Immigration and Naturalization Service was undisputed, and showed that she was advising her customers as to whether they qualified to file the various [**7] petitions and applications. The question of whether interviewing clients or customers and preparing immigration forms is the practice of law is one of first impression for this court. Apparently only one state court of last resort has addressed this issue. In *The Florida Bar v. Moreno-Santana*, 322 So. 2d 13 (Fla. 1975), the Supreme Court of Florida enjoined a non-lawyer from preparing immigration and naturalization forms for others and from advertising or representing the ability to perform such services. *Id. at 15*. The Cortezes seek to distinguish this Florida case by noting that the individual there represented himself to be an attorney. The Florida court, however, adopted the findings of the referee that the preparation of immigration forms to change the status of an alien requires legal training. *Id. at 15-16*. In *The Florida Bar v. Retureta-Cabrera*, 322 So. 2d 28, 29 (Fla. 1975), another individual was enjoined from preparing these immigration forms.

Although the act of recording a client's responses to the questions on the form I-130 probably does not

require legal skill or knowledge, the act of determining whether the I-130 should be filed at all does require **[**8]** special legal skills. The Cortezes often filed I-130 forms which reflected that the alien seeking a visa was in this country illegally and furnished the immigration authorities with the alien's address, thus making deportation more likely. Therefore, advising a client as to whether to file an I-130 requires a careful determination of legal consequences.

Another danger is also presented by the manner in which the Cortezes conduct their business. When Mrs. Cortez was asked what she would do if the client did not qualify for a preference under the form instructions, she testified that she would say that there was no way she could help. This act, when combined with the advertisement representing experience in every kind of immigration case, could likely mislead a customer to believe there is nowhere else to seek help and no other possibility for obtaining permanent residency. This is a type of occurrence which is sought to be prevented by prohibiting the unauthorized practice of law. We therefore hold that the undisputed activities of the Cortezes in selecting and preparing the various immigration forms required legal skill and knowledge.

Our holding presumes we have concluded that when **[**9]** the activities alleged to be the practice of law are undisputed, it is for the court to decide whether those activities amount to practicing law, and we now set forth the reasons for this conclusion. In the definition of practicing law in section 19(a) of the State Bar Act, the legislature ended the section stating:

This definition is not exclusive and does not deprive the judicial branch of the power and authority under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

The Committee argues that the legislature is making clear that the courts should decide what is the practice of law. The court of appeals held that judges and juries are both components of the judicial branch, and therefore this language "does not mandate that a judge alone should decide." 674 S.W.2d at 806. We will examine the history of this language to determine the legislative intent.

In *Hexter Title & Abstract Co. v. Grievance Committee, Fifth Congressional Dist., State Bar of Texas*, 142 Tex. 506, 179 S.W.2d 946 (1944), this court reviewed certain acts to determine if they constituted the unauthorized **[**10]** practice of law under article 430a of the 1925 Penal Code (repealed). n1 After finding a violation under the statute, **[*51]** this court specifically

left undecided "whether or not this court would have the implied authority to determine what would constitute the practice of law, independent of the statute" *Id.* at 954. In the companion cases of *Grievance Committee, State Bar of Texas, Twenty-First Congressional Dist. v. Dean*, 190 S.W.2d 126 (Tex.Civ.App. -- Austin 1945, no writ) and *Grievance Committee, State Bar of Texas, Twenty-First Congressional Dist. v. Coryell*, 190 S.W.2d 130 (Tex.Civ.App. -- Austin 1945, writ ref'd w.o.m.), the Austin court of appeals addressed this previously reserved question, observing:

independently of any statutory provisions as to what may constitute practice of law, the court has the duty and the inherent power to determine in each case what constitutes the practice of law, and to inhibit persons from engaging in the practice of law without having obtained a license to do so. This power of the court, the related statutes of this State, and the decisions are more fully discussed in our opinion in the companion *Dean* **[**11]** case.

Coryell at 131. In *Dean*, the court stated that the legislative definition was not exclusive and "does not deprive the judicial branch of the power and authority, both under the State Bar Act and the adjudicated cases, to determine whether other services and acts not therein enumerated, may constitute the practice of law." *Dean* at 129.

n1 Unauthorized Practice Act, ch. 238, 1933 Tex. Gen. Laws 835, 835-38, *repealed by* Act of June 1, 1949, ch. 301, § 1, 1949 Tex. Gen. Laws 548.

The legislature lifted the language from *Dean* and placed it in section 19(a) of the State Bar Act with the apparent intent to recognize the inherent power of the courts to determine what is the practice of law on a case by case basis, unconfined by the statute. *Coryell* and *Dean* have been cited by this court in recognizing the inherent power of the courts. See *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 & n. 1 (Tex. 1979). Therefore, even though we have used the legislative definition **[**12]** of the practice of law to aid us in this case, the courts are not bound by the jury's determination of whether the undisputed acts fell within this statutory definition.

The court of appeals determined that this final question should be one for the jury and relied on *Robertus v. State*, 119 Tex.Crim. 370, 45 S.W.2d 595, 597 (1931) which held that a jury should decide whether certain activities constituted the practice of medicine.

692 S.W.2d 47, *; 1985 Tex. LEXIS 922, **;
28 Tex. Sup. J. 407

674 S.W.2d at 807. Cases involving other professions are not determinative here. The courts have the duty and authority to supervise the legal profession by ensuring that those practicing law are qualified and by determining the boundaries of the practice of law. The direct policing relationship between the courts and the legal profession does not exist between the courts and other professions. The right to trial by jury still exists, of course, in cases where the alleged acts are disputed and

factual determinations must be made, but the courts may ultimately decide whether certain undisputed activities constitute the unauthorized practice of law.

We hold that the trial court was proper in rendering judgment n.o.v. and in granting the permanent injunction [**13] against the Cortezes. Accordingly, the judgment of the court of appeals is reversed, and the trial court judgment is affirmed.

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