

OARC Non-Prosecution Policy Regarding the Unauthorized Practice of Law by Nonlawyers

The Office of Attorney Regulation Counsel (“OARC”) will exercise its jurisdiction under C.R.C.P. 232.2 in a way that promotes the Regulatory Objectives codified by the Supreme Court in the Preamble to Chapters 18-20. There already are state and federal authorities allowing non-lawyers to perform certain legal services under certain circumstances, often characterized by lower risk to the public and meeting an access-to-justice objective (*see*: <https://www.coloradolegalregulation.com/wp-content/uploads/PDF/UPL/Understanding%20Practice%20of%20Law%20Issues.pdf>). OARC recognizes that individuals who are not authorized to practice law may provide legal information that is tailored to someone’s circumstances, and in doing so, may be asked to provide more substantive legal guidance or help an individual perform certain tasks relating to a legal matter. Sometimes the additional legal guidance is helpful and poses little risk to the recipient of legal information, though higher-risk situations warrant more caution. OARC also recognizes that on-line platforms have the potential to improve access to justice by drafting documents and pleadings based on user input and outlining the steps a user would need to take to seek resolution in a legal matter, but in doing so, could pose risks to individual users.

OARC retains significant prosecutorial discretion as to all complaints about the unauthorized practice of law, and routinely exercises that discretion in a way that meets the Regulatory Objectives. The prosecution policy outlined below is intended to document internal OARC practices, and does not have the force of law. It creates no legal safe harbor for anyone who lacks authority to practice law in Colorado. The decision to formalize and publicize this policy is a pilot program lasting no longer than three years, and a plan and schedule for evaluation of the short- and medium-term impacts of this policy will be separately published. OARC reserves the right to change it if there are unintended consequences that harm the public or prejudice the administration of justice.

The Colorado Rules of Civil Procedure provide for a series of definitions and procedural rules to prohibit the practice of law by nonlawyers. For example, under C.R.C.P. 232.2(c)(9), the unauthorized practice of law by a nonlawyer includes owning or controlling a website, application, software, bot, or other technology that interactively offers or provides services involving the exercise of legal judgment. “Nonlawyer” is a defined term in C.R.C.P. 232.1, meaning “a person who is not licensed, authorized, or otherwise certified to practice law in any jurisdiction in the United States, including a disbarred lawyer.” “A person” includes both natural persons and corporate or otherwise legally-recognized entities. However, for purposes of this prosecution policy, “nonlawyer” does not include suspended or disbarred lawyers, whose past misconduct may create ongoing risks to the public, and whose involvement in providing any type of legal service beyond what might be authorized in certain circumstances under Colo. RPC 5.5 will generate heightened prosecutorial scrutiny. In addition, licensed legal paraprofessionals (“LLPs”) acting outside their authorized scope of practice are addressed through their own Rules of

Professional Conduct and applicable disciplinary procedures.

OARC generally will refrain from prosecuting a matter under C.R.C.P. 231 et seq. as long as:

(A) the nonlawyer is not advertising legal services or providing legal services, including the selection of forms, for any matter in which the law provides for the possibility of juvenile detention or adult imprisonment (other than an eviction action), or the resolution may involve the safety of a minor or the termination of any person's custodial or parental rights concerning a minor;

And

(B) the nonlawyer is, or is operating under the auspices of, an organization in which a licensed lawyer is supervising the nonlawyer's work, or a licensed lawyer serves as the compliance officer or comparable role for the nonlawyer organization and enforces established quality assurance policies and procedures as to the legal advice and legal services being provided;

And

(C) the nonlawyer's statements about available services include a clear and understandable disclaimer that the nonlawyer is not a licensed lawyer, LLP, or law firm. The disclaimer can also include accurate, non-misleading statements about the extent of lawyer involvement, such as that a lawyer or LLP is involved in the supervision of the legal work or that the company employs or engages a legal compliance officer;

And

(D) the nonlawyer discloses to each user the privacy and confidentiality policies that address information provided to the nonlawyer, including whether and to what extent any such information is stored or accessible by others;

And

(E) The nonlawyer has obtained the user's acknowledgment that (1) the user, in utilizing the nonlawyer's services, is not receiving legal advice from a licensed lawyer or LLP and is not engaging the services of a licensed lawyer or LLP, and (2) the user agrees to the privacy and confidentiality policies disclosed by the nonlawyer;

And

(F) There is no evidence of any of the following as to the nonlawyer alleged to be engaged in the unauthorized practice of law:

(1) the nonlawyer is holding themselves out to any third party as representing or purporting to represent anyone in any legal matter or proceeding, or directing a consumer or someone else to conceal from a third party the nature and extent of the nonlawyer's services;

(2) the nonlawyer has made any statement or representation in advertising legal services deemed deceptive pursuant to applicable federal or state law, any statement that the nonlawyer's services are equal to those provided by lawyers or LLPs, or any guarantee or assurance of specific legal outcomes from using the nonlawyer's services;

(3) in providing legal services, the nonlawyer engaged in grossly negligent, reckless or intentional conduct that caused direct harm or loss to a consumer of those legal services;

(4) the nonlawyer has failed to provide all of the agreed-upon services if the nonlawyer has been paid for those services, or has failed to refund any payments for agreed-upon services not rendered;

(5) the nonlawyer's legal services have harmed a consumer or potential consumer of legal services through the loss or reduction of legal rights and remedies without the nonlawyer having taken reasonable steps to warn the consumer or potential consumer of the risk of such loss;

and

(6) the nonlawyer has prejudiced the administration of justice, including but not limited to: failing to take reasonable steps to avoid output containing errors, hallucinated cases, false evidence, or other similar output generated by the nonlawyer; failing to warn users about such errors, hallucinations, false recitations or similar output; or knowingly allowing users of the nonlawyer's services to abuse the legal system.