

The Supreme Court of Hawai'i seeks public comment regarding a proposed rule about the Unauthorized Practice of Law. The proposed rule defines the practice of law and would assist with enforcement measures, by clarifying what is and is not the practice of law. The proposed rule is attached hereto.

Comments about the proposed rules should be submitted, in writing, **no later than Friday, January 25, 2008** to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [online form](#) on the Judiciary's website at www.courts.state.hi.us. If adopted, the proposed rules will become effective July 1, 2008.

PROPOSED ADDITION TO THE RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

Rule ____ . **Unauthorized Practice of Law**

(a) Prohibition.

Except as provided in section (c) of this rule or other supreme court rule, no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar in good standing.

(b) Definitions.

"Person" refers to individuals and entities.

"Practice of law" is the giving of legal advice or legal assistance to another person. The practice of law includes, but is not limited to:

- (1) Giving advice or counsel to another person about the person's legal rights and obligations or the legal rights and obligations of others.
- (2) Performing legal research.
- (3) Selecting, drafting, or completing documents that affect the legal rights of another person.
- (4) Representing another person in a court, an administrative proceeding, an arbitration proceeding, a hearing, a deposition, or any other formal or informal dispute resolution process in which legal documents are submitted or a record is established
- (5) Negotiating legal rights or obligations with others on behalf of another person.
- (6) Providing oral or written legal opinions.

"Qualifying institution" is a business organization that is authorized and registered to do business as provided by law.

(c) Exceptions and exclusions.

The following are not prohibited under section (a):

- (1) Appearing *pro se*.
- (2) Acting as a representative when authorized by law or by a governmental agency.
- (3) Serving as a neutral mediator, arbitrator, conciliator or facilitator when such service does not include rendering advice or counsel as set forth under section (b)(1) above.
- (4) Serving as in-house counsel for a single qualifying institution; provided in house counsel
 - (i) registers and maintains registration with the State Bar in accordance with the requirements of Rule 17,
 - (ii) provides no personal representation to individuals, including customers, shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution,

(iii) makes no state court appearances on behalf of any person or entity other than him or her self,
and

(iv) agrees to submit to the disciplinary jurisdiction of the supreme court and its Disciplinary
Board.

(5) Acting as a legislative lobbyist.

(6) Selling legal forms.

(7) Performing services as a duly authorized negotiator for an employee organization or
employer.

(8) Performing services as a law clerk to a judge, justice, or member of the bar.

(9) Performing services as a paralegal under the supervision of a judge, justice, or member of the
bar.

(d) Governmental Agencies.

Nothing in this rule shall affect the ability of a governmental agency to carry out its
responsibilities as provided by law.