

Filing an Unlicensed Practice of Law Complaint



This pamphlet explains how and where consumer allegations regarding possible unlicensed practice of law (UPL) may be filed. This pamphlet also explains The Florida Bar unlicensed practice of law (UPL) system, established by the Supreme Court of Florida to protect the public against harm caused by unlicensed individuals practicing law. The basic procedures outlined here are designed to prevent misunderstanding.

WHO REGULATES THE CONDUCT OF NONLAWYERS WHEN THEY ARE ACTING LIKE LAWYERS?

The Constitution of the State of Florida gives the Supreme Court of Florida the power to regulate the conduct of attorneys. Through this constitutional grant of authority, the Supreme Court of Florida has the inherent authority to regulate and prevent the practice of law by individuals who are not licensed to practice law in Florida. The court created The Florida Bar and requires all lawyers to be members of that organization which funds the total cost of the lawyer discipline system and the unlicensed practice of law system. The Florida Bar acts as prosecutor in unlicensed practice of law cases, much like the state attorney's office does in criminal cases.

Unlicensed Practice of Law (UPL) committees, of which one-third of the members are not lawyers, investigate instances of unlicensed practice of law and report their findings to a Statewide Committee on Unlicensed Practice of Law. Florida Bar prosecutions are filed with the Supreme Court of Florida and trials are held before judges, called referees, appointed by the court.

Engaging in the unlicensed practice of law in Florida is also a crime. It is a third degree felony. For this reason, the State Attorney also has the power to bring criminal charges against an individual for practicing law without a license.

WHAT IS THE PURPOSE OF THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW?

The purpose of The Florida Bar unlicensed practice of law system is to protect the public. The Supreme Court of Florida can prevent an individual from continuing to engage in the unlicensed practice of law by issuing a civil injunction. UPL committees can also get the individual to agree to stop practicing law by having them sign a cease and desist affidavit.

The Florida Bar, as a prosecutorial agency, does not and cannot give individual legal service or advice to any person making allegations.

The Florida Bar has no authority to review a court decision on a particular matter and the Bar's UPL system should never be used as a substitute for an appeal of such cases.

WHERE DO I FILE A COMPLAINT?

You may make allegations regarding the unlicensed practice of law by contacting The Florida Bar's UPL offices in your area.

The addresses are listed at the end of this brochure.

Your complaint must be in writing, preferably on a Bar form. If a Bar form is not used, the following language must appear before your signature: "Under penalty of perjury, I declare that I have read the foregoing document and that to the best of my knowledge and belief the facts stated in it are true."

When filing a complaint, tell the Bar your name, address and phone number as well as the name, address and phone number of the nonlawyer, if you have that information. Then try to set forth the facts on which your allegations are based. Attach copies of any court papers, documents, letters or other materials that pertain to your allegations when you write the Bar office. Please do not send the original documents.

WHAT HAPPENS AFTER I FILE A COMPLAINT?

All matters received by The Florida Bar are reviewed by Bar UPL Counsel to determine if The Florida Bar has jurisdiction to investigate the allegations. If The Florida Bar has jurisdiction, the inquiry is considered as a complaint. The complaint may be referred to a local circuit committee for investigation or may be investigated by UPL Counsel. The committee will be located in the circuit where the accused resides or does business or where the alleged conduct took place.

WILL THE NONLAWYER KNOW ABOUT MY COMPLAINT?

Probably. The nonlawyer may be sent a copy of your complaint during the course of the investigation. Additionally, if the nonlawyer asks who complained, your name will be given. Anonymity will only be granted in extreme circumstances and should be discussed with one of the UPL attorneys before filing a complaint.

WHAT WILL IT COST ME?

No cost or fee is charged for filing an inquiry against a nonlawyer. All members of The Florida Bar are required to pay dues which cover the cost of the unlicensed practice of law program. You may, however, be required to devote some of your time to attending UPL committee hearings and testifying at trial.

Unlicensed practice of law committee members all donate their time as a voluntary public service and all other costs are paid by The Florida Bar. When the Supreme Court of Florida issues an injunction, the nonlawyer may be ordered to pay the costs involved.

WHAT IS A UPL COMMITTEE?

UPL committees of The Florida Bar are made up of volunteer members in your community, at least one-third of whom are nonlawyers. Each of Florida's 20 judicial circuits have at least one such committee.

The local UPL committee investigates complaints and decides whether the evidence shows that an individual practiced law

without a license.

The UPL committee may decide whether a trial before a judge is necessary and may make that decision with or without a hearing on your complaint. If the individual involved is present before the UPL committee, you may be given the opportunity to be there.

WHAT KINDS OF ACTIONS CAN BE TAKEN AGAINST THE NONLAWYER?

If the local UPL committee determines that the conduct does not involve the unlicensed practice of law, that it is an isolated incident which will not be repeated and will not result in a likelihood of future public harm, that the individual is no longer in Florida or that the complaining party does not wish to cooperate with the investigation, the local UPL committee may close the case.

If the local UPL committee determines that the individual did engage in the unlicensed practice of law and that the activity is likely to continue, the committee may request that the individual sign a cease-and-desist affidavit. Although the nonlawyer does not have to acknowledge that the nonlawyer engaged in the conduct in the affidavit, the nonlawyer will acknowledge that the conduct is the unlicensed practice of law and will agree to refrain from engaging in the conduct in the future.

If the conduct involves the unlicensed practice of law and the individual will not sign a cease-and-desist affidavit, the local UPL committee can recommend prosecution. Prosecution is before the Supreme Court of Florida and seeks a civil injunction which orders the nonlawyer to stop engaging in UPL. The Bar can also bring an action before the Supreme Court of Florida for indirect criminal contempt.

IS THERE A TRIAL?

If the local UPL committee recommends litigation and litigation before the Supreme Court of Florida is approved, UPL Counsel will file a formal complaint against the nonlawyer before the Supreme Court of Florida. The Supreme Court then appoints a circuit or family court judge as a referee to hold a trial on the complaint.

The referee will hear all relevant evidence, which may include your testimony, that of the nonlawyer and any other witnesses. The referee then makes findings of fact and files a report and recommendations with the Supreme Court of Florida.

The Supreme Court reviews the trial record, referee's report and recommendations. It has final authority to determine guilt in an action for indirect criminal conduct, and to issue an order enjoining the nonlawyer from further activity.

WHAT CAN I EXPECT?

- You can expect that your inquiry will receive The Florida Bar's prompt and full attention.

- You can expect that every attempt will be made to deal with your inquiry in a manner which is fair to both you and the individual about whom you inquire.
- You can expect to receive written notice of the committee to whom your complaint has been sent as well as notice of the final disposition.

WHAT SHOULDN'T I EXPECT?

Don't expect your allegation to be decided just because of what you claim to have happened. Nor, in fairness to you, can the nonlawyer about whom you inquire expect the matter to be decided just on the basis of his or her version of what happened. The final decision must depend upon the weight of the available and relevant evidence and testimony.

A WORD ABOUT CONFIDENTIALITY AND IMMUNITY

Once an inquiry is reviewed and a file is opened, the fact that a complaint is pending and the status of the complaint can be disclosed. Once the matter is closed or a recommendation is accepted by the statewide Standing Committee, the matter becomes public information and the part of the file defined as the UPL record is available to anyone who wishes to see it. Review of files is available only during specific days and at certain times. You should contact The Florida Bar to determine when files will be available. A fee for review and/or copies is required.

You and witnesses are not prohibited from talking about your problem with the nonlawyer or revealing that you have made an inquiry with The Florida Bar. You may also give others copies of any documents you give to or receive from The Florida Bar or the nonlawyer involved.

Because inquiries and complaints are not confidential, you do not have absolute immunity from suit for filing your inquiry. The general law of libel and slander applies. Regrettably, The Florida Bar cannot pre-review your inquiry to tell you if you have a good case. Generally, you cannot be successfully sued if you do not act in bad faith or with malice. If you are unsure, you should seek independent legal advice.

UPL Branch Offices

The UPL department has offices in Tallahassee, Ft. Lauderdale, Tampa, Orlando, and Miami. The addresses are:

Tallahassee

The Florida Bar
UPL Department
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5840

Tampa

The Florida Bar
UPL Department
4200 George J. Bean Pkwy., Suite 2580
Tampa, FL 33607-5958
(813) 875-9821

Orlando

The Florida Bar
UPL Department
1200 Edgewater Drive
Orlando, FL 32804
(407) 425-0473

Ft. Lauderdale

The Florida Bar
UPL Department
Suite 900
Cypress Financial Center
5900 N. Andrews Ave.
Ft. Lauderdale, FL 33309-2300
(954) 772-2245

Miami

The Florida Bar
UPL Department
Suite M100, Rivergate Plaza
444 Brickell Ave.
Miami, FL 33131-2458
(305) 377-4445

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