Librarians & the Unauthorized Practice of Law
Libraries & the Law

- **Libraries** are places where people go to seek information.
- **Librarians** are experts at helping them find it.
- It is when the information is specialized, such as *business, health, and law,*
  - and folks are seeking answers upon which they may act,
  - that our ethical duties of privacy, confidentiality, and the duty to **avoid the unauthorized practice of law** emerge.
Who conducts legal research?

- Lawyers
- Students of all ages for a class paper, etc.
- Citizens interested in laws and cases that may affect them
- Pro se researchers
  - Persons representing themselves
    - In non-litigation matters
      - Starting a business, drafting a will, drafting a contract or lease, etc.
    - In litigation (court proceedings)
      - Self represented litigants (SRLs)
Who is our concern?

- **Lawyers** do not need our legal advice and do not have the right to rely on it. They are the experts.
- **Students and citizens** who are researching the law for academic reasons, are not involved in a personal legal matter; therefore, they are seeking information only.
- **It is the pro se** who is involved in a personal legal matter that we must be careful not to cross the line with...
The Unauthorized Practice of Law (UPL)

Or, the practice of law by an individual who is not licensed to practice in the state, i.e., South Carolina.

UPL laws are designed to protect the public from erroneous advice from persons untrained in the law.

It is crime in all 50 states

In South Carolina, it is a felony

Up to $5000 in fines
(or) up to 5 years in jail
(or) BOTH
Before you panic!

- There are no known cases of a librarian being prosecuted for UPL.
- Why?
  - Librarians stick to what we do best:
    - Being experts at finding information.
    - Not legal advisers.
What is the Practice of Law?

- Definitions vary across states and are often vague.
- The SC Supreme Court has decided that:
  - It is irrelevant that a person is *not paid* for her services.
  - It is more than just *appearing in court* of behalf of a client...
- It includes:
  - *preparing legal documents,* and
  - *giving legal advice.*
What is Preparing Legal Documents?

- According to the SC Supreme Court, the preparation of legal documents:
  “...constitutes the practice of law when such preparation involves the giving of advice, consultation, explanation, or recommendations on matters of law.”

Preparing a Legal Document

- When a non-lawyer neighbor filled in the blanks of a computer-generated generic will form, the SC Supreme Court said he engaged in the unauthorized practice of law, because:
  - He exceeded the role of a mere scrivener
  - A scrivener does nothing more than record verbatim what a person says.

If a patron needs legal forms:

**DO**
- Inform the patron about the existence of court approved legal forms
- Show the patron how to navigate a particular website that contains court-approved forms
- Inform the patron of any known legal services groups that are available to help them complete legal forms
- Recommend form books for examples of legal forms
- Suggest books on specific legal topics that may include forms
- Show the patron how to use the index and table of contents for a particular form book
- Point out that annotated codes, legal encyclopedias, and books may reference forms relevant to a legal topic.

**DO NOT**
- Prepare legal documents or complete forms for the patron
- Advise the patron how to fill out forms
- Interpret the language in a form for the patron
- Suggest that the patron use a particular form.
What is Legal Advice?

A written or oral statement that:

- Interprets some aspect of the law, court rules, or legal procedures or recommends a specific course of action a patron should take.

- Applies the law to a patron’s specific factual circumstances.
## Legal Reference v. Legal Advice

<table>
<thead>
<tr>
<th>Legal Reference</th>
<th>Legal Advice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asking only information necessary to help patrons access relevant legal information while remaining neutral about the patron’s legal problem</td>
<td>Providing an opinion or advice on the application of a particular law or legal course of action</td>
</tr>
<tr>
<td>Directing patrons to a book or legal dictionary to find the meaning of a legal term</td>
<td>Explaining what a legal term means</td>
</tr>
<tr>
<td>Teaching patrons how to use legal materials and how to conduct effective legal research</td>
<td>Conducting legal research for a patron.</td>
</tr>
<tr>
<td>Showing patrons how to use indexes and how to conduct keyword searches to locate laws and cases and form books</td>
<td>Telling patrons which laws and cases apply and which forms to use and how to complete them</td>
</tr>
<tr>
<td>Helping a patron find books on procedures for a particular court (showing them how to find what to do)</td>
<td>Telling a patron which steps to take, what to file, and in what order (telling them what to do)</td>
</tr>
</tbody>
</table>
Legal Research Disclaimer

While the library is committed to serving the information needs of its patrons, the ethical principles of the American Association of Law Libraries prohibits us from practicing law:

“We acknowledge the limits on service imposed by our institutions and by the duty to avoid the unauthorized practice of law.” (AALL Ethical Principles, 1999).

Therefore, SCPL staff assistance is limited to providing instruction on the use of materials in the library. Please note that the library staff is prohibited from interpreting law, offering legal advice or opinions, providing advice on how to fill out forms or take legal action, and completing forms for patrons.

Spartanburg County Headquarters Law Collection
Do What You Do Best:

- Help patrons **find** legal materials
- Show them **how to use** them

- Create or link to topical **research guides**
  - Gives patrons a starting point
  - Helps you remain neutral in a reference interview

- Create a guide to **self help** materials
  - Or borrow the one from your local law library: [https://guides.law.sc.edu/CircuitRiders/SelfHelp](https://guides.law.sc.edu/CircuitRiders/SelfHelp)
Examples of Legal Reference:

LA Law Library
Collaborate & Form Partnerships

- Contact your local law librarian for **training**
- Ask for **research guides** on how to research specific legal materials
- Ask for **collection development** advice
  - Print
  - Online
- Offer to **partner** on a community service project.
Referrals Are a Good Thing!

- Know the **collection** and the **librarians** at your local law library
  - Give them a call for the patron
- Create a guide on **lawyer referral** and **legal services**
  Or borrow one from your local law library:
  [https://guides.law.sc.edu/CircuitRiders/SelfHelp](https://guides.law.sc.edu/CircuitRiders/SelfHelp)