

**“Unauthorized Practice of Law” Enforcement in California:
Protection or Protectionism?**

NCAJ National Center for
Access to Justice

About the National Center for Access to Justice

The National Center for Access to Justice (<https://ncaj.org>) works to advance the principle that everyone should have a meaningful opportunity to be heard, to secure their rights and to obtain the law's protection. We use research, data and analysis to expose how the justice system fails to live up to that ideal and, all too often, how it functions as a source of oppression. We identify and promote policies that can improve access to justice, and we measure existing laws and policies against those goals. Our flagship project, the Justice Index ranks states on their adoption of selected best laws and policies. NCAJ makes its home at Fordham University School of Law where it helps to guide the school's Access to Justice Initiative.

About the Legal Empowerment Initiative

NCAJ supports civil legal aid and the movement to secure civil rights to counsel in cases in which basic human needs are at stake, and, also, at the same time, supports other approaches, including new ideas for enabling people to obtain legal advice from individuals other than exclusively lawyers. To learn more about NCAJ's legal empowerment work, visit NCAJ's Legal Empowerment webpage (<https://ncaj.org/tools-for-justice/legal-empowerment>) where you will find our June 2021 report, "Working With Your Hands Tied Behind Your Back: Non-Lawyer Perspectives on Regulatory Reform." You will also find our January 2022 Comments in Support of the Paraprofessional Licensure Program developed by a Working Group of the California Bar Association, along with Comments we have submitted in other regulatory reform proceedings.

About this Report

This report – "Unauthorized Practice of Law' Enforcement in California: Protection or Protectionism?" – contributes new data to the intense policy debates that have sprung up in recent years about whether laws that prohibit the unauthorized practice of law are protecting people, or, instead, protecting primarily the Bar. By drawing on interviews with practitioners who were sent "Cease-and-Desist Letters" by the California Bar, the report offers new and illuminating perspectives on how the UPL rules are enforced. As we note in our Conclusion, California is considering authorizing non-lawyers to play greater roles in responding to people's legal needs. We urge policymakers to consider the untapped potential of such roles, and whether existing UPL rules are actively blocking people from doing needed work they are already equipped to do well – work that some courts may already be quietly embracing. As NCAJ has urged elsewhere, the Bar should consider whether some of the work non-lawyers are already doing *in defiance* of the rules should in fact inform how the rules themselves should be rewritten to allow it.

Acknowledgment

NCAJ is grateful for support received from the Bigglesworth Family Foundation that made this report possible.

**Research completed in fall 2021.
Report posted to NCAJ's website in February 2022.
For additional information contact NCAJ, dudell@ncaj.org.**

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February 2022

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Introduction

Every US state prohibits the “unauthorized practice of law,” but what does that mean? Against what harms are the Unauthorized Practice of Law (“UPL”) rules designed to protect? Are those goals served by enforcement of the UPL rules? Do the UPL rules serve the public good by protecting consumers or do they impede access to justice for those who would benefit from guidance in the legal system but who cannot afford or otherwise obtain help from a lawyer?

These questions are more important now than ever. There is a yawning “justice gap” – the gap between the amount of legal help Americans need and the amount of help to which they actually have access because the cost and availability of legal representation is prohibitive. Some states, increasingly aware of this reality, are opening up new space for people to obtain some kinds of legal help from non-lawyers. Many others seem poised to follow.

These reforms are contentious. Some degree of change may be inevitable, but how ambitious should it be? How much and what kind of work should non-lawyers be able to do, under what conditions, what risks do such reforms pose to consumers, and how can such risks be mitigated and deterred?

In arguing these questions, people on all sides of the debate point to what non-lawyers are already doing to help people with unmet legal needs. Reform advocates – including NCAJ – see evidence that many non-lawyers are already doing important work to help bridge the justice gap and they could be doing far more if the UPL rules permitted.¹ The advocates emphasize the tremendous untapped potential that could be unleashed by loosening or changing the rules. Skeptics and opponents of change see evidence that people are harmed by non-lawyer “assistance” that is dishonest, incompetent or both. They emphasize the danger that relaxing UPL prohibitions could open up new pathways to consumer exploitation and harm.

Both sides can point to anecdotes that support their positions. But designing changes to the UPL landscape and assessing the impact of such changes should be based on data that at a minimum analyzes the relative consumer benefits and harms resulting from relaxation of the UPL rules.

In theory, efforts to enforce existing UPL rules should tell us something about the kinds of unauthorized legal services that currently exist, and the degree to which they harm consumers. This report is the product of NCAJ’s efforts to test that proposition, which until now has not been a topic of empirical research or other assessment. For the reasons discussed below, NCAJ’s inquiry was not fully successful because we were not able to collect robust data on which to base an empirical analysis, but, as we also discuss below, our research does shed useful light on aspects of the debate and points to ways in which States might more effectively enforce UPL rules and evaluate modifications to UPL regulatory schemes.

¹ See National Center for Access to Justice, *Working With Your Hands Tied Behind Your Back: Non-Lawyer Perspectives on Legal Empowerment*, June 2021, <https://ncaj.org/working-your-hands-tied-behind-your-back>.

Summary of Findings

NCAJ looked to the State of California as a source of raw data with which to conduct this analysis. We selected California for several reasons. It is one of the nation's largest and most important markets for legal services. It is also a state where authorities have been relatively active in enforcing unauthorized practice rules. Finally, California is actively considering a range of reforms that would open up new models of legal services by non-lawyers – reforms that have been hotly debated with the opponents and proponents alike positioning themselves as champions of consumer protection.

We were surprised to find that although California has a robust enforcement regime (delegated almost entirely to the California State Bar) pursuing hundreds of UPL investigations per year, it collects very little data on those cases, and makes even less information available for analysis. Nevertheless, we were able to develop information – largely anecdotal, through interviews – that sheds useful firsthand light on some aspects of the investigative process and on the types of activities targeted for enforcement. This report is substantially based on perspectives gleaned from these interviews of more than a dozen individuals targeted for the unauthorized practice of law, and from related documentation, as well as substantive discussions with several California attorneys, Legal Document Assistants and State Bar officials. We also describe a productive exchange with State Bar officials responsible for overseeing the UPL enforcement program.

What we learned is this: if the goal of UPL enforcement is to protect consumers from harm, the California Bar could increase its focus on that objective and give greater guidance not only to consumers but also to those non-lawyers seeking to provide advice on legal matters consistent with the existing UPL laws. More fundamentally, some of the most compelling critiques we heard about the Bar's UPL enforcement may in fact be better aimed at modifying the breadth and nature of the underlying prohibitions on the provision of legal advice than changing the manner in which the Bar enforces those prohibitions.

In NCAJ's view, the biggest problem with UPL enforcement in California is that it does not always make clear to violators what they have done wrong and are supposed to do differently. And while violators are told to "cease and desist" alleged UPL activity, they are offered virtually no guidance as to what kind of behavioral change would be sufficient.

UPL investigations are handled by the State Bar's Office of Chief Trial Counsel ("OCTC") OCTC's enforcement team is relatively new, having been set up only within the last five years. It also suffers from very real resource constraints. In NCAJ's view, the best way to leverage those limited resources is to (1) target enforcement efforts around violations that risk consumer harm; and (2) ensure that the value of actual enforcement is multiplied by its impact as a deterrent.

The Bar agrees that the emphasis of UPL enforcement efforts should be on consumer harm. At present, however, it does not actually *know* how often it targets alleged violators who are causing harm rather than individuals whose alleged transgressions are victimless, or are the product of attorney competition, or reflect an adversary's effort to disarm an opponent who is relying on a nonlawyer for help. The good news is that Bar officials told NCAJ they have recently embraced plans to track these kinds of data. NCAJ hopes that the Bar will share this information as broadly

as possible and will continue to engage with NCAJ and with others who are advocating reform of the UPL laws and examining the effects of the UPL laws.

UPL violators whose activities risk consumer harm should know that the Bar is likely to target them for enforcement. Policymakers should know how much – and what kind – of consumer harm is being tackled through enforcement. Non-lawyers who help their clients with legal problems should be able to know what kinds of activity have been deemed violations, and what kind of remedies have been proposed to bring violators into compliance.

Ultimately, the hardest questions lead back to the rules themselves – and not to how they are enforced. This report describes the experiences of several people who feel wronged because the Bar publicly branded them as violators without finding they had done anyone any harm. These interviewees are convinced that they are in fact doing good in the world – providing good legal services people desperately need and can't get anywhere else.

Some of these interviewees expressed determination to ignore the Bar's edicts. Others decided, in despair, to pull back and do less. All were angry at the Bar for coming after them. The truth, though, is that most of them clearly *were* engaged in the unauthorized practice of law. Some admitted that they helped desperate clients select the right legal forms. Others offered basic legal advice, or helped a frightened, unrepresented party interact with opposing counsel. In other words, they were guilty.

What California and other states need to grapple with most urgently is whether some of these activities should no longer be a crime.

Methodology

NCAJ embarked upon this research project with the goal of understanding, through California's UPL enforcement directed at non-lawyers, what kinds of activity were being targeted, and in particular, whether the UPL activities in question were causing harm to consumers.

We initially hoped to secure information from the Bar itself that would help shed light on these questions, such as anonymized copies of its Cease-and-Desist letters and/or related materials. We sought only materials related to cases involving non-lawyers, and suggested that the materials be redacted so as to exclude potentially identifying details. The Bar regularly publishes the names of the alleged offenders but nothing about the nature of the offenses, and it declined to provide any of the information we requested about the content of the complaints or the Bar's findings. In response to NCAJ's Public Records Act request, the Bar asserted that these types of information constituted disciplinary complaints and investigatory records that the Bar is not permitted to disclose under California law. In fact, the only information the Bar ultimately provided was a chart that broke down some of the Bar's overall UPL caseload by area of law.

Faced with the lack of available data, NCAJ decided to pursue information through less conventional channels. The Bar publishes on its website the name of every individual and entity to whom it sends a UPL Cease-and-Desist letter. The Bar sent out 280 such letters in 2019 and 2020. Using the Bar's published list of recipients, we relied on publicly available sources to

locate contact information for as many of those 280 letter recipients as possible. We then screened out disbarred California attorneys and out-of-state attorneys, to focus on the caseload that related specifically to the activities of non-lawyers.

Next, we attempted to reach out to every non-lawyer on that narrower list for whom we had potentially viable contact information – 76 people in all. We told those individuals that we were doing research on the nature of the Bar’s UPL enforcement activity, and that we were eager to hear the perspectives of people who had been the targets of its investigations. We also offered to anonymize the interviews, to eliminate any possibility of reprisal or bad publicity.

Of those 76 people, we were able to conduct in-depth interviews with 13. Several of those shared some or all of the written correspondence they exchanged with the Bar in the course of the UPL investigation. We also acquired documentation relating to the cases of two others who we did not interview. Some people declined to be interviewed and we were unable to establish contact with others. Notably, in some cases, the businesses associated with that contact information appear to have closed shortly after a Cease-and-Desist letter was issued.

The 13 interviews we conducted are not a representative sample of the Bar’s enforcement efforts. None of the people who agreed to be interviewed by NCAJ are *notarios* working on immigration issues, for example, and the bar told us that immigration-related cases make up roughly 23 percent of its overall UPL caseload. Impressionistically, we tend to believe that most – though not all – of the people who spoke with us did so because they believe that they did not violate UPL rules or because they believe the rules unreasonably constrain them from putting their knowledge and skills to good use. In this, our interviewees may or may not be representative of the larger universe of people investigated by the Bar.

We also interviewed twelve lawyers and reform advocates in California. Finally, we examined California’s infrequent resort to *criminal* enforcement in the state court system of the UPL misdemeanor prohibition by reviewing every such prosecution from January 2011 to May 2021; we found only eight of these in total.

With all of this information in hand, along with our own preliminary analysis of its implications, we went back to the Bar in August 2021 with a new set of questions. In a zoom interview, two officials from OCTC answered a range of questions about their approach to enforcement around non-lawyer UPL activity. They also spoke to some of the resource and policy constraints they face in tackling that difficult task.

I. Policing the “Unauthorized Practice of Law”

A. What is the Practice of Law, Anyway?

Every US state prohibits the unauthorized practice of law (UPL). The general rule is that only attorneys who are admitted to a state’s bar can practice law in that jurisdiction. States also carve out various exceptions that may allow out-of-state attorneys, law students, certified non-JD professionals and certain other individuals to “practice law” in limited ways.

This concept seems simple on its face but in fact it is something of a quagmire, because the “practice of law” resists coherent definition. The American Bar Association’s model definition is a tautology:

The "practice of law" is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.²

The core principle enunciated by this circular definition is that non-lawyers are generally forbidden from using the law on behalf of others. Nor are they permitted to *advise* others on how to use the law on their own behalf.³ These prohibitions do not depend on whether legal services are being sold or offered free of charge.

On the other hand, non-lawyers are allowed to provide *information* to another person about what the law says, as long as they refrain from offering advice as to how it might apply to that person’s real-world legal troubles. This core distinction between information and advice has proven to be a fuzzy concept, however. A literal interpretation leads to absurd outcomes that neither the legal profession nor any state authority would reasonably countenance. For example, few people would embrace the idea that it should be a crime to recommend to another that they show up for a court date or pay a speeding ticket – but such common sense wisdom, which is so routinely the subject of conversation among people – is technically prohibited as legal advice.

Generally speaking, states have responded to this lack of clarity with something of a collective shrug, and with a “we know it when we see it” approach. For example, in a guide for newly admitted lawyers, the New York State Bar Association frankly acknowledges that there is “no single place to turn in New York for a definition of the practice of law and what may constitute the unauthorized practice of law in New York State.”⁴ The same lack of clarity exists in other states. The resulting grey area leaves non-lawyers seeking to help those who have legal problems without clear guidance or boundaries. It also makes it difficult for institutions to train non-lawyers on the range of services allowed and how to perform them. At the very least, states and the authorities charged with enforcing their UPL restrictions should better delineate what is and is not permitted under their rules.

² ABA Task Force on the Model Definition of the Practice of Law, Model Definition, available at https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/.

³ The ABA Model Definition goes on to explain that the “practice of law” presumptively includes giving advice about any person’s legal rights or responsibilities; selecting, drafting or completing legal documents that affect the legal rights of any person; representing any person in front of a court or other adjudicative body; or negotiating the legal rights or responsibilities of any person. Some of these activities may be permitted when carried out under the supervision of an attorney, but non-lawyers are generally prohibited from these activities when acting independently. Ibid at (c).

⁴ New York State Bar Association, *The Practice of Law in New York State: An Introduction for Newly-Admitted Attorneys*, p. 33, <https://nysba.org/app/uploads/2020/03/The-Practice-of-Law-in-New-York-State.pdf>.

B. Whose Interests are Served by the UPL Laws?

UPL restrictions are justified primarily as a consumer protection measure. The theory is that the law is complex and often byzantine. Incompetent legal advice can lead people into disaster. It makes sense to take steps to ensure that laypeople are getting their legal help from people who are qualified and competent. Nonetheless, existing UPL rules have drawn sharp criticism – not just for their vagueness but for their very deliberate breadth.

The primary argument against existing UPL rules is that these rules are protectionist, designed and implemented to protect lawyers against competition from non-lawyers, and that the default assumption that a law degree is required for the competent, independent provision of any legal services is unreasonable when blanketly applied. While many legal services might indeed require the specialized knowledge and perspective of an attorney, the argument goes, people who need legal help could, and should be able to, obtain it from non-lawyers familiar with the law in specific areas, who have the right kind of experience, and who could competently provide that help within their zones of competence.

Does it really make sense to bar a paralegal with 20 years' experience from independently advising a client on what forms to fill out or what information to include on the form? Is it really true that only someone with a law degree can learn to help someone prepare a simple will or assist with a basic landlord tenant dispute? Where a court offers forms and computer access to help litigants who have no counsel at all, does it make sense to prevent those individuals from consulting with others who are experienced with those tasks?

These questions are important, because there is a huge chasm between the amount of legal help people in America need and the amount of help that is actually available to them. Every year, tens of millions of people navigate legal problems alone, without any sort of legal advice.⁵ Many suffer for it. Some lose cases by default because they ignore the system's demands for their participation. Others are steamrolled in court by more powerful legal adversaries who have lawyers on their side. Many do not use the law in situations where it could help vindicate their rights. One leading study found that only about a fifth of people surveyed had sought any kind of help with recent civil legal problems. Many did not even realize that their problems were legal in nature, or that the law might be of help to them.⁶

Understanding that people without access to lawyers are the consumers the UPL laws are designed to protect, the question asked by those urging reform is whether allowing limited access to legal help from nonlawyers would risk greater harm to this group than the threats they endure on a daily basis due to the status quo in which they are, in the millions, unable to secure the legal help they need.

⁵ The Self-Represented Litigants Network estimates that 3 out of 5 people in civil cases go to court without a lawyer – some 30 million people. See <https://www.srln.org/>. See also State Bar of California, *California Justice Gap Study*, 2019, <http://www.calbar.ca.gov/Portals/0/documents/accessJustice/Justice-Gap-Study-Executive-Summary.pdf>.

⁶ Rebecca Sandefur, "Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study," August 8, 2014, https://www.abajournal.com/files/sandefur_accessing_justice_in_the_contemporary_usa_aug2014.pdf.

C. Enforcing UPL Rules

States have adopted widely varying models of UPL enforcement. Many, like California and Florida, have largely delegated the task of investigating alleged UPL violations to state bar associations. Violations often trigger Cease-and-Desist letters and much more rarely, litigation or even criminal charges. Other states, like New York, have placed UPL enforcement in the hands of their Attorneys General. Some states investigate hundreds of complaints each year; others, hardly any.

The best and only real overview of this confusing national picture is a 2014 study conducted by Deborah Rhode and Lucy Ricca.⁷ It surveyed UPL enforcement authorities in most US states to garner baseline information about the extent of their enforcement efforts. It also reviewed over 100 judicial decisions in UPL cases regarding the areas of law alleged UPL violations involved. As that study noted, in many states “most, or almost all ... cases were informally settled, typically through a warning or Cease-and-Desist letter.” In many other states, such settlements constituted a large proportion of overall outcomes even if not a majority.⁸

Policymakers should consider UPL rules in light of both the urgent need people have for expanded legal services and the imperative of consumer protection that is supposed to underpin unauthorized practice rules. That effort would be assisted by a granular and clear-eyed understanding of what the enforcement of existing rules actually looks like and accomplishes. Is enforcement targeting unethical or incompetent providers of unauthorized services? Is it, instead, targeting providers of good, affordable legal services that consumers desperately need? Is enforcement keeping consumers safe from harm, or is it causing harm for consumers by preserving lawyers’ lucrative monopoly on the practice of law? Protection, or protectionism? Or, some complex mix of the two?

NCAJ set out to consider these thorny issues in the context of California. The state struggles with an ocean of unmet legal need. For precisely that reason, it is actively considering reforms that would open up new space for people to obtain key legal services from non-JDs.⁹ At the same time, California is relatively vigorous in its efforts to enforce UPL rules. What does California’s system of enforcement really mean to accomplish, and does it succeed in doing so?

II. Enforcing UPL Rules in California

California courts have held that the practice of law “includes, but is not limited to, the following activities: (1) performing services in court cases/litigation; (2) giving legal advice and counsel; and (3) preparing legal instruments and contracts that secure legal rights - even if the matters

⁷ Deborah Rhode and Lucy Buford Ricca, “Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement,” *Fordham Law Review*, vol. 82:6, 2014, pp. 2587-2610.

⁸ *Id.* at 2592.

⁹ For more on these efforts, see <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Closing-the-Justice-Gap-Working-Group> and <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/California-Paraprofessional-Program-Working-Group>.

involved do not have anything to do with lawsuits or the courts.”¹⁰ State law makes the unauthorized practice of law a misdemeanor offense, punishable by a fine of up to \$1000 or up to a year in county jail. For repeat offenses, the minimum penalty is more than 90 days in the county jail, and a court may impose a fine, or a sentence of less than 90 days, only if the court states the reasons for its lesser penalty on the record.¹¹

On their face, the UPL penalties seem remarkably harsh. They allow for scenarios where a person could spend a year behind bars simply for giving an unrepresented friend or neighbor advice about a pending divorce proceeding or traffic case. In reality, though, criminal charges for unauthorized practice are rarely brought in California.

NCAJ was able to find records of only eight misdemeanor UPL prosecutions in California between January 2011 and May 2021. One State Bar official told NCAJ that he suspected this was an undercount, but that there are indeed not very many prosecutions.¹² Six of the cases NCAJ identified involved disbarred, suspended or out-of-state attorneys, rather than non-JDs engaging in practice of law activity.¹³ Just two involved non-JDs, and in both of those cases the accused had explicitly falsely claimed to be attorneys.¹⁴ In all but one of these eight cases, prosecutors brought UPL charges in conjunction with charges of larceny, perjury or some other serious offense.¹⁵

We did not find a single California case prosecuting a non-JD with the unauthorized “practice of law” where the defendant was not accused of fraudulently claiming to be an attorney. However, this seeming dearth of prosecutions does not indicate a lack of commitment from California to enforce its prohibition on the unauthorized practice of law. State judiciaries generally retain authority to oversee the practice of law within their jurisdictions. In California and in many other states, the State Bar, through OCTC, handles UPL enforcement activities on the Court’s behalf. Through the Bar, California actually conducts far more enforcement activity than many other

¹⁰ *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (Cal. 1922). See also *People v. Alexander F. Sun*, No. B222420, 2011 Cal. App., Unpub., LEXIS 3395 (May 6, 2011) (“In addition to going to court, the “practice of law” includes such things as (1) applying legal knowledge and skill to a set of facts in order to render a legal opinion or make a recommendation to or on behalf of a client as to how to proceed, (2) acting as a representative to enforce, protect or defend a client’s rights or to counsel a client regarding his, her or its rights, (3) negotiating on behalf of a client, (4) advising a client, (5) the analysis of circumstances and the decision to take on a client’s representation, and (6) discussing the value or merit of a given case with a client or potential client).

¹¹ California Business and Professions Code, Division 3, Chapter 4, Article 7, Section 6126 (a), https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=3.&title=&part=&chapter=4.&article=7.

¹² NCAJ interview with Steven Moawad and Augustin Hernandez, Office of Chief Trial Counsel (OCTC), State Bar of California, August 25, 2021. Moawad also said he suspected that, in some cases, prosecutors elected not to bring UPL charges in favor of focusing on more serious, felony charges like fraud.

¹³ *People v. Alexander F. Sun*, No. B222420, 2011 Cal. App. Unpub. LEXIS 3395, at *5 (May 6, 2011); *People v. Hedderman*, No. A140501, 2014 Cal. App. Unpub. LEXIS 3884, at *1-2 (May 30, 2014); *People v. Rodriguez*, No. B243578, 2014 Cal. App. Unpub. LEXIS 1606, at *23-24 (Mar. 5, 2014); *People v. Vincent*, No. B229075, 2012 Cal. App. Unpub. LEXIS 2356, at *1-2 (Mar. 28, 2012).

¹⁴ *People v. Cardinali*, No. H036513, 2013 Cal. App. Unpub. LEXIS 3279, at *3 (May 9, 2013); *People v. Rachele*, No. B236953, 2013 Cal. App. Unpub. LEXIS 2264, at *1 (Mar. 27, 2013); *People v. Starski*, 7 Cal. App. 5th 215, 215, 212 Cal. Rptr. 3d 622, 624 (2017).

¹⁵ The lone exception is *People v. Starski*, supra at fn 11.

states. The Bar has sent hundreds of Cease-and-Desist letters to people it determines have engaged in UPL in recent years.¹⁶

A. Little Available Data

Investigations carried out by OCTC are almost always prompted by complaints lodged by members of the public, lawyers or judges. OCTC officials told NCAJ that while the Office is in theory free to launch investigations in a more proactive manner, resource constraints generally preclude such activity.¹⁷

Anyone can file a complaint using a straightforward online form.¹⁸ OCTC receives something on the order of 600-700 complaints alleging UPL activity in a normal year. It forwards roughly 65-70 percent of these on for investigation. OCTC told NCAJ that it generally prioritizes cases that involve some risk of consumer harm, but did not describe the harms they encounter and the office currently lacks any data on the proportion of complaints or investigations that do involve such risks.¹⁹ The Bar found UPL violations in 280 cases in 2019 and 2020. The Bar publishes the name of every person or entity that it finds to have engaged in UPL activity, and the date on which it sent them a Cease-and-Desist letter.²⁰

However, the Bar does not publish the letters themselves, the underlying complaints, nor any information about what kind of UPL activity the named individuals is alleged to have engaged in. It also does not provide information on how the bar reached its determination that an individual engaged in UPL activity. More broadly, the Bar makes little information available to the public about how its investigations work, what kind of malfeasance they uncover, or what kinds of corrective action violators take. This situation partly reflects a lack of transparency, and it partly reflects a failure to collect salient data. As a consequence, neither consumers nor those seeking to offer them assistance have a clear sense of what conduct is permissible and what will constitute actionable UPL, let alone present the risk of consumer harm. Additionally, lawmakers lack basic data that would help them design or assess modifications to existing UPL restrictions or a baseline from which to evaluate the impact of such reforms.

People who commit minor or very technical violations essentially experience the worst of both worlds – their names are published and forever linked to the violation, but without any indication that they were not found to have caused harm or behaved dishonestly. For example, NCAJ interviewed one former state official who was found to be a UPL violator because a consulting firm she went to work for gave her the job title of “counsel.” She and her employer immediately moved to change it, but any internet search of her name now prominently features her as a UPL violator.²¹

¹⁶ <http://www.calbar.ca.gov/Public/Discipline/Nonattorney-Actions>.

¹⁷ NCAJ interview with Moawad and Augustin, August 25, 2021.

¹⁸ Form available at http://www.calbar.ca.gov/Portals/0/documents/forms/NonAttorney_Complaint.pdf

¹⁹ NCAJ interview with Moawad and Augustin, August 25, 2021.

²⁰ For a complete list of all cases where the Bar has issued a UPL Cease-and-Desist letter, see <http://www.calbar.ca.gov/Public/Discipline/Nonattorney-Actions>.

²¹ NCAJ interview, August 2021.

NCAJ reached out to OCTC in 2020 to ask for information about its non-lawyer UPL enforcement caseload. The only information the Bar was able to provide at that time was a breakdown of its number of investigations by area of law. While not without utility, in and of itself this information does little to elucidate the kind of actual “practice of law” activity the Bar pursues, the nature of the remedies it hopes violators will adopt, or the degree to which consumers are suffering harm. The limited value of the information is further diminished by the fact that nearly half of all cases were categorized under a catch-all “miscellaneous” category.²²

UPL Cases Investigated by OCTC, 2019-2020²³

Area of Law	Percentage of Cases
Bankruptcy	1.07
Criminal	3.46
Debt Resolution	3.46
Family Law	7.19
Identity Theft	1.60
Immigration	23.3
Immigration-Related	0.4
Loan Modification	3.86
Miscellaneous	47.4
Personal Injury	2.53
Will/Trust	3.73
Worker’s Compensation	2.0

This dearth of public information poses a challenge to those assessing potential ways to relax the UPL laws in order to enable people to obtain some kinds of legal advice from qualified legal aid providers who are not attorneys. Additionally, UPL enforcement should serve as a deterrent to potential violators: both those acting willfully, whose activities put consumers at risk of harm, and those seeking only to provide forms of assistance allowed within the bounds of the current UPL laws. But the limited information the Bar publishes offers no clear guidance on what kinds of activities are likely to trigger investigation and sanction.

The lack of detail available about the activity leading to a UPL Cease-and-Desist letter also means that while the public can learn who has been found to be a UPL violator, there is no way for anyone to distinguish among i) UPL violators who deliberately prey upon consumers by falsely claiming they are authorized to provide legal services, ii) UPL violators who may simply have been asked to change language they use in their advertising, or iii) UPL violators who were above board about their professional credentials but were charged with providing legal services

²² With a view to getting a more illuminating picture of what the Bar’s enforcement efforts look like, NCAJ submitted a Public Records Act request to the State Bar in 2020. We asked for a copy of every UPL Cease-and-Desist letter OCTC sent out in 2019 – with names and any other identifying details of recipients and complainants withheld. The Bar responded that it could not agree to the request because it considered the letters to be disciplinary records whose disclosure is prohibited under California law. Letter from OCTC to NCAJ, July 13, 2020.

²³ Data provided to NCAJ by the State Bar of California.

they were not authorized to provide. Nor is data made available on whether the UPL violator was alleged to have caused harm of some kind, or was found to have caused harm.

B. Questionable Complaints

OCTC does not conduct many proactive UPL investigations. Instead, its process is largely driven by public complaints. According to OCTC, this is in large part a function of resource constraints. While the office does engage in what it describes as fairly extensive public education efforts, it told us that it does not have the human or investigative resources to take a more proactive approach to discovering violations. “If we had more resources, I suspect we’d be more proactive in going out there and looking for violators,” one official told NCAJ. “Our resources essentially just allow us to investigate the cases that are brought to us.”²⁴

OCTC officials suggested to NCAJ that a complaint-driven process may be more likely to orient enforcement activity around violations linked to consumer harm – asserting that many of the complainants are people who believe they have suffered such harm.²⁵ OCTC maintains that its UPL enforcement efforts are animated primarily by a desire to prevent and address consumer harm – and that its investigative efforts reflect that priority. Complaints, OCTC officials told us, come “primarily from clients of these non-attorneys who complain not only about a failure to perform, but they know that they got duped by somebody who is not licensed to practice law.”²⁶

On the other hand, a complaint-driven approach risks overlooking serious abuses in communities to which OCTC’s outreach does not extend. Additionally, the complaint process lends itself to use by admitted attorneys to protect against competition, as well as misuse by attorneys who seek to retaliate, settle scores, or knock out their adversaries.

NCAJ interviewed several non-lawyers – and also some lawyers – who said that the complaints against non-lawyers were brought by lawyers rather than by consumers alleging harm. Some claimed that the complaints were brought by competitors looking to put them out of business. As one California attorney who had helped several non-lawyers with UPL investigations put it: “What I don’t like about that is, it’s unfair competition. It’s for a business reason and not really because of the unauthorized practice.”²⁷ One attorney who had represented many non-lawyers faced with UPL allegations told NCAJ that “The majority of the complaints that generate state bar investigations are not from consumers, but from attorneys – attorneys who are often representing people on the opposite side in litigation.”²⁸ Or as one paralegal put it, “A lot of this is just lawyers protecting the club they went to school to join.”²⁹

²⁴ NCAJ interview with Moawad and Augustin, August 25, 2021.

²⁵ NCAJ interview with Moawad and Augustin, August 25, 2021.

²⁶ NCAJ interview with Moawad and Augustin, August 25, 2021.

²⁷ NCAJ interview, June 2021.

²⁸ NCAJ interview, July 2021.

²⁹ NCAJ interview, August 2021.

Some paralegals³⁰ and legal document assistants³¹ told NCAJ that their clients' opposing counsel in legal disputes had threatened to report them for UPL activity. They felt that this was essentially a strong-arm tactic aimed at disempowering their own client. One independent paralegal described the problem this way:

It's totally unfair because once an opposing attorney realizes it's a paralegal helping the other side, he can just say hey, cut it out or I'm going to call up the state bar and tell them you are committing UPL. That used to happen to me five, seven times a year... [UPL rules] were created to protect the public. But when you look at all these cases brought to the state bar, it doesn't match up with that goal. I just think the UPL practices right now are being misused and providing a disservice to consumers.³²

One non-attorney who the Bar found to be a UPL violator told NCAJ that, "It's always some other attorney...I assumed the Bar would come for us at some point, because at the end of the day this is an economic activity that is threatening the interests of lawyers."³³ An LDA (Legal Document Assistant) in one small town told NCAJ that the complainant in her case was a local attorney who viewed her as competing for the same business at lower rates. In this case, NCAJ had access to the LDA's correspondence with the State Bar. We were able to verify that the

³⁰ A "paralegal" is defined by California law as, among other things, a person who performs substantial legal work under the supervision of a member of the California Bar. See generally, BUSINESS AND PROFESSIONS CODE, DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY, CHAPTER 5.6. Paralegals. Provisions 6450 – 6456. [https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=6450.#:~:text=\(a\)%20%E2%80%9CParalegal%E2%80%9D%20means,substantial%20legal%20work%20under%20the](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=6450.#:~:text=(a)%20%E2%80%9CParalegal%E2%80%9D%20means,substantial%20legal%20work%20under%20the).

³¹ A "Legal document assistant," in contrast with a paralegal, may carry out law related tasks independent of any supervision of an attorney. California law defines an LDA as: "a person . . . who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing themselves in a legal matter..." "Self-help service" includes:

- (1) Completing legal documents in a ministerial manner, selected by a person who is representing themselves in a legal matter, by typing or otherwise completing the documents at the person's specific direction.
- (2) Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing themselves in a legal matter, to assist the person in representing themselves. This service, in and of itself, does not require registration as a legal document assistant.
- (3) Making published legal documents available to a person who is representing themselves in a legal matter.
- (4) Filing and serving legal forms and documents at the specific direction of a person who is representing themselves in a legal matter.

The role of an LDA is further limited by law: "A legal document assistant may not provide any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies."

BUSINESS AND PROFESSIONS CODE, DIVISION 3, PROFESSIONS AND VOCATIONS GENERALLY, CHAPTER 5.5. Legal Document Assistants and Unlawful Detainer Assistants, ARTICLE 1. General Provisions, 6400 - 6401.7, https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=3.&title=&part=&chapter=5.5.&article=1.

³² NCAJ interview, July 2021.

³³ NCAJ interview, August 2021.

complainant was an attorney in the same town who worked in the same area of law, though not his motivations.³⁴

Several other people who received UPL Cease-and-Desist letters from the Bar echoed these concerns in our interviews.

The problem is compounded by the lack of available data on who is filing complaints and on what grounds, as this makes it impossible to evaluate the degree to which the California UPL complaint process serves consumers, legal adversaries, or the vested interests of licensed attorneys. OCTC's decision in mid-2021 to start systematically collecting data including on the proportion of complaints that are brought by aggrieved clients as opposed to attorneys or others is a welcome development³⁵ that should shed further light in this in the future.

C. Little Apparent Consideration of Harm

Regardless of the genesis and/or motivation behind the complaints investigated by OCTC, several of the people NCAJ interviewed felt frustrated by an investigative process that they described as incurious about the actual nature of their work and whether they are providing good service, or causing consumer harm. As one non-attorney who the Bar ultimately found to be engaged in UPL activity put it:

The Bar was 100% uninterested in whether we were competent, whether the outcome for the consumer was positive, anything like that. We did try to introduce facts about how our customers benefit and how good our service is. But those were just ignored. They did not want to know, for example, how our fees compare to an attorney's, or how good our outcomes are...The lack of interest about the consumer needs and the consumer outcomes is really striking.³⁶

NCAJ was able to review this interviewee's correspondence with the State Bar, and to confirm that the Bar's allegations, questions and ultimate conclusions made no mention of consumer harms or outcomes. We saw the same lack of focus on the consumer experience in several – though not all – of the other cases we reviewed. In those instances where a complainant claimed to the Bar that he or she had suffered harm, such allegations did not play a role in OCTC's findings.

Another non-lawyer – a Legal Document Assistant – described his experience being investigated for UPL this way:

They didn't ask us, what do you guys do exactly? What do the local courts say about it? They just said, 'From our perspective your website says you are doing

³⁴ NCAJ interview, August 2020.

³⁵ NCAJ interview with Moawad and Augustin, August 25, 2021. NCAJ will evaluate whether additional available data would warrant a further report.

³⁶ NCAJ interview, August 2021.

things you can't do. Period, end of story. You have to have that website down yesterday.”³⁷

Of course, the practice of law by unauthorized people is not made any more lawful by good consumer outcomes. Still, given limited enforcement resources there is a strong argument that the Bar should focus its efforts on cases where there is at least some allegation of consumer harm involved. More fundamentally, the extent to which people are securing good outcomes from individuals who are not lawyers should inform decisions about reforming the UPL laws to create carve outs from those prohibitions for the benefit of the consumers they are designed to protect.

D. Vague Allegations and Little Guidance for Remedial Action

Most of the UPL violators with whom we spoke with said that the process of investigation left them frustrated, aggrieved and – most troubling from a policy perspective – confused as to what remedial action was required of them. As one Legal Document Assistant put it, “I’m totally on board with making sure everyone doing this work is doing it competently. And I’m totally on board with making sure non-lawyers are not practicing law. But this is not a fair process.”³⁸

The experience of those investigated by OCTC appeared, at least anecdotally, to depend on whether the alleged UPL violators were represented during the Bar investigatory process. NCAJ interviewed two alleged UPL violators who were represented by counsel in those interactions. They described a generally cordial interaction with Bar investigators, even if they were unsatisfied with the eventual outcome. “The process was actually relatively pleasant,” one of those alleged UPL violators said. “I don’t feel like they were extremely adversarial. I might even call the person we were dealing with sympathetic...It was more, ‘hi, we are concerned you are doing this, can we talk?’”³⁹

By contrast, most of the alleged UPL violators NCAJ interviewed did not retain counsel, and those individuals experienced the process as hostile, dismissive and seemingly uninterested in hearing them out. For these individuals the investigatory process was opaque and left them feeling judged without understanding the basis.

A non-lawyer NCAJ interviewed reported that the OCTC investigator on his case was “very accusatory and very draconian...He wasn’t asking questions so much as saying, ‘this is what you are doing wrong. I’ve looked at your website and this and this and this is wrong.’”⁴⁰ The latter part of this complaint about the process – that Bar investigators seemed to base their allegations and their ultimate conclusions entirely on a survey of the alleged violator’s website – was put forward by other interviewees as well.

One LDA who voiced the same concern said that, “I thought it was really misguided of them to fire off a really nasty [Cease-and-Desist] letter without doing any kind of a real investigation. It

³⁷ NCAJ interview, July 2021.

³⁸ NCAJ interview, August 2021.

³⁹ NCAJ interview, August 2021.

⁴⁰ NCAJ interview, August 2021.

says ‘pursuant to an investigation,’ but there was no real investigation.”⁴¹ Two interviewees said that they sent extensive documentation of their activities to OCTC in response to the allegation letter but that this was never acknowledged, nor was it explicitly mentioned in the Bar’s ultimate findings.

Much of the frustration and concern expressed by our interviewees revolved around the lack of guidance as to how they could continue to function consistent with the UPL rules. It may well be that all of our interviewees were in fact engaged in UPL activity. Some acknowledged as much to NCAJ. In other cases, it appears clear from our correspondence and interviews that they were likely engaged in UPL activity like giving legal advice or helping clients select legal forms. But even if OCTC’s investigations are generally successful in identifying violations, there was little, if any guidance on what remedial steps the violators should undertake. OCTC appears to view its role solely in terms of policing what should NOT be done, rather than assisting non-lawyers in how they might operate on the right side of the rules. As a consequence, California’s UPL enforcement efforts may not succeed in driving the desired changes in violator behavior – even when a person targeted for enforcement is eager to comply.

This limited focus is clear from OCTC’s Cease-and-Desist letters, which generally mark the end point of OCTC’s interaction with an alleged violator. Letters reviewed by NCAJ include a “summary of alleged conduct,” which lays out facts that evidence UPL activity. A “Notice” at the end of the letter then asserts that OCTC has determined that the recipient has engaged in UPL, and orders them to Cease and Desist. The letters contain no guidance as to what kind of remedial action would be satisfactory.

In some cases, a letter recipient’s entire business model may be inherently unlawful. But in many other cases, violations are more technical in nature. Some alleged violations relate to advertising, or to language put forward on organizational websites. Others implicate some particular aspect of client interactions that OCTC sees as amounting to the provision of legal advice, help selecting legal forms, and so on. In these cases, it may well be possible for non-lawyers to make some changes and then continue operations without breaking the rules – but they are left guessing as to how.

This left several NCAJ interviewees feeling like they had no idea whether their eventual efforts to comply were sufficient. One alleged violator told us that he had modified his operations in a good faith effort to stop engaging in UPL activity – but had no way of knowing whether his efforts were sufficient. “We don’t really have any way of knowing if they accept our premise,” he said. “But as far as we are concerned the matter is resolved. If they disagree then I guess they will come at us again with another letter.”⁴²

Two interviewees took down their websites entirely after the bar found fault with some of the language used to advertise their services. In each case, the individuals said that they simply did not feel confident choosing alternative language that would not trigger the “additional appropriate action” OCTC threatened in its Cease-and-Desist letter. “We took the site down and

⁴¹ NCAJ interview, August 2021.

⁴² NCAJ interview, August 2021.

it's still down," one interviewee told us – nearly a year after the fact.⁴³ Others told NCAJ that they considered shutting down their businesses entirely – but ultimately did not, even though they were not sure whether they had managed to stop engaging in UPL activity. Some who received Cease-and-Desist letters from OCTC, and who we were not able to contact, appear to have shuttered their businesses entirely

Some of the people we interviewed said that they assumed the steps they had taken to come into compliance were adequate – but complained that they could never know for sure unless the Bar came after them a second time. Others reacted more cynically, taking the lack of clear guidance as a reason to focus on evading scrutiny without changing much about their operations. In sum, greater guidance from the Bar would benefit consumers as well as those trying to advise them consistent with the UPL rules.

III. Punishing Good Work: Do the Rules Need to Change?

Although NCAJ has identified ways in which California might more effectively serve consumers through its UPL enforcement, the more pressing question is whether the UPL rules themselves, in California and elsewhere, do more harm than good to the consumers they are designed to protect. By defining “unauthorized practice of law” as broadly as they do, such rules prevent people from obtaining almost any meaningful help from non-attorneys who are equipped and available to help them.

Several of our interviewees expressed that the rules prohibit non-lawyers from providing important legal services they are competent to offer, which people desperately need and will not get otherwise. As one LDA put it, “I’m providing a real needed service, there’s no question of that, and I just can’t believe they don’t see that.”⁴⁴

California’s tentative embrace of Legal Document Assistants illustrates how overbroad and unworkable the current prohibition on unauthorized practice is. In California, Legal Document Assistants are non-lawyers who are empowered to help clients fill out legal paperwork. They are not allowed to “practice law,” which means that they cannot help their clients decide what forms they need to fill out, or give them any sort of advice as to how they should fill them out. They must wait for the client to instruct them. They are, to some degree, meant to serve as glorified scribes.⁴⁵

In the eyes of some LDAs, this conceptualization of their role is at odds with what clients actually want and need. One LDA told NCAJ that “What they tell us, is that the client is supposed to be able to walk in and say, ‘here’s all the forms, here’s what I want you to say, write it down.’ But how would they know? So, I give them some advice.”⁴⁶

⁴³ NCAJ interview, July 2021.

⁴⁴ NCAJ interview, August 2020.

⁴⁵ See above, fn 31, for text of California’s LDA law.

⁴⁶ NCAJ interview, June 2021.

Another LDA was more blunt. “If you’re an LDA and you’re working independently,” he said, “I guarantee you that you’re violating state bar rules. According to the true rule of UPL, you can’t even help people pick a form. This isn’t consumer protection. It’s draconian application of some archaic rule.”⁴⁷ Another stated flatly that “You *do* tell people, here’s what you need – you need this form and this and that. They don’t know any of that.”⁴⁸

One non-lawyer told NCAJ that for many years he operated a “booming” court navigation service. “I wouldn’t represent them or anything,” he said, “but I’d go with them and then afterward I’d explain to them what had actually happened. What they actually had to do next, translate the legalese into English, and so on.” In 2020, he was hit with a UPL Cease-and-Desist notice from the Bar. He struggled to identify a clear path to operate on the right side of the rules, without any guidance from the Bar on how to proceed. “At that point, I actually thought about just quitting,” he said. In the end, he kept his business open but offers less help for the same fees. “I’m good at what I do because I care, because I go the extra mile,” he said. “But now I’m a little more circumspect about it.”⁴⁹

Similarly, NCAJ interviewed a paralegal working primarily in housing and family law, who was the subject of an anonymous UPL complaint about his advertising practices. The Bar investigated and issued a UPL Cease-and-Desist letter. Ultimately, he saw no choice but to develop a closer relationship with two attorneys who occasionally supervised his work – and to bill his clients for their retainer. “I prepare the answer or the motion that needs to be prepared, but the attorney’s name is on it and it’s more expensive,” he said. “My rates are now five times higher, and the clients are mostly wealthier people. It’s pretty much a rip-off but there’s no other angle I can take.” He said that the kind of clients he used to serve could no longer afford his services. “You tell someone \$500, and \$250 up front is something they can work with. You tell them \$5000, and they don’t see how they can pay you.”⁵⁰

A third independent paralegal told NCAJ that she stopped offering her clients advice after receiving a Cease-and-Desist notice – even when she knew they were setting themselves up for disastrous outcomes. “I’m in a position where I’m so afraid – sometimes people come in and they are very unreasonable and we know that what they are asking for is not going to happen. I don’t say anything anymore. Before, it was different, I would give them some advice.”⁵¹

Even acting as a mere intermediary, to provide a buffer between an unrepresented party and her adversary, can run afoul of the current UPL provisions. One Legal Document Assistant told NCAJ that he was helping a self-represented client prepare documents for a divorce. She alleged a history of violent abuse at the hands of her husband, who had retained an attorney. Because she found the interactions with her husband’s lawyer traumatic, her therapist asked the LDA if he could do anything to make the process easier on the client. The LDA offered to send an email to the husband’s attorney that the client had drafted – on the understanding that he would simply

⁴⁷ NCAJ interview, August 2021.

⁴⁸ NCAJ interview, August 2021.

⁴⁹ NCAJ interview, July 2021.

⁵⁰ NCAJ interview, July 2021.

⁵¹ NCAJ interview, June 2021.

cut and past her words into an email, “typos and all.” The lawyer responded and said, “You’re skirting the line on unauthorized practice of law, cease and desist now.” Even though the LDA explained that he would not contact the lawyer again, the lawyer made a complaint to OCTC alleging he had engaged in the unauthorized practice of law.

Another indicator that the UPL rules are too restrictive is that judges are looking to non-lawyers to provide more assistance than the UPL rules currently permit. As one veteran LDA put it, “There’s this huge disconnect between what the bar considers UPL and what judges in the courtrooms I work in are actually calling on me to do in the course of my normal professional life.” He went on to explain that one judge had told him:

“Look, we know you are going to cross the letter of the law with UPL. But because the family law court is so backed up and is such a quagmire, we would rather help you guys help with the basic stuff rather than have it come in written in crayon. Just be careful – don’t put your names at the top of the document.” And that’s how it’s been working.

This aligns with the findings of one recent study that described a “quiet” collaboration between judges and non-lawyers that is “hidden behind the scenes:”

Focusing on domestic violence courts as the primary illustration, we find that even in jurisdictions not currently contemplating regulatory reform, judges are relying on organized non-lawyer actors to prepare pleadings, offer substantive and procedural information to litigants, and provide counseling services. These non-lawyer advocates play a significant role in shaping the facts and arguments presented to the judge, which we believe, in turn, influences process and outcomes.

The study suggests that judges who face large numbers of unrepresented litigants allow and indeed rely on non-lawyer advocates even when UPL rules might technically prohibit some of that activity.⁵²

Conclusion

Like many other states, California is actively considering new models of legal services delivery that would allow non-lawyers to play a greater role. Policymakers – and the organized Bar – should consider the untapped potential of these new ideas. They should also consider whether existing UPL rules are actively blocking people from doing much needed work they are already equipped to do well – work that some courts may already be quietly embracing. As NCAJ has argued elsewhere, the Bar should consider whether some of the work non-lawyers are already doing *in defiance* of the rules should in fact inform how the rules themselves should be rewritten to allow it.

⁵² Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Mark, *Judges and the Deregulation of the Lawyer's Monopoly*, Fordham Law Review, Vol. 89, p. 1315, 2021. Available at https://scholarship.law.columbia.edu/faculty_scholarship/2745.

Recommendations

To the California State Bar:

1. Ensure that UPL Cease-and-Desist letters are sufficiently clear and definite to alert recipients to the specific activities causing their operations to be out of compliance with the UPL law.
2. Collect and publish comprehensive data about OCTC's UPL caseload including the following:
 - The proportion of cases that involve allegations of consumer harm.
 - The proportion of complainants who are clients of the alleged violator, and not lawyers, judges, other members of the public, etc.
 - The proportion of complainants who are attorneys performing work connected to a legal matter the alleged violator is also working on.
 - The areas of law implicated.
3. In every investigation, proactively inquire of the complainant whether there are any allegations of consumer harm connected to the case – regardless of whether these are alleged in the complaint initially put forward.
4. For each entry on the Bar's published list of UPL Cease-and-Desist letter recipients, provide basic information about:
 - The nature of the UPL activity at issue in the complaint;
 - The existence of any allegation of consumer harm;
 - The relationship of the complainant to the alleged UPL violator; and
 - Information about any guidance provided to the alleged UPL violator on steps they might take to bring their operations into compliance.
5. Consider whether to stop publishing the names of UPL Cease-and-Desist letter recipients in cases where there is no allegation of consumer harm.
6. Consider whether existing UPL rules are actively blocking people from doing much needed work they are already equipped to do well – work that some courts may already be quietly embracing.

To California State Legislators:

1. Ensure that the State Bar has the resources necessary to implement the recommendations above.
2. Consider revising the definition of prohibited “unauthorized practice of law” to exclude the provision of certain kinds of limited legal advice, such as form selection
3. Amend the statute providing criminal penalties for unauthorized practice of law activity to ensure that no sentence of incarceration may be imposed except in cases involving fraud.