

UPL ADVISORY OPINION NO 2014-3

Representation of Family and Friends

Facts:

1. Mother graduated from law school but is not licensed to practice law in Oregon or any other state. She would like to defend her son in a criminal matter in circuit court.

2. A contractor with no background in law would like to represent his friend in a construction dispute with a homeowner in a county justice court.

3. A contractor with no background in law would like to represent his friend in a construction dispute with a homeowner before the small claims department of a circuit court.

4. Friend, who has worked as a legal assistant, would like to assist her acquaintance, wife, with selecting pleading forms and drafting pleadings to file in a pending divorce case in circuit court.

Questions:

1. Can mother represent her son in circuit court?
2. Can contractor represent his friend in justice court?
3. Can contractor represent his friend in small claims court?
4. Can friend assist wife with selecting pleading forms and drafting pleadings to file in a divorce case?

Conclusions:

1. No.
2. Yes.
3. No.
4. No.

Discussion:

I. Question No. 1 (Non-lawyer Parent Representing Child in Circuit Court)

A non-lawyer mother who tries to represent her child in circuit court would very likely engage in the unlawful practice of law.¹ Although people may represent themselves *pro se* in circuit court, only active members of the Oregon State Bar and out-of-state lawyers admitted *pro hac vice* may represent other persons. ORS 9.320 (a party may only prosecute or defend a lawsuit *pro se* or through an attorney).²

It makes no difference that mother seeks to represent her own child. As a general rule, non-lawyer parents do not have a right to provide legal advice to their children or serve as their children’s lawyers.³ Because mother is not an active member of the Oregon State Bar or any other state bar, she may not defend son in a criminal matter in circuit court. Mother’s legal education does not give her the right to defend son. Attending law school or having a law degree does not give a person the right to represent others in court.⁴

¹ ORS 9.160(1).

² *Accord* ORS 9.160(2); *see Oregon Peaceworks Green, PAC v. Sec’y of State*, 311 Or 267, 270-71, 810 P2d 836 (1991) (“ORS 9.160 unequivocally prohibits a nonattorney from practicing law. ORS 9.320 states the key exception to the ORS 9.160 prohibition: representation of oneself. Neither statute empowers a nonattorney to represent *another* in state court, a fundamental aspect of law practice.”).

³ In some cases involving minor children, parents may have independent, enforceable rights to prosecute on their own behalf. *See e.g., Winkelman v. Parma City School District*, 550 US 516, 127 S Ct 1994, 167 L Ed 2d 904 (2007) (holding parents have authority to bring an action under the Individuals with Disabilities Education Act (IDEA) as an aggrieved party with independent rights).

⁴ *But see* Oregon’s Rules for Admission of Attorneys 13.05 to 13.30 (Law School Appearance Program allowing limited court appearances by eligible law students who are certified by the court and supervised by an active member of the bar).

II. Question No. 2 (Non-lawyer Representation of Friend in Justice Court)

Non-lawyers such as contractor may represent other people in justice courts. ORS 52.060 states “[a]ny person may act as attorney for another in a justice court, except a person or officer serving any process in the action or proceeding, other than a subpoena.” Therefore, in this example, the contractor would be able to represent his friend in justice court regarding the construction dispute with the homeowner.

III. Question No. 3 (Non-lawyer Representation of Friend in Small Claims Department)

Non-lawyer contractor would likely be engaging in the unlawful practice of law if he tried to represent his friend in a small claims department of a circuit court. Generally, people must represent themselves in small claims court unless the court orders otherwise. ORS 46.415(4) (in small claims proceedings, no “person other than the plaintiff and defendant . . . shall appear on behalf of any party”).⁵

IV. Question No. 4 (Non-lawyer Selecting Forms and Drafting Pleadings for Friend)

Non-lawyer friend may not select legal forms or draft pleadings for wife’s divorce case because to do so would very likely be the unlawful practice of law. ORS 9.160 (1). As a general rule, non-lawyers may not select legal forms or draft pleadings for others to file in circuit court, because such activity would amount to the unlawful practice of law.⁶ Even though friend has some limited training and experience as a legal assistant, she may not give legal advice to another person.

⁵ Exceptions may apply when a party is a government entity (*e.g.*, the State of Oregon) or a party obtains permission from the court to be represented by an attorney. ORS 46.415(4), (5).

⁶ *Oregon State Bar v. Security Escrows, Inc.*, 233 Or 80, 89, 377 P2d 334 (1962) (holding that “the practice of law includes the drafting or selection of documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons being served”).