

Commission on the Unauthorized Practice of Law **Fair Housing Advisory Opinion 2010-002**

The Commission on Unauthorized Practice of Law (UPL Commission) received a request for an advisory opinion regarding the ability of a nonlawyer to represent someone other than themselves at the first stage of an unfair housing proceeding without committing unauthorized practice of law (UPL). The procedures in question are the administrative investigation step and the initial meeting of the Nebraska Equal Opportunity Commission (NEOC) where the investigation is reviewed. The process is set forth in the Nebraska Fair Housing Act, *Neb. Rev. Stat. §§20-301 to 20-344*. The NEOC assigns an investigator to review the complaint. The investigator prepares the information for the NEOC meeting. The NEOC Commissioners review the information provided to them and make a determination as to whether there is a discriminatory housing issue under either Federal or State law.

The specific question that was asked for purposes of this advisory opinion is whether non-lawyer representatives who are employed by the Fair Housing Center of Nebraska, a Nebraska 501(c)(3) charitable organization, are committing UPL when they represent a complainant at the early stages of the administrative process. The representation takes place during the administrative investigation process and the subsequent meeting which is designed to review the materials compiled during the investigation. At the conclusion of the meeting, a determination is made as to whether a formal charge of discrimination should be filed.

The types of cases where non-lawyer representatives assist complainants are not “contested” as defined in the Nebraska Administrative Procedures Act (hereinafter APA). Under the APA, a contested case is, “...a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.” *See Neb. Rev. Stat. 84-901*. A contested case heard pursuant to the APA requires that an official record is kept of the administrative hearing. *See Neb. Rev. Stat. 84-913*. Furthermore, there are fairly elaborate procedures set forth for a contested administrative hearing. *See Neb. Rev. Stat. 84-914*. This opinion is limited to cases investigated pursuant to the Nebraska Fair Housing Rules and Regulations at the informal steps of the process described above and not at the level of a contested hearing.

At the conclusion of administrative investigation of a complaint by the NEOC, there is a meeting at which a determination is made as to whether there is reasonable cause for a case to proceed to a formal hearing. At the informal meeting, the parties may address the Commission. There are no rules of evidence in effect at the meeting or at any time during the investigation. No evidence is offered at the meeting. No record is created at the meeting which would be the basis for further review. The parties retain the right to proceed regardless of the determination made at the meeting. If the parties elect to proceed to the next step, there is a formal process with procedures that are similar to those of a district court.

The general prohibition for practicing law is set forth in Neb. Ct. R. §3-1003. This rule provides: “No nonlawyer shall engage in the practice of law in Nebraska or in any manner represent that such nonlawyer is authorized or qualified to practice law in Nebraska except as may be authorized by published opinion or court rule.”

The practice of law is defined at Neb. Ct. R. § 3-1001:

The “practice of law, “ or “to practice law, “ is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:

- (A) Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.
- (B) Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person.

- (C) Representation of another entity or person in a court, in a formal administrative adjudication proceeding or another formal dispute resolution process, or in an administrative adjudicative proceedings in which legal pleadings are filed or a record is established as the basis for judicial review.
- (D) Negotiation of legal rights or responsibilities on behalf of another entity or person.
- (E) Holding oneself out to another as being entitled to practice law as defined herein.

We do not need to go further than the above definition of the practice of law to resolve this advisory opinion. Neb. Ct. R. §3-1001 (C) allows representation of the type that is provided by the Family Housing Center. The investigatory stage of the complaint process and the subsequent meeting with the NEOC are not formal adjudicative processes. There are no pleadings filed nor is there a record established as a basis for judicial review. Thus, at the early stages of the administrative proceedings under the Nebraska Fair Housing Act, a nonlawyer may assist a complainant.

Based on the facts presented in the request for the advisory opinion, there is no violation of the UPL Rules. The facts demonstrate no violation of § 3 – 1001 (A)(B)(D) or (E) with (C) already addressed in the opinion. This opinion is very fact specific, thus, with even a slight change in the work the representatives do, there may be a violation of the Rules. The representatives and their employer need to proceed with caution as they engage in their work.

In conclusion, the assistance provided by Family Housing Center staff acting as representatives during the investigative process, including attending the NEOC Commission meeting where there is a determination if the case should continue to a formal administrative hearing is not the unauthorized practice of law under the Nebraska Court Rules.