Accessing Justice:
Public Libraries and Legal Needs Training

Agenda

9:00-9:30 Registration
9:30-9:45 Welcome
9:45-10:45 The Virtual Law Library: Resources at your Fingertips
    Presented by: Jennifer Frazier, KY State Law Librarian
10:45-11:00 Break
11:00-12:00 What Questions May I Answer: A Panel Discussion
    Panelist: Terry Manuel, KDLA Program Development Manager
    Marc Theriault, General Counsel Administrative Office of the Courts
    Steven Pulliam, Deputy Bar Counsel Kentucky Bar Association
12:00-1:00 LUNCH
1:00-2:00 Continuation of the Panel
2:00-3:00 Virtual Reference Tool
    Presented by: Soha Saiyed, Staff Attorney Legal Aid Society
Justice Wil Schroder,

Justice Schroder was elected to the Supreme Court of Kentucky in November 2006 to serve the 6th Supreme Court District. Justice Schroder has more than 27 years of judicial service. He served on the Kentucky Court of Appeals for more than 15 years (1991 to 2006). He also served as a trial judge on the Kenton District Court for almost eight years (1983 to 1991), which included one year as a juvenile judge.

Justice Schroder earned his bachelor’s degree in 1968 and his juris doctor in 1970 from the University Of Kentucky. He also earned an advanced law degree, LL.M., in 1971 from the University Of Missouri at Kansas City. Justice Schroder was admitted to the Kentucky Bar in 1970, the Missouri Bar in 1972 and the United States Supreme Court Bar in 1974.

In the early 1970s, while completing his advanced law degree at the University Of Missouri, Justice Schroder worked as an attorney for the Kansas City Legal Aid Society and as a corporate attorney for the St. Paul Insurance Company. Upon returning to Kentucky, he became an assistant law professor at Northern Kentucky University Salmon P. Chase College Of Law (1972 to 1975) during the first three years the college operated as a Kentucky-based institution.

Justice Schroder was in private practice (1975 to 1983) in Covington with his brother, Robert, where he represented the Northern Kentucky Area Planning Commission and served as a contract attorney for the Special Fund of the Division of Workers’ Compensation and as a Kenton County public defender. He also served as a hearing officer for the Kentucky Personnel Board and was appointed city attorney for Newport, Ky., (1982 to 1983) during the onset of Newport’s early riverfront development.

Justice Schroder was born in 1946 in Fort Mitchell, where he and his wife, Susan Wahlbrink Schroder, reside. He is the father to two daughters, Stephanie and Lydia, and a son, Wil.
Jennifer Frazier,

Jennifer is the State Law Librarian. She received her BA in History from Northern Kentucky University; J.D. from the Brandies School of Law at the University of Louisville and Masters in Library and Information Science from the University of Kentucky. She is a member of the Kentucky Bar Association, American Association of Law Librarians, Kentucky Library Association, and the Southeastern Chapter of the American Association of Law Librarians. She is a Commissioner on the Kentucky Access to Justice Commission and was a member of the three person team from Kentucky sent to the Public Libraries and Access to Justice Conference presented by the Self-Represented Litigation Network and National Center for State Courts in Cooperation with Legal Services Corporation held in Austin, TX in January 2010. Additionally, she was a panel member at the National Association of Legal Aid and Defenders conference in November 2010 presentation on Libraries and Access to Justice.
Terry Manuel,

When Terry Manuel was assigned to the Alice Lloyd College library as a work-study student aide responsible for repotting all the plants in the college library, he had no idea it would lead to a career in library and information sciences. After receiving Bachelor’s degrees in History and Sociology from Pikeville College, Terry served as a bookmobile librarian and library director for the Floyd County (KY) Public Library while also serving as a volunteer firefighter and deputy sheriff and earning his MLS from the University of Kentucky. A vacation to Wyoming in 1989 turned into a three-year position as liaison for State Government Services with the Wyoming State Library. Terry returned to Kentucky in 1992 and joined the Kentucky Department for Libraries and Archives in November of that year as a regional librarian. In 1997 he was appointed as KDLA’s statewide technology consultant, and in 2006 became a branch manager for the Field Services Division of KDLA.

In 2010, Terry earned his Masters in Law from Champlain College in Burlington, VT, and is currently pursuing a Ph.D. in Public Administration through Cappella University. In his spare time, Terry likes to rebuild and repair amateur radio equipment. He and his wife – parents of two beautiful daughters and grandparents of five exceptionally bright and beautiful grandchildren – live on a farm in Anderson County, KY with two dogs and six cats.
Marc Theriault,

Marc is General Counsel to the Administrative Office of the Courts. In this position, he is responsible for managing the AOC legal department; drafting revisions to court rules and administrative procedures; drafting and revising statewide legal forms; representing Court of Justice interests on various boards, work groups, task forces and commissions; and managing litigation involving judges, circuit court clerks, AOC personnel, and all other Court of Justice interests.

He previously served as Law & Technology Projects Manager at Legal Aid Society of Louisville and Statewide Technology Coordinator for all of Kentucky’s legal aid programs. During this time, Marc created several innovative programs combining advocacy with the creative use of technology, including opening and managing Kentucky’s first legal self-help center and Kentucky’s first legal-assistance program for veterans. His work as managing attorney for the Kentucky Corps of Advocates for Veterans earned legal aid a trip to the White House as well as national recognition for being one of the first programs of its kind nationally.

Marc is a graduate of the University of Kentucky College of Arts & Sciences and of Santa Clara University School of Law, where he completed a fellowship for former White House Chief of Staff and current Secretary of Defense, Leon Panetta. He has also served as adjunct faculty for the University of Louisville Brandeis School of Law and is an active member of the Kentucky Bar Association and Louisville Bar Association.
Steven Pulliam,

Steven received his B.S. in Natural Resource Conservation and Management from the University of Kentucky in 1999. He then earned his J.D. from the UK College of Law in 2002, where he was a member of the staff and Notes Editor of the *Journal of Natural Resources and Environmental Law*. After graduating from law school Pulliam was admitted to the Kentucky Bar and clerked for Judge Roger L. Crittenden (Ret.) in the Franklin Circuit Court. He then joined the KBA Office of Bar Counsel in 2003. He left in 2007 to work for the KY Department of Environmental Protection handling waste litigation cases as a staff attorney, but returned to the KBA in 2008. He currently serves as Deputy Bar Counsel and primarily focuses on disciplinary cases, but also advises the KBA on a variety of issues, and oversees the KBA Unauthorized Practice of Law Committee.
Soha Saiyed

Soha is a staff attorney with the Rural Unit at the Legal Aid Society and Project Manager for the Technology Initiative Grant that brings libraries and Legal Aid together to serve low income populations in Kentucky. Soha is admitted to practice in Kentucky. Prior to joining Legal Aid in July 2008, Soha served as a Compliance Officer at Expungement Assistance Services.
The Virtual Law Library: Resources at your fingertips

Jennifer Frazier
State Law Library
502-564-4848
jenniferfrazier@kycourts.net

Finding Cases

- Subscription databases
- KY Supreme Court and Court of Appeals
  - www.courts.ky.gov
- Google Scholar
  - www.google.com/scholar
- Cornell
  - http://www.law.cornell.edu/
Cases Continued

- U.S. Supreme Court
  - www.supremecourt.gov
- Appellate court cites
- PACER
  - www.pacer.gov
Statutes, Acts and Bills

- GPO Fdsys
  - www.gpo.gov/fdsys
- KY LRC
  - www.lrc.ky.gov
Indexes and Search Engines

- Law Library of Congress
  - www.loc.gov
- KY Bar Association
  - www.kybar.org
- University of Louisville
  - www.law.louisville.edu/library
- Criminal Law Library of NY
  - www.nycourts.gov/library
Forms

- AOC forms
  - www.courts.ky.gov/forms

- www.kyjustice.org
Legal Aid

- www.kyjustice.org
- National Center for State Courts
Information to help you

- http://www.webjunction.org/partners/minnesota/mn-topics/platj.html
- http://web.resourceshelf.com/go/resourcetable/58327
- http://accesstojustice.net/category/libraries/

Questions?
Helpful Websites

Legal Aid

www.kyjustice.org

Kentucky Research

Statutes- www.lrc.ky.gov

Cases- www.courts.ky.gov

Forms- www.courts.ky.gov

www.kyjustice.org

Access to Justice


Access to Justice blog- www.accesstojustice.net
Supreme Court of Kentucky

RE: Establishment of Kentucky Access to Justice Commission

ORDER

(A) Purpose. The Kentucky Access to Justice Commission (KAJC) is created in recognition of the need to expand access to civil legal representation for people of low income and modest means in Kentucky.

(B) Authority. Section 109 of the Kentucky Constitution establishes the Court of Justice, and Section 110 vests in the Chief Justice the duty and responsibility to perform all necessary administrative functions relating to the courts of this Commonwealth. Section 14 of the Kentucky Constitution further ensures open and speedy access to our court system.

(C) Membership. The KAJC will consist of twenty-five appointed members and five ex-officio members. The Chief Justice or designee will serve as interim Chair of the Commission until a permanent Chair is selected by the voting members. Members will serve three-year terms at the discretion of the Chief Justice. Each member will serve an initial staggered term, which will be from one to three years. The initial term for each member will be designated at the time of appointment. Members will be appointed as follows:
(1) Voting members:

(a) Two members appointed by the Chief Justice from each of the seven Kentucky Supreme Court districts;
(b) Four judges or justices selected by the Chief Justice to represent each of the four divisions of the Kentucky Court of Justice. No more than two of these representatives may be a retired or senior judge or justice;
(c) One Circuit Court Clerk appointed by the Chief Justice;
(d) One representative from the Kentucky Bar Association’s Board of Governors appointed by the President of the KBA;
(e) One representative from the four Kentucky civil legal aid programs, to be chosen by that group collectively;
(f) The Governor of Kentucky or a representative appointed by the Governor;
(g) The Speaker of the House or a member of the Kentucky House of Representatives appointed by the Speaker of the House;
(h) The President of the Senate or a member of the Kentucky Senate appointed by the President of the Senate; and
(i) The Kentucky State Law Librarian.

(2) Ex officio members: In addition to the twenty-five voting members of the Commission, five non-voting ex-officio members will be designated from each of the following organizations to serve three-year terms:

(a) One individual collectively representing the three law schools in Kentucky, serving on a rotating basis each term;
(b) A representative of the Kentucky Sheriff’s Association, to be appointed by
the President of the Association;
(c) The Director, or designee, of the Administrative Office of the Courts;
(d) The President, or designee, of the Kentucky Justice Association; and
(e) The President, or designee, of the Kentucky Defense Counsel.

(3) Vacancies. The KAJC will immediately notify the Supreme Court of any
vacancy on the Commission. A replacement member will be appointed to serve
the remainder of any unexpired term.

(D) Responsibilities. The KAJC is charged with the following goals, purposes,
and responsibilities:

(1) Identify the current and future needs of the legal services community in
providing access to justice to the poor and financially disadvantaged in
Kentucky;

(2) Develop and establish a strategic statewide plan for delivery of legal services
to the poor and financially disadvantaged in Kentucky;

(3) Develop strategies and ideas to increase resources and funding for access to
justice in civil legal matters and to make recommendations to appropriate
entities to ensure that the resources and funding are applied to the areas and
organizations of greater need;

(4) Work to improve funding, resources, support, development, and delivery of
civil legal services to low income people;
(5) Assist in access to justice through self-representation and use of volunteer lawyers;

(6) Expand the delivery, support, and development of civil legal aid through development of committed government leaders, and increase public education on civil legal aid matters and its impact on society;

(7) Work to reduce barriers to the justice system by addressing existing proposed court rules, procedures, and policies that affect access to justice for poor Kentuckians;

(8) Monitor and evaluate the effectiveness of the statewide system and service providers and periodically evaluate the progress made in fulfilling their respective responsibilities; and

(9) Be directly responsible to the Supreme Court for reporting and making recommendations concerning access to justice to the court system by persons in the Commonwealth of Kentucky.

(E) Bylaws. The KAJC shall establish its bylaws and other internal operating procedures pertinent to its responsibilities and may appoint committees to assist its work. The bylaws of the Commission must be approved by the Supreme Court. All offices, if any, shall be established by the Commission’s by-laws.

(F) Review. The Commission will submit an annual written summary report to the Supreme Court, subject to more frequent reporting as required by the
Supreme Court or the Commission's by-laws. The Supreme Court will review and evaluate the work of the Commission no later than January 1, 2013.

SO ORDERED this 14th day of October, 2010.

[Signature]
CHIEF JUSTICE
Remarks

Chief Justice John D. Minton Jr.
News Conference: Kentucky Access to Justice Commission

Thursday, Oct. 14, 2010, 10:30 a.m.
Supreme Court Courtroom, Capitol, Frankfort, Ky.

Good morning.

I take your presence here today as support for the important announcement we are about to make and I appreciate you being here.

As those of us in state government work to meet the challenges of the worst budget crisis in recent history, we tend to focus on the big picture – the major programs and services that are the most visible.

During fiscal difficulties, it is tempting to postpone action or support for programs that, while often less visible, are nonetheless critically important.

That’s why I am pleased to announce today that the Supreme Court of Kentucky is making access to justice a priority for the Judicial Branch. We are partnering with the state’s legal, business, civic and religious communities – as well as the Executive and Legislative branches – to create the Kentucky Access to Justice Commission.

Stated simply, the goal of the commission is for the judiciary to take a leadership role in delivering civil legal aid to low-income citizens who have nowhere else to turn for help.

Civil legal aid is legal assistance provided at no cost to low-income individuals and families for urgent, non-criminal legal matters.

In Kentucky and nationwide, those who live below the federal poverty guideline are often without the means to retain an attorney to handle important legal needs. Legal aid intervenes with legal advice and representation to protect vulnerable individuals who face threats to their safety, health, financial security and overall well-being. For example, legal aid staff help the elderly obtain government benefits; help victims of domestic violence escape abuse and rebuild their lives; prevent evictions, protecting children from homelessness and educational disruptions; and aid victims of consumer fraud and those facing bankruptcy.
Today Kentucky joins nearly two dozen states where supreme courts have formed Access to Justice Commissions to help their low-income citizens obtain this critical legal assistance.

The need in Kentucky is great and it is growing. Currently, Kentucky Legal Aid receives 4,000 calls a month requesting legal help. Legal Aid closes about 24,000 cases each year, providing assistance to 68,000 low-income families and children who can’t obtain legal assistance anywhere else. While the number served may seem high, in fact less than half of those who need help actually receive it. About 55 percent of the people who apply and are eligible for legal aid services are turned away because of lack of resources.

That’s an alarming statistic and the current economic downturn makes it even more difficult to close this gap.

The Kentucky General Assembly has funded legal aid for the poor since 1996. However, due to the budget crisis, the 2008 state appropriation for civil legal aid for poor Kentuckians was cut by nearly 67 percent, from $1.5 million to $500,000 per year. Budget cuts have resulted in the loss of at least 15 attorney positions and the closure of a branch office in a rural area of the state. The IOLTA (Interest on Lawyers Trust Accounts) annual dispersals to programs providing civil legal services have declined from $1.6 million to $400,000 in the last three years.

We want to increase the amount of civil legal aid available to our fellow Kentuckians and we plan to do that by forming the Kentucky Access to Justice Commission.

The Commission has been established by Supreme Court order. I have appointed Judge Roger L. Crittenden, a retired Franklin County circuit judge with a distinguished reputation on the bench, to serve as interim chair of the commission. Judge Crittenden has the years of judicial and administrative experience, as well as the leadership ability and diplomacy, to effectively lead this group, and he has graciously accepted this challenge.

I am in the process of appointing members to the commission in preparation for the KAJC’s first meeting on Jan. 28, 2011. There will be 25 appointed members and five ex-officio members. The names of the members will be announced in the coming weeks.

I have long been a supporter of attorneys doing pro bono work. Each year during my Law Day address, I tell the new lawyers that I believe it is the obligation of attorneys to make our system of justice available to all citizens by contributing a portion of their knowledge and skill pro bono and by participating in community and civic causes.

That idea has gained momentum in the last decade as the American Bar Association and the national Conference of Chief Justices have supported the creation of Access to Justice commissions.

In 2006, the Conference of Chief Justices, of which I am a member, passed a resolution that acknowledged the importance of judicial leadership in establishing partnerships with the state’s legal community to ensure equal access to justice. The resolution called for states to seek results in three areas:
1) To remove impediments to access to the justice system, including physical, economical, psychological and language barriers;
2) To develop effective plans for funding for civil legal services for those who have no meaningful access to the justice system; and
3) To expand assistance available for self-represented litigants.

The key to the commission’s success is teamwork. For us to be effective, the judiciary must partner with the state and local bar associations, legal aid providers, law schools, elected officials and other community leaders. Only together can we provide the level of legal aid services needed by our fellow Kentuckians.

Before I turn the program over, I’d like to give a word of appreciation to Jacqueline Duncan, director of the Kentucky Volunteer Lawyer Program. Jackie is so committed to the cause that she pushed to bring it to the attention of the Supreme Court. She has also been instrumental in preparing for the launch of the commission and I commend her spirit and her dedication to legal aid.

In addition, we wouldn’t be here today without the groundwork laid by our next speaker, Supreme Court Justice Bill Cunningham, who represents 1st Supreme Court District in Western Kentucky. Justice Cunningham embraced the idea of the Judicial Branch playing a leadership role in access to justice. He formed a steering committee and researched the national Access to Justice movement before formally proposing to the Supreme Court that we make this issue a priority. Justice Cunningham’s information, ideas and enthusiasm have been invaluable as we begin the process and I appreciate his support.

(Chief Justice Minton calls on Justice Cunningham and Judge Crittenden to speak and then they are available to take questions from the media.)

###
The Reference Services for Legal Matters

A librarian who begins offering opinions or advice about a course of action that should be taken, may unduly influence the patron, and it is possible that this influence could adversely affect the ultimate outcome the situation.

What a librarian should do:

- Recommend law books on particular subjects, including books that provide forms and will explain the law and procedures of the courts, and demonstrate how to effectively use them by explaining the indexes and tables of contents;
- Help to find the broad definition of legal words or phrases, usually by using sources such as Black’s Law Dictionary, Cal. Jur. 3rd, Words and Phrases, etc.;
- Point the patron to on-line sources to provide the patron with information which may be relevant to his legal question;
- Locate new legislation or cases when the patron does not know the citation or party names;
- Read short quotes from legal materials over the phone when the person has a specific citation (though it’s usually a bad idea);
- Teach legal research techniques such as use of digests and Shepard’s;
- Locate biographical information about attorneys and judges.

What a library should not do:

- “Help” a person by interpreting the law (statutes, regulations, or cases), or offering an opinion as to how a patron’s specific legal problem should be handled.
- Identify any single law as the statute (or regulation, or case) that will answer the patron’s legal question;
- Interpret the law by explaining what a statute (or regulation, or case) means;
- Recommend a specific legal form or explain how to fill in the form
- Write a brief, prepare a will or draft a contract;
- Interpret any legal document from a court or an attorney.

Definitions:

- **Legal information**: Facts about the law and the legal process
- **Legal advice**: Advice about the course of action someone should take to further his or her own best interest
- **Legal Information**: Who, what, where, when, how
- **Legal advice**: Opinions, conjecture, predictions
- **Legal information**: How to bring an issue to the attention of the court
- **Legal advice**: Suggestions on how best to proceed, or the judges’ inclinations
• **Legal information**: options can be described
• **Legal advice**: recommending a specific option

General Guidelines:

• If you don’t know, don’t guess
• Don’t do more than you are comfortable doing

• You can tell litigants how and where to file a complaint or other pleading
• You **can’t** advise litigants whether to file a complaint or other pleading, what sort of damages to seek, or what arguments to include

• Do not attempt to provide analysis or interpretation of statutes or ordinances based on the specific facts of the litigants case, or state positively that one statute is THE STATUTE the customer needs.

• You may provide forms for the litigant to use
• You may not provide or suggest the information that should be entered on the forms
• You may give information about where a form needs to be filed
• You cannot provide advice about whether a form **should** be filed

_____________________________________________________________________________________

**SAMPLE**

A MESSAGE TO PATRONS ON LEGAL ASSISTANCE

Some library patrons do not realize that it is unlawful for members of the library staff to help patrons interpret legal materials they read or to advise them how the law might apply to their situation. That kind of service would constitute the unauthorized practice of law and could subject the staff member and the library to prosecution. It would also require an amount of personal service that a staff of our size cannot provide if we are still to carry out other duties. For those reasons, our staff must limit themselves to advising you which materials or websites might be helpful to you, where they are located, and how to find information in them. Please do not think our staff is being uncooperative when they suggest that you interpret the materials you read for yourself and make your own decisions as to how the material you have read applies to you. Our staff will be happy to help you find the materials you need, and to show you how to use the various legal publications.

If you need further help to solve your legal problem, you may wish to consult one of the following legal service organizations:

   *Insert name and contact information of organizations here*

_____________________________________________________________________________________

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502-564-8300
**What is the practice of law?**

“The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.” (KY Supreme Court Rule 3.020)

**Kentucky Cases**

In *Kentucky Bar Association v. Brooks*, 173 S.W.3d 617 (Ky. 2005), it was determined that Ms. Brooks engaged in the unauthorized practice of law by advising customers how to fill out the Schedule C portion of their Petitions filed in the United States Bankruptcy Court. Brooks had already received a cease and desist letter from the KBA telling her to stop the unauthorized practice, but continued to advise customers. She was fined $1,500.00.

Ms. Brooks continued to advertise her Legal Self Help business under the "Attorneys" heading in the Yellow Pages and on the cover magnet, as well as the description of her services within the advertisements, create the misleading impression that she is providing legal services in the capacity of an attorney. In 2010 the Court ruled that her advertisements violated the Court's previous order to refrain from the unauthorized practice of law and fined her $5,000.00 for her “continued contumacious actions.” *Kentucky Bar Association v. Brooks*, 325 S.W.3d 283 (Ky. 2010).

In *Kentucky Bar Association v. Tarpinian*, 337 S.W.3d 627 (Ky. 2011), Ms. Tarpinian was helping draft legal pleadings and documents for customers who had provided her with answers to a questionnaire that she developed. She did not sell blank documents to customers. The Kentucky Supreme Court found that Tarpinian’s characterization of her business as a typing service was not credible. The simple questions on the questionnaire did not support the answers typed into the documents, and determined Ms. Tarpinian was interviewing and consulting with her customers, and was offering counsel and advice on legal matters. Ms. Tarpinian was also fined $5,000.00 by the Court.
QUESTION 1: Does a non-attorney business entity or corporation, whose business is the creation, preparation or typing of legal forms and documents, engage in the unauthorized practice of law when, in addition to creating, preparing or typing the forms, the non-attorney or entity assists in the identification of the purchaser’s legal goal and advises the purchaser on the proper choice and utilization of the forms to achieve their legal goal?

ANSWER: Yes. See Opinion

QUESTION 2: Does the answer to Question 1 change if the non-attorney business entity or corporation uses the services of an attorney, even if referred to as a “supervising,” “on call” or “employee” attorney?

Answer: No.

AUTHORITY

SCR 3.020 defines the practice of law. The Supreme Court of Kentucky has the exclusive authority to promulgate rules governing the practice of law. Turner v. Kentucky Bar Association, 980 S.W.2d 560 (Ky. 1998).

The compelling reason for such regulation is to protect the public against rendition of legal services by unqualified persons. Comment to Kentucky Rule of Professional Conduct SCR 3.130-5.5.

The practice of law is defined by SCR 3.020 as any service "involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services."

The "unauthorized" practice of law is the performance of those defined services by non-lawyers for others. Countrywide Home Loans, Inc. et. al v. Kentucky Bar Association, 113 S.W. 2d 105 (Ky. 2003).

Corporations are not permitted to practice law in the Commonwealth. Kentucky Bar Association v. Tussey, 476 S.W.2d 177 (Ky. 1972); KBA U-32; Kentucky Bar Association v. Legal Alternatives, Inc., 792 S.W.2d 368 (Ky. 1990).
OPINION

For many years the public has been able to obtain from office supply stores and a variety of other sources, pre-printed form documents identified as wills, contracts, powers of attorney, partnership agreements, articles of incorporation and other similar documents all of which will be referred to as “legal form documents” for purposes of this discussion.

More recently certain entities and businesses have emerged which not only sell preprinted business type legal forms, but in addition thereto offer the public the opportunity to purchase blank documents on which the purchaser may provide information, fill in the blanks and have the documents typed by the business. The customers would be representing themselves in various types of legal matters such as dissolution of marriage and consumer bankruptcy cases.

Some types of legal forms seem quite simple to complete while others are more complicated. The sale of these preprinted legal forms, in and of itself, does not constitute the unauthorized practice of law.

However, the Kentucky Bar Association has become aware that some such entities and businesses advertise directly while others strongly imply that by using their “services” no attorney is required to handle a variety of legal matters. Some specifically include in the purchase price of these forms the name and phone number of an identified attorney who is represented to be available to “provide information” for the purchasers of the legal forms. In some instances the purchasers are encouraged to contact the identified attorney for advice.

The purely ministerial acts of typing forms, filing in blanks on commercially available preprinted forms, or official forms of the courts, would not constitute the practice of law. However, if the services of these entities are not so limited, the services could violate the prohibition against the unauthorized practice of law.

The following are illustrative of the services that if rendered by such entities or businesses, would be the unauthorized practice of law:

1. Offering services to the public in such a manner that creates an impression in the public that it may rely upon such entities or businesses to properly prepare legal form documents for them or on their behalf, other than properly typing;

2. Representing to the public that such entities or businesses, or any persons that are either employed by or who act in concert with them, are capable of advising the public as to which forms are needed and how to use them;

3. Completing forms or assisting in the completion of forms that are not official forms approved by the Administrative Office of the Courts of the Supreme Court of Kentucky or the relevant state or federal Court or administrative agencies, if
conveying information that would lead a reasonable person to believe that the completed form is legally sufficient for the customer’s purpose;

4. Providing services such as conducting interviews to ascertain and evaluate information necessary to properly complete forms, that go beyond the mere selling of forms, typing of forms, providing written general information or providing secretarial or notary services;

5. Preparing or assisting in the preparation of any pleadings, motions, legal memoranda, arguments, briefs, notices or any other legal documents or pleadings for another person unless mere typing services are offered;

6. Using the title “paralegal” unless the employee is working directly for and under the supervision of a member of the Kentucky Bar Association and performs specifically delegated substantive legal work for which a member of the Kentucky Bar Association is responsible;

7. Giving advice and making decisions on behalf of another person that requires legal skill and knowledge of the law greater than that possessed by the average citizen;

8. Giving advice to another person concerning the application, preparation, advisability, or quality of any legal instrument or document in connection with any legal proceeding or procedure;

9. Construing or interpreting the legal effect of Kentucky or Federal laws and statutes for another person, as those laws relate to any legal matter, including but not limited to probate, dissolution of marriage, and bankruptcy matters;

10. Giving advice and/or explaining legal remedies and options to another person that affects that person’s procedural and substantive legal rights, duties and privileges;

11. Providing direct advice to another person in the nature of explanation, recommendation, advice and assistance in the selection and completion of preprinted legal forms;

12. Initiating and controlling a lawyer-client relationship, setting fees and paying an attorney to do work for a third party;

13. Engaging in any personal legal assistance in the preparation of legal forms including the service of “correcting” customer’s errors or omissions or providing customers with any assistance in preparing the forms other than mere typing or ministerial acts of correcting typographical errors;
14. Advising another person as to the sale, preparation or typing of a will, living trust or related documents by recommending or identifying the type of will, living trust or related documents most appropriate for another person’s situation;

15. Assembling and/or drafting a will, living trust, deed, durable power of attorney or related documents for another person;

16. Executing and/or advising on the steps necessary for the legal execution of a will, living trust, deed, durable power of attorney or related documents for another person other than providing notary services;

17. Funding and/or advising on the funding of a living trust for another person.

The preceding are examples of services which, if provided by non-attorneys, would constitute the unauthorized practice of law. The list is not intended to be exhaustive of all possibilities but merely exemplary of the types of improper activities that might be engaged in by non-attorneys or legal form document preparation entities.

If a customer already has identified their legal goals and intends the use of the forms to achieve such ends, then selling them the forms they request is not the practice of law.

However, "[p]racticing law is not confined to performing services in actions or proceedings in courts of justice, but includes giving advice and preparing wills, contracts, deeds, mortgages, and other instruments of a legal nature." Howton v. Morrow, 106 S.W.2d 81, 82 (Ky. 1937). (emphasis added) If the entity advises the customers that the document is advisable or legally sufficient for their particular legal situation, that is the unauthorized practice of law.

The availability of an “on call” attorney as part of the services being sold not only does not avoid the unauthorized practice of law, it adds another layer of problems.

If the entity or business has an employee who is a licensed attorney whose services have been sold as part of the package, and who, advises, or assists the purchaser in how to achieve their particular legal goal, one of two significant problems is involved. First, the services are being sold by the lay entity (however organized). Corporations cannot practice law. This relationship would cause the employee attorney to be aiding and assisting the entity in the unauthorized practice of law. See Kentucky Bar Association v. First Federal Savings & Loan Association, 342 S.W.2d 397 (Ky. 1960); SCR 3.130-5.5(e).

Second, similar business practices by an unincorporated entity, while they may not constitute the unauthorized practice of law by a corporation, raise other troubling ethical considerations for the attorney or firm involved which are outside the scope of this opinion but deserve mention. These include improper fee splitting, advertising and/or improper referral of legal business to the attorney. See KBA E-264; SCR 3.130-5.4.
Likewise, there may be consumer protection issues which are outside of the scope of this opinion.
KENTUCKY BAR ASSOCIATION

V. IN SUPREME COURT

SANDRA CAMILLE BROOKS

RESPONDENT

OPINION AND ORDER

On January 8, 1997, the Kentucky Bar Association (KBA) served Respondent with a letter, sent pursuant to SCR 3.460, directing her to discontinue the unauthorized practice of law. On July 11, 2005, the KBA filed a Motion for a Show Cause Rule pursuant to SCR 3.460, alleging that Respondent had violated its directive to discontinue her unauthorized practice of law. On July 12, 2005, this Court issued a rule ordering Respondent to show cause why she should not be held in contempt for violating the KBA's directive. Respondent filed her response on July 18, 2005, alleging compliance with the 1997 directive. On July 28, 2005, Respondent filed an amended verified response, requesting this Court to dispense with a hearing in the matter and admitting the said allegations.


2. Respondent is not admitted to practice law in the State of Kentucky.
3. On January 8, 1997, the Kentucky Bar Association (KBA) served Respondent with a letter, sent pursuant to SCR 3.460, directing her to discontinue the unauthorized practice of law.

4. In an Order dated April 27, 2004, Respondent was found to have engaged in the unauthorized practice of law by the United States Bankruptcy Court in the Eastern District of Kentucky. Respondent unsuccessfully appealed that Order.

5. On July 11, 2005, the KBA filed a Motion for a Show Cause Rule pursuant to SCR 3.460, alleging that Respondent had violated its 1997 directive to discontinue her unauthorized practice of law. On July 12, 2005, this Court issued a rule ordering Respondent to show cause why she should not be held in contempt for violating the KBA’s directive. Respondent filed her response on July 18, 2005, alleging compliance with the 1997 directive.

6. For the stated purpose of resolving the said controversy, Respondent amended her July 18, 2005, response, admitting that she engaged, subsequent to a 1997 directive issued by the KBA, in the unauthorized practice of law by advising customers how to fill out the Schedule C portion of their Petitions filed in the United States Bankruptcy Court. Respondent further admits that such practice was in direct violation of the KBA directive to cease and desist in the unauthorized practice of law.

7. Respondent requests this Court to dispense with an evidentiary hearing pursuant to SCR 3.460(2) and to find her in civil contempt of this Court for the unauthorized practice of law in violation of the 1997 KBA directive. Respondent further requests this Court to impose a sanction in the amount of one thousand five hundred dollars ($1,500) to be paid as reimbursement to the KBA for the time and expense it
incurred in this matter. Respondent additionally agrees to pay any costs or fees associated with these proceedings.

8. Respondent agrees to not engage in the unauthorized practice of law in the future.

9. The KBA is not opposed to Respondent's proposed resolution in this matter.

ACCORDINGLY, IT IS HEARBY ORDERED:

(1) Pursuant to SCR 3.460, Respondent is found to be in civil contempt of this Court for the unauthorized practice of law in violation of a 1997 KBA directive.

(2) Respondent is ordered not to engage in the unauthorized practice of law in the future.

(3) Respondent is sanctioned for her contempt in the amount of one thousand five hundred dollars ($1,500.00), to be paid to the KBA as reimbursement for its time and expense associated with this matter.

(4) As of this date, the KBA has not alerted this Court of any costs or fees due or owing in connection with this action.

Lambert, C.J., Cooper, Graves, Johnstone, Roach and Scott, J.J., concur.

Wintersheimer, J., concurs in result only.

Movant's motion for publication of this Court's Opinion and Order entered herein on August 25, 2005, is granted and the Opinion and Order is hereby designated "TO BE PUBLISHED."

Cooper, Graves, Johnstone, and Roach, JJ., sitting. All concur.

ENTERED: October 13, 2005.
Upon motion of the Kentucky Bar Association (KBA), this Court entered an order directing Sandra Camille Brooks to show cause why this Court should not hold her in contempt for her continued unauthorized practice of law in violation of an August 25, 2005 Order of this Court. The 2005 order held Respondent in contempt for her failure to abide by a 1997 KBA directive to cease and desist engaging in the unauthorized practice of law and, again, ordered her to refrain from the unauthorized practice of law. Respondent failed to timely respond to this Court’s April 22, 2010 Show Cause Order. Nevertheless, a response was filed upon this Court’s granting of Respondent’s motion for an extension of time.

At the outset, we must address a challenge to this Court’s jurisdiction. Respondent filed a motion to dismiss this case, asserting that the KBA has
failed to state a claim upon which relief can be granted and further asserting that this Court lacks subject matter jurisdiction. Although there is no accompanying explanation or argument, we surmise that Respondent is questioning this Court's authority to discipline her, a non-lawyer, for the violation of a Supreme Court Rule governing the practice of law. First, Respondent's assertion would have been better directed to the previous 2005 proceedings wherein this Court sanctioned her and enjoined her from the unauthorized practice of law. At this juncture, the proceedings are merely contempt proceedings for Respondent's violation of our previous order. Clearly, there can be no legitimate challenge to this Court's jurisdiction to enforce its own order and to impose contempt sanctions for violations of such order. Nevertheless, because of the significance of a jurisdictional challenge, we will address the underlying issue of this Court's jurisdiction to enjoin and sanction non-lawyers for the unauthorized practice of law.

This Court has long exercised its jurisdiction to sanction and enjoin non-attorneys from practicing law without a license. See, e.g., Hargett v. Lake, 305 S.W.2d 523 (Ky. 1957); Carter v. Brien, 309 S.W.2d 748 (Ky. 1956); Hobson v. Kentucky Trust Co. of Louisville, 303 Ky. 493, 197 S.W.2d 454 (Ky. 1946); Kentucky State Bar Ass'n v. First Fed. Sav. & Loan Ass'n of Covington, 342 S.W.2d 397 (Ky. 1961); Frazee v. Citizens Fid. Bank & Trust Co., 393 S.W.2d 778 (Ky. 1964); Kentucky State Bar Ass'n v. Kelly, 421 S.W.2d 829 (Ky. 1967); Kentucky Bar Ass'n v. Fox, 536 S.W.2d 469 (Ky. 1976); Kentucky State Bar Ass'n v. Bailey, 409 S.W.2d 530 (Ky. 1966). Furthermore, the contention that
this Court does not have jurisdiction to proceed against a nonmember of the legal profession for the unauthorized practice of law was expressly rejected in *Kentucky State Bar Ass'n v. First Fed. Sav. & Loan Ass'n of Covington*, 342 S.W.2d 397 (Ky. 1960), a holding that was reaffirmed in *Kentucky State Bar Ass'n v. Tussey*, 476 S.W.2d 177 (Ky. 1972).

Along with prior instances of sanctions and injunctions imposed by Kentucky's highest Court against non-lawyers for the unauthorized practice of law, *First Federal* relied on *In re Baker*, 85 A.2d 505 (N.J. 1951) for its exercise of jurisdiction over non-lawyers. *Baker*, a decision of New Jersey's highest court, explained that jurisdiction was expressly granted by its Constitution, but even absent such express authority, inherent power existed in the Court to exercise jurisdiction over laymen who were practicing law without a license. Significantly, New Jersey's constitutional provision, N.J. Const. Art. VI, § 2, is very similar to Ky. Const. § 116.¹ Both provisions provide for the state's supreme court to govern admission to the bar and to discipline members of the bar. *Baker* explained that this express authorization to regulate licensed attorneys necessarily carried with it an implied corollary power to sanction those who invade the province of the profession without obtaining admission to the bar. *Baker* eloquently stated the rationale as follows:

> It is generally conceded throughout the country that the power to control admissions to the bar and to discipline members of the bar is inherent in the judiciary. Here these powers have been expressly

¹ Section 116 provides, in relevant part, that the Supreme Court "shall, by rule, govern admission to the bar and the discipline of members of the bar."
conferred on the Supreme Court by art. VI, sec. II, par. 3 of the Constitution: “The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.” But whether inherent or express, these powers over the admission and discipline of members of the bar would be meaningless and futile if laymen might practice law with impunity. . . . The reason for prohibiting the unauthorized practice of law by laymen is not to aid the legal profession but to safeguard the public from the disastrous results that are bound to flow from the activities of untrained and incompetent individuals, assuming to practice a learned profession which entails years of preparation and without being bound by the high standards of professional conduct and integrity which are imposed on members of the bar by the Canons of Professional Ethics, which are zealously enforced by the courts for the public good.

_Baker_, 85 A.2d at 511-12.

_Baker_ gleaned insight from the highest courts of Illinois and Vermont, which had already addressed the issue. In _In re Morse_, 126 A. 550, 553 (Vt. 1924), the Supreme Court of Vermont said:

That the express legislative grant to this court of exclusive and full authority to determine who shall practice as attorneys before the courts of this state carries with it the implied power to do whatever may be reasonably necessary to make such grant effective, even to punishing for contempt those pretending to such office, cannot be doubted.

Similarly, in _People ex rel. Ill. State Bar Ass’n v. Peoples Stock Yard Bank_, 176 N.E. 901, 906 (Ill. 1931), the Supreme Court of Illinois stated:

Having inherent and plenary power and original jurisdiction to decide who shall be admitted to practice as attorneys in this state, this court also has all the power and jurisdiction necessary to protect and enforce its rules and decisions in that respect. Having power to determine who shall and who shall not practice law in this state, and to license those who
may act as attorneys and forbid others who do not measure up to the standards or come within the provisions of its rules, it necessarily follows that this court has the power to enforce its rules and decisions against offenders, even though they have never been licensed by this court. Of what avail is the power to license in the absence of power to prevent one not licensed from practicing as an attorney? In the absence of power to control or punish unauthorized persons who presume to practice as attorneys and officers of this court the power to control admissions to the bar would be nugatory. And so it has been held that the court, which alone has authority to license attorneys, has a necessary corollary ample implied power to protect this function by punishing unauthorized persons for usurping the privilege of acting as attorneys.

A related concept was addressed in Hobson v. Kentucky Trust Co. of Louisville, supra, which explained that unauthorized practice of law proceedings could be initiated not only by the bar association but by any practicing attorney because “an acquired right to practice law vests the holder with a ‘property right’ which he or she may protect against an intruder into the profession who has not likewise acquired such a similar right.” 197 S.W.2d at 458.

We need not add to the explanations so amply set out in the foregoing authorities to justify our exercise of jurisdiction over Respondent in the first instance, wherein we sanctioned and enjoined her from the unauthorized practice of law. Moreover, as stated earlier, the current proceedings are not unauthorized practice proceedings, although that is the underlying infraction; rather, because this Court has previously entered an order enjoining Respondent from further engaging in the unauthorized practice of law, these
proceedings are focused on whether Respondent should be held in contempt for violation of this Court's August 25, 2005 order. The nature of these proceedings being contempt as opposed to unauthorized practice of law removes them from the purview of SCR 3.460, which provides for the appointment of a special commissioner. In these contempt proceedings, Respondent has been offered an adequate opportunity to show cause why she should not be held in contempt of this Court's order. See Commonwealth v. Pace, 15 S.W.3d 393 (Ky. App., 2000). She has responded with a detailed explanation of the issues raised by her conduct and has submitted nine exhibits for the Court's consideration. We now turn to whether Respondent has indeed shown sufficient cause that she should not be held in contempt of this Court's 2005 Order.

Although Respondent is not admitted to practice law in this Commonwealth, Respondent has continuously operated a business, which she advertises as “Legal Self Help.” In 1994, the KBA received information indicating that Movant was selling legal forms, assisting customers in completion of the forms, and giving legal advice to customers, particularly concerning bankruptcy matters. This prompted an inquiry, followed by correspondence between the KBA and Respondent. The KBA obtained affidavits from two of Respondent's customers, stating that Respondent had given them legal advice and had provided them with extensive assistance in completing bankruptcy forms. The end result of the KBA's inquiry was a January 8, 1997 letter to Respondent. The letter noted, “You have also chosen
to advertise in the Lexington Telephone Book under the ‘attorneys’ section, although you are not an attorney.” The letter directed Respondent to cease and desist the unauthorized practice of law.

Despite this directive, in 2004, the United States Bankruptcy Court in the Eastern District of Kentucky found Respondent and her “Legal Self Help” business guilty of engaging in the unauthorized practice of law, a decision affirmed on appeal. Consequently, upon the KBA’s motion, this Court ordered Respondent to show cause why she should not be held in contempt for violating the 1997 directive issued by the KBA. Respondent admitted that she had violated the 1997 directive. In an August 25, 2005 Order, this Court held Respondent in contempt and imposed a sanction of $1,500.00. Further, the Court, again, ordered Respondent to cease the unauthorized practice of law.

The current disciplinary proceeding arises from Respondent’s continued advertisement of her Legal Self Help business under the “Attorneys” section of the 2009-2010 edition of the Windstream Yellow Pages (Yellow Pages) for the Greater Lexington Metro Area. The ad proclaims “Low Cost Legal Self Help . . . Over 22 years Helping Our Customers Save Costly Legal Fees . . . Hundreds of Legal Forms.” Further, Respondent’s business was advertised under “Attorneys” on a refrigerator magnet attached to the front of the book. In August 2009, the Office of Bar Counsel (OBC) notified Respondent that this advertising contravened this Court’s 2005 Order. In her reply, Respondent attempted to shift the responsibility for the advertisement to Yellow Pages by attaching their advertising terms and conditions, which explain that they
determine the listing headings and are authorized to refuse to publish an advertiser under a particular heading. Respondent asserted that her request for them to add other headings had not been approved.

The OBC requested documentation showing that Respondent had indeed asked that her business not be listed under the “Attorneys” heading and also requested that Respondent obtain an affidavit from a Yellow Pages employee, verifying that Respondent had no control over the placement of her advertisement in the phone book or on the cover magnet and further verifying that it was the Yellow Pages’ decision to list Respondent’s business under the “Attorneys” heading. Subsequently, Respondent stated that Yellow Pages was in the process of assigning a new representative to her area, who was supposed to contact her in mid-November 2009. She attached the same documentation as previously provided. In January 2010, OBC followed up with a phone call to Respondent, inquiring about the status of the requested affidavit. Her written response averred that Yellow Pages had advised her that the company was in the process of changing its name, that it was extending its publishing cycle for three months, and that a representative would contact her at that time. Respondent did not mention any efforts undertaken to obtain the previously requested affidavit.

Accordingly, on April 22, 2010 this Court ordered Respondent to show cause why she should not be held in contempt for violating this Court’s 2005 Order. In her response, Respondent seems to reason that a 2008 consent order and injunction issued by the United States Bankruptcy Court in the
Eastern District of Kentucky proves that she is no longer engaged in the unauthorized practice of law. However, the 2008 Order appears to have been prompted by allegations of Respondent’s continued violation of the Order issued by the Bankruptcy Court in 2004. The 2004 Order found that Respondent had engaged in the unauthorized practice of law and, in addition to imposing fines, required Respondent to submit weekly reports of customers purchasing “bankruptcy kits,” essentially enabling the Bankruptcy Court to continually monitor her activities. This arrangement lasted until 2008 when yet another adversary proceeding was commenced, alleging further violations by Respondent; namely, that she was preparing bankruptcy petitions. The proceeding resulted in the aforementioned 2008 consent order and injunction wherein Respondent, without admitting any wrongdoing, agreed to cease selling bankruptcy forms and performing any acts constituting the practice of law in the area of bankruptcy. We fail to see how the 2008 Order provides a defense to Respondent’s violation of this Court’s 2005 Order.

Furthermore, the particular violation at issue here involves Respondent’s holding herself out as an attorney through Yellow Pages’ advertisements. On this issue, Respondent continues her attempt to shift responsibility for the advertisement to Yellow Pages. She attaches to her response an affidavit of a Yellow Pages employee representative. However, the affidavit does not comply with the information requested by the OBC. Rather, the affidavit, dated April 12, 2010, simply states that Respondent has requested that Yellow Pages add new headings but that Respondent understands that “Yellow Pages has full
controlovertheHeadingsandPlacementoftheAdvertisementandinnoway
promises that these new headings will be added.” Respondent avers that she
was contacted by Yellow Pages about a month after the execution of this
affidavit and she was informed that Yellow Pages would be adding the headings
of “Attorney – Pro se, Attorney – Self Representation, Attorney – Self Help,” and
that Respondent’s business would be listed under the new headings in the next
publication in July 2010. Consequently, Respondent asks this Court to abate
this matter until July 2010 when she can demonstrate compliance with this
Court’s 2005 Order.

As already noted, however, the submitted affidavit does not indicate that
Respondent had ever asked not to be listed under the “Attorneys” heading, the
proof requested by the OBC. Moreover, other than Respondent’s vague
statement that she had asked Yellow Pages in the past to add new headings,
Respondent does not offer evidence of any past communication she had with
Yellow Pages to prevent her ads from appearing under this inappropriate
heading. In fact, there is no indication that Respondent even informed Yellow
Pages that she was not an attorney. Instead, Respondent explains that her
business has been listed under this heading for the past twenty-six (26) years
and without complaint prior to the 2005 Order. However, Respondent was on
notice as early as 1997 that advertising under this section was impermissible.
In its 1997 directive, the KBA detailed the information that it had obtained of
Respondent’s activities that constituted the unauthorized practice of law and
explicitly noted “You have also chosen to advertise in the Lexington Telephone Book under the ‘attorneys’ section, although you are not an attorney.”

SCR 3.020 defines the practice of law as “any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy, in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.” This Court has recognized that “it is incumbent upon this Court to maintain the integrity of the profession by ensuring that those who hold themselves out to the public as attorneys are authorized to do so.” *Hipwell v. Kentucky Bar Ass’n*, 267 S.W.3d 682, 683 (Ky. 2008).

In *Kentucky Bar Ass’n v. Legal Alternatives, Inc.*, 792 S.W.2d 368 (Ky. 1990), this Court found an Oregon corporation, which advertised and offered services in Kentucky, to be engaged in the unauthorized practice of law where no attorneys were employed by the corporation. Although it provided disclaimers in its literature, the corporation was assisting clients in filling out legal forms, particularly in bankruptcy filings, in exchange for a fee. The corporation ignored a cease and desist letter from the KBA and this Court held it in contempt for doing so and imposed a $5,000.00 sanction. Other jurisdictions have also concluded that holding oneself out as an attorney constitutes the unauthorized practice of law. In *State ex rel. Indiana State Bar Ass’n v. Diaz*, 838 N.E.2d 433 (Ind. 2005), a non-lawyer who provided immigration services to clients promoted her services by identifying herself as a Notary Public. Significantly, the titles “Notario publico” or “Notario” refer to an
elite class of lawyers in many Latin American countries. The Supreme Court of Indiana concluded that utilizing these titles on advertisements and business cards, absent a conspicuous disclaimer that she was not an attorney, was inherently misleading and constituted the unauthorized practice of law. See also In re Mittower, 693 N.E.2d 555 (Ind. 1998) (holding that designations of “esquire,” “general counsel,” and “attorney-in-fact,” on business cards and letterhead by one who no longer held a license to practice law constituted the unauthorized practice of law).

In the instant matter, Respondent’s advertising of her Legal Self Help business under the “Attorneys” heading in the Yellow Pages and on the cover magnet, as well as the description of her services within the advertisements, create the misleading impression that she is providing legal services in the capacity of an attorney. Such actions directly contravene this Court’s August 25, 2005 Order. Further, Respondent’s purported defense is unpersuasive. Merely tendering a document that contains the Yellow Pages’ terms and conditions of advertising offers little support to Respondent’s defense. Although the tendered document confirms that Yellow Pages determines headings and has the right to refuse to publish an advertisement under a particular heading, Respondent failed to show that she made Yellow Pages aware of her true status or requested that her business not be listed under the “Attorneys” heading, or that the listing was, in any way, contrary to her own request. Furthermore, the affidavit of the Yellow Pages employee supports only that Respondent has attempted to rectify the violation after these proceedings.
were initiated; it offers no support that Respondent made any such efforts pursuant to the 1997 directive or the 2005 Order of this Court.

As such, we agree with the KBA that Respondent’s advertisements violate this Court’s 2005 Order to refrain from the unauthorized practice of law. Respondent was cautioned, as early as 1997, to refrain from advertising her business under the “Attorneys” section of the phone book. In light of Respondent’s extensive disciplinary history concerning the very matters at issue here, a sanction of $5,000.00 is imposed for Respondent’s continued contemptuous actions. Respondent is once again ordered to refrain from engaging in the unauthorized practice of law and we must also caution Respondent that each violation and sanction imposed for her unauthorized practice of law augments the disciplinary history that this Court will consider in imposing sanctions for future violations, if any, of the 2005 Order and this Order.

Accordingly, it is hereby ORDERED that:

1. Respondent is found to be in contempt of this Court for the unauthorized practice of law in violation of the August 25, 2005 Order of this Court.

2. Respondent is ordered not to engage in the unauthorized practice of law in the future.

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2 The new heading proposed by Respondent, we note, still contains the word “attorney.”
3. Respondent is sanctioned for her contempt in the amount of Five Thousand Dollars ($5,000.00), to be paid to the Clerk of the Supreme Court for remittance to the General Fund of the Commonwealth within thirty (30) days of the date of the entry of this Order.

4. Respondent is responsible for costs or fees due or owing in connection with this action, if any, upon appropriate motion by the Kentucky Bar Association.

All sitting. All concur.


[Signature]

CHIEF JUSTICE
On motion of the Kentucky Bar Association (KBA), pursuant to Supreme Court Rule (SCR) 3.460(1), this Court issued an Order to Show Cause against Respondent Della Tarpinian, ordering her to show cause why she should not be held in contempt of this Court for continuing to engage in the unauthorized practice of law following a January 27, 2003 cease and desist letter from the KBA. Respondent filed a response to this Court’s order, denying that she had engaged in the unauthorized practice of law. Accordingly, pursuant to SCR 3.460(3), this Court referred the matter to a Special Commissioner for a hearing. The Special Commissioner conducted a hearing and filed a report with this Court, which included findings of fact, conclusions of law, and
recommendations. We now consider that report and the Special Commissioner's recommendations.

The Special Commissioner made the following findings of fact, which we now adopt:¹

The Respondent, Della Tarpinian, operated a business in Owensboro, Kentucky, entitled Legal Docs, LLC. In exchange for payment of fees, she offers to draft legal pleadings and documents for customers who have provided her with answers to a questionnaire that she developed. The Respondent does not sell blank legal form documents to customers. She has operated this business since 2001. She is not now, nor has she ever been licensed to practice law in the Commonwealth of Kentucky or any other jurisdiction. She received and reviewed the KBA letter dated January 27, 2003, styled Warning Letter Regarding the Unauthorized Practice of Law. She also acknowledged receipt of the KBA letter dated June 4, 2001, advising that the KBA had initiated an investigation regarding the unauthorized practice of law. She also acknowledged receipt of a letter from the KBA dated December 4, 2009, listing specific cases wherein it is alleged that she prepared legal documents without having any right to do so.

The Respondent testified that she did not understand the letters from the KBA, and characterized them as confusing to her. She said she consulted with her attorney, Galen Clark, upon receipt of said letters. She consulted with Mr. Clark regarding the 2003 KBA cease and desist letter. Mr. Clark testified he had reviewed a KBA letter and was then of the opinion that she was not involved in the unauthorized practice of law since she only provided a form typing service, did not hold herself out as an attorney and did not give legal advice. However, he denied having ever seen the KBA 2003 cease and desist letter. Nevertheless, on January 30, 2003, the Respondent replied to the Executive Director of the KBA regarding the KBA letter

¹ Citations to the record have been omitted.
of January 27, 2003. Her reply appears to be copied
to a newspaper and television reporter and refers to
"false and unfounded allegations". When asked about
the KBA 2003 cease and desist letter, she responded
saying, “I really don’t read the letters from the Bar”.

The Respondent’s advertisements and “disclaimer”
notify customers that no attorneys provide services for
Legal Docs, LLC and that Legal Docs, LLC does not
give legal advice. Exhibit R 7.5 describes the entity as
a “Legal Document Preparation Service”. Exhibit R 10
describes the entity as a “Legal Document Service”.

The Special Commissioner found that Respondent had “prepared and
drafted pleadings, motions, orders and other documents” in nine uncontested
divorce cases in Daviess Circuit Court\(^2\) and one domestic case in Daviess
District Court\(^3\) The parties stipulated that “drafted” would be defined as
“having taken information in response to a questionnaire and typing that
information in pleading form.” Additionally, the Special Commissioner found
that Respondent completed a Child Support Worksheet and calculated child
support obligations in one case in Hancock Circuit Court\(^4\) and that she
prepared a Contract and Bond for Deed, which was filed in the Daviess County

\(^2\) Shelly Wilhite v. Miles Wilhite, No. 09-CI-00032 (Daviess Cir. Ct., Div. I); Peggy S.
Koller v. Timothy D. Koller, No. 09-CI-00184 (Daviess Cir. Ct., Div. II); Kimberly R.
Lindsey v. Joseph F. Lindsey, No. 09-CI-00552 (Daviess Cir. Ct., Div. I); Kevin J.
Howard v. June M. Howard, No. 09-CI-01003 (Daviess Cir. Ct., Div. II); Jerry L.
Hayden v. Donna M. Hayden, No. 09-CI-01070 (Daviess Cir. Ct., Div. I); Penny R.
May Callaway v. Gordon C. Callaway, No. 09-CI-00888 (Daviess Cir. Ct., Div. I);
Jeffrey D. Westerfield v. Roxy M. Westerfield, No. 09-CI-00821 (Daviess Cir. Ct., Div.
I); Brandy Espinosa-Fuentes v. Bruno Espinosa- Fuentes, No. 09-CI-00093 (Daviess
Cir. Ct., Div. I); Joyce M. Acey v. David G. Acey, No. 09-CI-00916 (Daviess Cir. Ct.,
Div. I).

\(^3\) Kara Baldwin v. Christopher Vasquez, No. 05-D-00286-002 (Daviess Dist. Ct.).

\(^4\) Charity M. Wilson v. Michael G. Wilson, No. 08-CI-00090 (Hancock Cir. Ct.).
The Special Commissioner found that Respondent “knew these documents were intended by her customers to achieve or further objectives impacting their legal rights, and she was paid money for drafting these documents.”

The Special Commissioner continued:

Della Tarpinian testified that she created the questionnaire distributed to divorcing customers when she first started her business, and that the questionnaire required basic information that she determined necessary to type divorce forms. She agreed that her general intention in creating the questionnaire was to have customers provide information which would produce documents to be filed in court, and that satisfied the legal requirements of a dissolution proceeding.

It is noted that the questionnaire contains no question with respect to the participation of the parties in other litigation regarding child custody issues. Nevertheless, the Wilhite petition at paragraph 9 asserts no other custodial litigation; as does the Koller petition and the Espinosa-Fuentes petition. It is noted that the questionnaire makes no inquiry with respect to the debts of the parties; yet the Property Settlement Agreements prepared by the Respondent make provisions for payment of debts. It is noted that the questionnaire makes no inquiry regarding the marital/non-marital character of assets; yet the Property Settlement Agreements prepared by the Respondent state that each party has had their non-marital property restored to them.

The questionnaire developed by the Respondent has no inquiry related to payment of health insurance for parties’ children, and yet the Respondent attributed health insurance obligations in specific amounts when she calculated Child Support Worksheets. The same is true with respect to apportionment between the

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5 Daviess County Clerk’s Office, Deed Book 864, page 735 (filed June 9, 2009).
parties regarding the payment of medical expenses for minor children. The Property Settlement Agreements contain apportionment provisions. The questionnaire does not mention the Parents Education Clinic, but the court documents do so.

Given the very simple questions asked in the questionnaire provided by the Respondent, and the absence of other questions where provisions are ultimately included in court documents, it is clear that the Respondent is interviewing and consulting with her customers regarding these provisions. She is offering counsel and advice on legal matters. Her testimony to the contrary lacks credibility.

Several of the Respondent's customers filed Petitions to Reopen Dissolution of Marriage Proceeding and Enter Decree for Dissolution of Marriage after the Court had denied entry of decree. These petitions are legally sophisticated pleadings, citing case law and court rules. They evidence legal knowledge well beyond the legal knowledge of an ordinary person. Each of these petitions are signed by the litigants, pro se. These pro se litigants did not create these petitions. Ms. Callaway stated that attorney Galen Clark prepared her petition and that she signed it in Della Tarpinian's office. The Haydens believe the petition was prepared by Della Tarpinian and written by attorney Galen Clark. Ms. Espinosa-Fuentes stated that "Della" prepared the petition. Then she stated that Galen Clark prepared the petition. Ms. Howard advised the trial judge that "Della's lawyer" wrote the petition.

This effort to mislead the trial court and the Respondent's participation in that effort is evidence of her lack of regard for the rules designed to protect litigants from those persons not legally competent or qualified to counsel, advise and advocate on matters of law.

SCR 3.460 provides the procedure to be followed when the KBA believes that a person is engaging in the unauthorized practice of law in Kentucky. In this case, pursuant to SCR 3.460(1), the KBA initiated an investigation, and
ultimately sent Respondent a warning letter "requesting that the unauthorized practice of law be discontinued." Id. SCR 3.460(1) further states that, if future violations occur, the KBA may move this Court to "issue a rule against the alleged offender to show cause why he/she should not be held in contempt for unauthorized practice of law." A person who continues to engage in the unauthorized practice of law following a KBA directive to discontinue may be held in contempt of this Court. See Kentucky Bar Ass'n v. Brooks, 173 S.W.3d 617 (Ky. 2005). SCR 3.020 defines the practice of law as "any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services."

The Special Commissioner's findings of fact in this case clearly establish that Respondent continued to engage in the unauthorized practice of law after the KBA's January 27, 2003 warning letter. Although Respondent characterizes her business as a "typing service," it is clear from the record that Respondent did far more than type information supplied by her customers. In Kentucky Bar Association v. Legal Alternatives, Inc., this Court found that an Oregon corporation engaged in the unauthorized practice of law by preparing legal documents, despite a disclaimer that the corporation did not employ attorneys and did not provide legal advice. 792 S.W.2d 368 (Ky. 1990). Similarly, in Kentucky Bar Association v. Brooks, this Court held that the respondent engaged in the unauthorized practice of law by assisting customers in filling out United States Bankruptcy Court forms following a cease and
desist letter from the KBA. 173 S.W.3d 617. Respondent's conduct is similar to the conduct in these cases.6

After the filing of the Special Commissioner's report, this Court “may permit the filing of briefs by the parties or may summarily dispose of the matter and shall enter such order as may be appropriate.” SCR 3.460(4). In this case, the Special Commissioner's findings of fact are supported by the record, and her conclusions of law are sound. We see no reason to require additional briefing by the parties, and choose to summarily dispose of this matter, as permitted by SCR 3.460(4).

The Special Commissioner concluded that Respondent profited from the noted violations in the approximate amount of $2,635.00 in the year 2009. Given that Respondent's conduct was similar to the conduct of the corporation in Legal Alternatives (for which this Court imposed a $5,000.00 fine), and given that Respondent has operated her business continuously since receiving the KBA directive in 2003, the Special Commissioner recommended the imposition of a $5,000.00 fine. We agree that the continuous nature of Respondent's unauthorized practice of law makes this fine appropriate.

On motion of the KBA, the Special Commissioner amended her recommendations, and recommended that the fine be made payable to the KBA

6 See also KENTUCKY BAR ASSOCIATION, Unauthorized Practice of Law Opinion KBA U-63 (2006), available at http://www.kybar.org/documents/up/kba_u-63.pdf (opining that a non-attorney business entity or corporation, whose business is the creation, preparation, or typing of legal forms and documents, engages in the unauthorized practice of law when it assists in the identification of the purchaser's legal goal and advises the purchaser on the proper choice and utilization of forms to achieve that goal).
to defer its costs in prosecuting this matter. We believe that a fine for contempt is more appropriately directed to the General Fund of the
Commonwealth. However, pursuant to SCR 3.460(5), Respondent is liable for costs in this matter, and costs may be paid to the KBA upon proper motion.

Accordingly, IT IS HEREBY ORDERED that:

1. Pursuant to SCR 3.460, Respondent Della Tarpinian is found to be in contempt of this Court for engaging in the unauthorized practice of law in violation of the Kentucky Bar Association’s January 27, 2003 directive.

2. Respondent is ordered not to engage in the unauthorized practice of law in the future.

3. Respondent is sanctioned for her contempt in the amount of Five Thousand Dollars ($5,000.00), to be paid to the Clerk of the Supreme Court for remittance to the General Fund of the Commonwealth within thirty (30) days of the date of the entry of this Order.

4. Pursuant to SCR 3.460(5), Respondent is responsible for costs or fees due or owing in connection with this action, if any, upon appropriate motion by the Kentucky Bar Association.

All sitting. All concur.

ENTERED: April 21, 2011.
Introduction

- The Legal Aid Society is a nonprofit organization that assists low-income Kentuckians with civil legal issues.
- The mission of the Legal Aid Society is to pursue justice for people in poverty.
- We provide free legal services to the most disadvantaged in our community.
- We fight on their behalf when their health, safety, and stability are unjustly threatened.

Kentucky Legal Services

- Legal Aid Society is located in Louisville and serves Jefferson County as well as the surrounding 14 counties.
- There are 3 other legal services organizations around Kentucky.
- Every county is served by one of the four legal aid agencies.
Joint website to offer legal information.

Contains links, explanations, videos and forms.

Topics covered include family law, consumer issues, housing law and veterans' issues.
Triage tool

- Came about as a result of a federal technology grant.
- Designed to help self-represented litigants get legal information and complete court documents with ease.
- Navigation is easier than website.
Contact Information

- AppalReD Legal Aid
  New clients: 1-866-277-5733
  Local: 606-886-3876

- Kentucky Legal Aid
  First time callers: 866-452-9243
  Toll Free: 800-782-1924
  Local: 270-782-1924

- Legal Aid of the Bluegrass
  800-888-8189
  Local: 606-784-8921

- Legal Aid Society
  800-292-1862 (Toll-Free in KY only)
  502-584-1254