

The Non-Lawyer Educator Teaching Legal Issues in Higher Education: Legally *and* Educationally Defensible?*

LORI K. MILLER
Wichita State University

Professors teaching law-related courses in higher education have a tremendous responsibility to ensure the accurate dissemination of legal knowledge and theory. As students graduate and pursue individual careers, the information received in law-related courses will influence everyday decision making responsibilities in the areas of, for example, lease negotiations, exculpatory clause use, risk management practices, and human resource management. Misinformation learned in a higher education law-related course can result in economic hardships and injustice for multiple constituencies including employers, employees, clients/customers, family members, and society.

The American Bar Association (ABA) is also concerned about hardships that innocent individuals can incur because of misinformation provided by nonattorneys. The American Bar Association's (ABA) Standing Committee on Lawyers' Responsibility for Client Protection and the more recently established Commission on Nonlawyer Practice (formed in 1992) illustrate the importance placed on the issue associated with the nonlawyer engaged in the practice of law.¹ As recognized in the ABA Commission findings, the vigorous enforcement of unauthorized practice of law allegations common in the 1930s has waned in the last few decades and enforcement has become lax.² The report did not directly address the issue of nonlawyers providing legal education in universities and colleges. Instead, the report focused on unauthorized legal practice by "legal technicians" (i.e., those offering

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1. American Bar Association Commission on Nonlawyer Practice, *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations* (1995). Report compiled from approximately 400 witnesses, 2,000 documents, and ten hearings held between 1992-1994.

2 *Id.* at 1.

assistance with divorces, bankruptcy, wills and trusts).³ However, the Commission did state that an "urgent goal" of the ABA is to protect the public from nonlawyers who provide assistance to unknowing clients.⁴ Further, the Commission stated that there should be a thorough review of the existing law-related practices to ensure that a person is not providing legal communications beyond their professional capacities.⁵

The employment of nonlawyers to teach law-related courses in higher education can generate an academic debate as to whether universities and colleges are contributing to the unauthorized practice of law. This paper discusses whether the nonlawyer educator is engaged in the unauthorized practice of law and how the nonlawyer educator can best protect against the perception that he/she is engaged in the authorized practice of law. The state of Kansas is used as an example to identify practices at a state-specific level. Part I of this paper discusses how the ABA Model Rules of Professional Conduct (MRPC) § 5.5 and the Kansas Model Rules of Professional Conduct § 5.5 influence the issue of nonlawyer educators teaching students law-related content. Part II defines the term, "practice of law," based on Kansas Supreme Court and other judicial interpretations. Part III discusses how the practice of employing nonlawyers to teach law-related courses in higher education could represent an unauthorized practice of law. Part IV represents how the exercise of the quo warranto option could restrain this unauthorized practice of law. And, Part V presents some concluding comments and recommendations that can be used to convey to the student that information provided by the professor throughout the course itself does not represent legal advice, the establishment of an attorney-client relationship, or the unauthorized practice of law.

I. THE PRACTICE OF LAW AS DEFINED BY THE ABA MRPC AND THE KANSAS MRPC

Both the American Bar Association's Model Rules of Professional Conduct § 5.5 and the Kansas Model Rules of Professional Conduct § 5.5 provide guidance regarding what represents, and does not represent, the practice of law. The MRPC⁶ and the Kansas Model Rules § 5.5⁷ state, "A

3. *Id.* at 9-10.

4. *Id.* at 4.

5. *Id.* at 16.

6. THOMAS D. MORGAN & RONALD D. ROTUNDA, PROFESSIONAL RESPONSIBILITY 84 (2000).

7. KANSAS RULES OF PROFESSIONAL CONDUCT 5.5 (2002).

lawyer shall not: (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." Although Kansas has adopted the identical Model Rule language as the ABA, it is the supreme court within each state that evaluates, defines, and interprets what constitutes the "practice of law."⁸

The intent of the MRPC and Kansas Model Rule § 5.5 is to protect the public. Specifically, both the ABA and state model rules strive to protect the public from physical, mental, and/or economic harm associated with the delivery of poor advice or mishandled legal claims. As stated by the Kansas Supreme Court in *In re Flack*, "[t]he underlying purpose of regulating the practice of law is not so much to protect the public from having to pay fees to unqualified legal advisors as it is to protect the public against the often drastic and far reaching consequences of their inexpert legal advice."⁹ Similarly, a professor disseminating inaccurate legal information or one who attempts to problem solve for a student presenting an individual professional or personal legal quandary can subject the student to economic, legal and/or ethical challenges.

Although not specifically mentioned by the MPCR, a question can be raised as to whether academic courses offered by higher education institutions provide a type of law-related service. Higher education institutions are replete with law-related academic degree requirements within, for example, educational administration, journalism, communication, public administration, business, and sport administration degree programs.

For example, students enrolled in an educational administration law course use the learned material as they problem solve and make decisions regarding student invasion of privacy issues and Family Educational Rights and Privacy Act (FERPA)¹⁰ provisions, teacher disciplinary actions, security-related policies, and due process requirements. Similarly, students enrolled in a sport law course use the learned material to problem solve and make decisions regarding the use of appropriate event promotions, waivers, contracts, and how to comply with various employment-related federal and state legislation.

8. MORGAN & ROTUNDA, *supra* note 6, at 41. See also *Edwards v. Spellman*, 504 P.2d 407 (Okla. 1972); *State ex rel. Boynton v. Perkins*, 138 Kan. 899 (1934).

9. 33 P.3d 1281, 1287 (Kan. 2001), quoting *In re Baker*, 85 A.2d 505 (N.J. 1951) (the court held that an attorney's association with a company that used the attorney's name and engaged in fraudulent activities involving estate planning, demonstrated that the attorney had engaged in the unauthorized practice of law).

10. Family Educational Rights and Privacy Act, Pub. L. No. 93-380, 88 Stat. 57; codified as amended at 20 U.S.C. 1232g (1994 & Supp. IV 1998).

Professors typically use hypothetical illustrations and actual case law to illustrate legal concepts. Occasionally, students will ask questions and seek advice or guidance about their own unique legal situations.

Concerns related to the unauthorized practice of law can surface during these discussions if the professor fails to clearly communicate that input given does not represent legal advice. The question then becomes, would discourse between a faculty member and student during the course of a semester be interpreted as either the practice of law and/or a law-related service?

II. THE "PRACTICE OF LAW"

There does not appear to be one precise definition clearly communicating what is, and is not, the "practice of law." In *State ex rel. Stephan v. Williams*, the Kansas Supreme Court considers various common law definitions, including the following:

(a) . . . the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. *But in a larger sense it includes legal advice and counsel*, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.¹¹

(b) . . . *the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent.*¹²

As noted by the court, real or perceived practices that provide "legal advice and counsel" as well as communication(s) regarding the "knowledge and application of legal principles and technique" can qualify as the practice of law.

Although Frederick Moss's article pertains to the law professor teaching at a law school, Moss clearly addresses the concern of this paper as he says

. . . the practice of law is the application of legal knowledge, judgment, training, or skill in advising or otherwise assisting another to analyze or solve a particular legal problem or need. Thus, in many states, a

11. *State ex rel. Stephan v. Williams*, 793 P.2d 234, 240 (Kan. 1990), quoting *State ex rel. Boynton*, 138 Kan. at 907-908 (emphasis added). See also *In re Juhnke*, 41 P.3d 855, 858 (Kan. 2002) (referring to the quote as the "general" and accepted definition of the practice of law).

12. *Williams*, 793 P.2d at 240, quoting *R.J. Edwards, Inc. v. Hert*, 504 P.2d 407, 416 (Okla. 1972) (emphasis added) (situation involved a former law professor admitted to practice in another state was not engaged in unauthorized practice of law).

teacher engages in the practice of law if, in advising a student, he applies legal principles and judgment in an attempt to solve the student's legal problems, such as informing the student how the law might apply to the student's situation.¹³

For purposes of academic argument, is it possible for the nonlawyer professor teaching legal issues courses to form a relationship with a student that resembles the more formal attorney-client relationship? For example, effective teaching includes not only competent representation of the particular academic content, but also the establishment of a rapport with the student and the ability to answer legal questions effectively. In a legal issues course, it is undisputed that the questions posed by students regard legal issues and related scenarios. Often, the questions stem from real-life experiences the adult learner has encountered (or is encountering) in his/her own work environment. It is also undisputed that the nonlawyer professor is expected to respond intelligibly to the student inquiry. The tuition-paying student assumes that responses and feedback given by a university professor are accurate and legally correct. As stated by Moss, the "application of legal knowledge, judgment . . ." in an attempt to inform the student as to "how the law might apply to the student's situation" can, and typically does, exist in the higher education classroom.¹⁴

In addition, most courts stipulate the existence of a lawyer-client relationship when ascertaining whether one is, or is not, engaged in the practice of law. In *State ex rel. Schneider v. Hill*, a critical component of the Kansas Supreme Court's decision was the real or perceived existence of an attorney-client relationship between the defendant selling divorce kits and the individuals purchasing and utilizing the kits.¹⁵ The selling of divorce kits used for filing and obtaining a divorce did not represent the unauthorized practice of law. Specific to the court's analysis included whether a special relationship existed in which the client relied upon the "'skill,' 'special knowledge' or 'expertise' of the seller."¹⁶ The Court concluded that the defendant was dispensing a uniform commodity (divorce kits) versus sophisticated legal information based on case-specific facts.¹⁷

13. Frederick C. Moss, *Is You Is, Or Is You Ain't My Client? A Law Professor's Cautionary Thoughts On Advising Students*, 42 S. TEX. L. REV. 519, 523-24 (2001).

14. *Id.*

15. 573 P.2d 1078 (Kan. 1978).

16. *Id.* at 1079.

17. *Id.* at 1079-1080.

However, the Maryland appellate court stated in *In re R.G.S.*, "we do not think that the existence of lawyer-client relationships is the *sine qua non* for the practice of law."¹⁸ In other words, the practice of law will not be *solely* dependant upon the formal establishment of an attorney-client relationship. Rather, the practice of law can be concluded based on the totality of the circumstances, i.e., whether advice was given, whether the person giving the advice operated under the guise of a practicing attorney, or whether the nonlawyer presented circumstances where another reasonable person would assume an attorney-client relationship had been established.¹⁹

Similarly, the question as to whether a higher education professor is, or is not, practicing law can be reviewed based on a variety of factors.²⁰ In the context of the higher education classroom, it is important to ask whether the professor informed the students that he/she was not a licensed attorney or whether the professor informed the students that commentary discussed in class was "educational" versus legal advice.²¹ Appropriate communication given by a professor to best convey the appropriate relationship is discussed in Part V of the paper below.

III. NONLAWYERS TEACHING LAW-RELATED COURSES IN HIGHER EDUCATION: AN UNAUTHORIZED PRACTICE OF LAW?

Common law analogies allow for debate as to whether the use of nonlawyers to teach law-related courses in higher education represents an unauthorized practice of law. In *In re Flack*, the Kansas Supreme Court noted that "the actions of counseling and advising clients on their legal rights and rendering services requiring knowledge of legal principles are included within the definition of practicing law."²² As a result, the court found that nonlawyer client services representatives engaged in the unauthorized practice of law

18. 541 A.2d 977, 981 (App. Md. 1988). See also Moss, *supra* note 14, at 523-24 (highlighting that a lawyer-client relationship is not always required to prove an unauthorized practice of law claim).

19. *State ex rel. Schneider*, 573 P.2d 1078; *Edwards*, 504 P.2d 407.

20. In *re Flack*, 33 P.3d 1281, 1287 (Kan. 2001) (what constitutes an unauthorized practice of law is determined on a case-by-case basis); *In re R.G.S.*, 541 A.2d at 982 (quoting Attorney General's language stating, "a phrase such as "practice of law" may mean different things in different contexts").

21. It is important to note that even if the professor is an attorney he/she must make clear to students that matters discussed in class are educational in nature and should not be taken as legal advice.

22. *In re Flack*, 33 P. 3d at 1287.

"because their services involved counseling and advising clients on their legal rights and rendering services requiring knowledge of legal principles."²³

A legal issues professor, while communicating with tuition-paying students versus clients, consciously or unconsciously may provide advice to student-practitioners based on the professor's own interpretation of the law. Traditional sport law courses, for example, are required by the North American Society for Sport Management (NASSM) and the National Association of Sport and Physical Education (NASPE) governing bodies to include the following content within the institution's sport management degree programs:²⁴

Undergraduate Degree Required Content (Standard #9):

Tort law	Contract Law
Risk management procedures	Administrative/statutory law
Product liability	The legal system
Constitutional law	Crowd control and security

Master's Degree Required Content (Standard #9)

Tort law	Contract law
Risk management procedures	Administrative/statutory law
Product liability	The legal system
Constitutional law	Labor/antitrust law

One can assume that at some time when covering the above information, a professor will be involved in discussing legal-related issues, providing hypothetical fact-specific scenarios, and providing legal-related advice.

The following illustrates how a classroom scenario *could* reflect a situation where a nonlawyer educator is engaged in the practice of law. For example, assume a legal issues professor is discussing the use of exculpatory agreements (e.g., waivers) during the contract section of the course. The lecture includes discussion on when exculpatory agreements are helpful and the appropriate content to include in an exculpatory agreement. The class critiques existing exculpatory agreements and discusses ways to make the documents more legally defensible. And, most importantly for purposes of illustration, the professor provides advice regarding the agreements being used

23. *Id.*

24. SPORT MANAGEMENT PROGRAM REVIEW COUNCIL, SPORT MANAGEMENT PROGRAM STANDARDS AND REVIEW PROTOCOL 8, 15-16 (2000).

by students in their own work setting (e.g., athletic department, health club, park and recreation department).

One of many similar situations could be described for each of the above NASSM/NASPE identified areas. Based on a literal interpretation, one can argue that the nonlawyer educator is engaged in providing "skill, special knowledge, or expertise,"²⁵ and/or "counseling and advising,"²⁶ in addition to discussing student "legal rights and rendering services requiring knowledge of legal principles."²⁷

The Kansas Supreme Court provides additional input regarding what constitutes the practice of law in its 1978 decision, *Hill*.²⁸ In considering what qualifies as the unauthorized practice of law, the supreme court considered "whether the person whose conduct is being scrutinized represented he had or implied he had legal knowledge *beyond that of a layman . . .*"²⁹ Although an attorney-client relationship is not meant to be established between the non-attorney professor and the student,³⁰ a university professor is assumed to have knowledge beyond that of a layperson in the content area being taught. In fact, unless this enhanced level of knowledge exists, the individual professor would not be assigned to teach the law-related course.

To compound what could be a potential problem and/or hardship, in a public school setting the misinformed (or non-informed) nonlawyer educator acting in good faith may be somewhat protected from liability claims via both governmental immunity³¹ and judicial reluctance to address the issues of educational malpractice.³² Although a plaintiff may have recovery options via misrepresentation, negligence, or promissory estoppel,³³ traditional

25. *Hill*, 573 P.2d 1078.

26. *In re Flack*, 33 P. 3d at 1287.

27. *Id.*

28. *Hill*, 573 P.2d 1078.

29. *Id.* at 1079.

30. A critical component of the Kansas Supreme Court's decision was the real or perceived existence of an attorney-client relationship between the defendant selling the divorce kits and the individuals purchasing and utilizing the kits. *Id.*

31. KAN. STAT. ANN. §§ 75-6103 - 75-6105 (2001). Kansas governmental immunity statutes. This actually would only be true for a public school if the teacher is an actual employee (it may not apply to an adjunct) and this immunity has been severely depleted recently in most states.

32. *But see* R.J. Hendricks v. Clemson Univ., 529 S.E.2d 293 (S.C. App. 2000) (held it was a question of fact for jury regarding decision whether misinformation given by employed advisor constituted gross negligence).

33. These types of claims would most likely be intertwined as the misrepresentation or negligence in providing a less than quality education could lead to a promissory estoppel claim based in brochures or catalogs stating that a student would receive a certain type of quality education. A nonlawyer professor who claims to provide certain legal knowledge could theoretically open

malpractice claims or insurance coverage otherwise available because of a lawyer's negligence are not available for the person injured by a state employee teaching legal issues in higher education.

IV. REGULATING THE NONLAWYER: THE QUO WARRANTO OPTION

In Kansas, as similar to other states,³⁴ the Kansas Constitution vests the judicial power of the state in the Kansas Supreme Court.³⁵ The Kansas Supreme Court interpreted this language as follows, in noting that it "has the inherent power to prescribe conditions for admission to the bar, *and to define, supervise, regulate and control the practice of law.*"³⁶ Specifically, the Kansas Supreme Court has original jurisdiction and possesses sole power to decide who has, or does not have, authority to practice law in the state.³⁷

As explained in *Martin v. Davis*, "[t]he practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to regulate the practice naturally and logically belongs to the judicial department of the government."³⁸ Although recognized as a possible intrusion into the constitutional rights of an individual pursuing his/her own desired career,³⁹ the Kansas Supreme Court has been granted supervisory authority of law-related practices via the state's constitution in an effort to best serve and protect public welfare.⁴⁰

themselves up to these types of claims if a student relies on the professor's knowledge to his or here detriment.

34. TEX. CONST., art. V, § 1 (2002); IOWA CONST., art. V, § 1 (2002); CAL. CONST., appx I, art. VI, § 1 (2001); ILL. CONST., art. 6, § 16 (2001).

35. As stated by the KAN. CONST., art 3, § 1 (2000), "[t]he judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and other courts as are provided by law. . ."

36. *Williams*, 793 P.2d at 239, quoting *State ex rel. Stephan v. O'Keefe*, 235 Kan. 1022, 1036 (Kan. 1984) (emphasis added). *See also* *State ex rel. Jackson v. Anheuser-Busch Brewing Assoc.*, 90 P. 777 (Kan. 1907), for a further explanation of quo warranto actions in the state of Kansas.

37. *Williams*, 793 P.2d at 239.

38. 357 P.2d 782 (1960) (affirmed that the Kansas Supreme Court has valid exercise of police power to govern attorney practices).

39. *See* the *Martin* case, as well as the majority and concurring opinions in *R.J. Edwards*, 504 P.2d 407, for an excellent, comprehensive reading on Fifth and Fourteenth Amendment implications of judicial regulation of the practice of law, as well as the origin of the quo warranto action in the state of Oklahoma.

40. *Martin*, 357 P.2d at 791.

Further, Article 3, Section 3 of the Kansas Constitution provides the Supreme Court with "original jurisdiction in proceedings quo warranto, . . ."⁴¹ A quo warranto cause of action represents "a common law writ designed to test whether a person exercising power is legally entitled to do so. . .it is intended to prevent exercise of powers that are not conferred by law. . ."⁴²

In *Williams*, the respondent argued that the Kansas Territorial Agricultural Society's (KTAS) charter authorized him to represent the association as its attorney.⁴³ The state brought a quo warranto action against Williams to enjoin his unauthorized legal practices. The Kansas Supreme Court held that a state professional association did not have the power to authorize a nonattorney to practice law in Kansas.⁴⁴ The court then enjoined Williams from continuing to engage in his unauthorized practice of law behaviors.⁴⁵

The Kansas Supreme Court recognized the legitimacy of a quo warranto cause of action in *State ex rel. Fatzer v. Schmitt*.⁴⁶ Moreover, as explained by the Kansas Supreme Court in *Kansas Bar Assoc. v. Judges of the Third Judicial District*, a quo warranto action is a "proper method to determine when an individual had been exercising the privilege of practicing law without benefit of a license."⁴⁷ Similarly, in *State ex rel. Stovall v. Martinez*,⁴⁸ the court recognized that a quo warranto action is an appropriate procedural mechanism for ascertaining a person's authority to practice law.

In *Williams*, the court further explains the use of a quo warranto cause of action.⁴⁹ In ruling against the defendant the court succinctly stated ". . . Nor does he [defendant] have the right to give legal advice to any other person or entity not admitted to the practice of law, or to assist any such person or entity in any matter requiring legal knowledge and training."⁵⁰ Based on *Williams*,

41. KAN. CONST. art. 3, § 3 (2000).

42. BLACK'S LAW DICTIONARY 1256 (6th ed., 1990).

43. 793 P.2d 234. The respondent also professed to be the Kansas Attorney General as Robert T. Stephan had not been properly elected to the AG office.

44. *Id.* at 241-242.

45. *Id.* at 240.

46. 258 P.2d 228 (Kan. 1953) (quo warranto proceeding found that individual had undertaken certain advising and counseling matters that showed that he gave legal advice to those who stood in relation of client to him and therefore he had been exercising the privilege of practicing law without being licensed).

47. 14 P.3d 1154, 1162 (Kan. 2000) (state bar association challenged the practice of nonlawyers representing parties in small claims court; petition dismissed).

48. 996 P.2d 371 (Kan. App. 2000) (attorney general alleged insurance claims consultant was engaged in unauthorized practice of law by providing certain legal related services to clients).

49. 793 P.2d 234.

50. *Id.* at 242.

one can deduce that the Kansas Supreme Court could, if desired, prohibit the practice of nonlawyers teaching law-related classes in institutions of higher education.

As demonstrated from the above case precedent, a state supreme court is granted state constitutional authority to regulate the practice of law. The quo warranto option then enables a court to restrain an individual's unauthorized practice of law. While there are many benefits associated with the nonlawyer teaching legal education in a higher education institution, there are also risks.⁵¹

Benefits include the employment of professors who are dedicated to educating students interested in learning and the furthering of their career aspirations. Further, professors may spend more time in scholarship and publication of learned knowledge without fear that a particular published stance will tarnish their individual popularity with clients and generated income. Because of the presumed salary differentiation between a practicing lawyer and a legal educator, one might conclude that those desiring to teach in higher education are dedicated to non-profit motives of selfish service to the student and professional advancement.

Risks associated with the employment of the nonlawyer educator include the dissemination of incorrect information and misrepresenting to the student that class discussions represent legal advice. While maybe not the best use of a state supreme court's time, the quo warranto option enables a state supreme court to reign in the practices of a nonlawyer educator perpetuating information that may harm the legal profession as well as the student and the multiple constituencies the student represents, i.e., family members, employer, employees, and friends.

V. CONCLUSION

As mentioned above, nonlawyer educators in higher education routinely address legal theory and application, while also answering a student's law-related questions reflecting their own professional dilemmas. Whether or not this academic instruction and discourse reflects the unauthorized practice of law deserves further debate. As summarized in *Perkins*,

The occasions upon which an attorney may be required to act touch, in many instances, the deepest and most precious concerns of men, women, and children. They may involve the liberty, the property, the happiness, the character and the life of his client. Obviously, one not

51. Rory K. Little, *Law Professors as Lawyers: Consultants, Of Counsel, and the Ethics of Self-Flagellation*, 42 S. TEX. L. REV. 345 (2001).

possessing an adequate degree of intelligence and education cannot perform this kind of service, nor should he be permitted to do so . . .⁵²

While the unauthorized practice of law has been discussed in the literature,⁵³ the issue germane to the nonlawyer educator teaching in an institution of higher education has not been given much consideration.

Although common law specific to the nonlawyer educator and the unauthorized practice of law is limited, the following five recommendations reflect prudent practices that can be adopted by all nonlawyers teaching legal-related courses.

1. *Appropriate syllabus communication.* A faculty member teaching a legal issues related course should clearly stipulate on their syllabi whether he/she is a licensed attorney.⁵⁴ As mentioned earlier, the objective of the unauthorized practice of law discussions is to protect the public from relying on ill-informed individuals who may or may not have a full and comprehensive understanding of involved legal theories, principles, practices, and recovery options. This type of information will put the students on notice that the professor presenting the information is not a legal practitioner and provide a form of informed consent as a defense if the teacher ever faces claims that they were engaged practice of law.

2. *Communicate in lectures and when addressing individual student inquiries that commentary given does not represent legal advice, per se.* Students routinely ask, and should ask, "what if" questions. For example, "What if Coach ABC is terminated because of a recently acquired disability?" "What if the women's swim team at ABC University always practices at 5:00 am and the men's swim team always has the pool for practice from 3:00 – 6:00 p.m.?" "What if a physical educator employed at ABC Elementary School had a student die during class?" The questions are endless. It is important that professors respond with appropriate knowledge-related information.

52. 28 P.2d 765.

53. Paul D. Healey, *Pro Se Users, Reference Liability, And The Unauthorized Practice Of Law: Twenty-Five Selected Readings*, 94 LAW LIB. J. 133 (2002).

54. The consequences of failing to inform clients or other individuals of one's inability to practice law can be extreme. The following cases involve nonlawyers or other individuals not authorized to practice law and the problems they can encounter if they do not properly inform their clients of this circumstance. *Cincinnati Bar Assoc. v. Massengale*, 568 N.E.2d 1222 (Ohio 1991) (suspended attorney failed to clearly articulate to clients the suspension of his license); *Schmitt*, 258 P.2d at 233 (court gave minimal credence to fact that defendant told prospective purchasers that he was not a lawyer).

Professors can best protect against unauthorized practice of law allegations by clearly stating that the response does not represent legal advice and encourage the student to seek legal counsel from a licensed attorney as appropriate.⁵⁵

3. *Encourage Board of Regent review.* Because of the wide-spread practice of nonlawyers teaching legal education, it may be appropriate for the some outside group to establish an ad hoc committee(s) to consider the practice of nonlawyers teaching law-related courses. The possibilities for this outside group could include committees appointed by (1) the University's own Board of Regents or Trustees,⁵⁶ (2) the state or local bar association,⁵⁷ (3) the American Bar Association (ABA),⁵⁸ (4) the university's general counsel,⁵⁹ or (5) the particular state's Board of Bar Examiners.⁶⁰ Depending on the nature and outcome of the discussions, a state supreme court could exercise

55. Again, even attorneys teaching legal issues class must be careful that students do not take their perspectives from class as actual legal advice. Attorneys must inform students that their role in the classroom is that of teacher and not counselor and ask that students discuss real life legal situations outside of class with other legal counsel or even with the teacher once an appropriate attorney-client relationship is developed.

56. Although the Board of Regents or Trustees may seem to be the most logical choice at the university level, this Board may not be qualified to appoint a group with practical experience as legal advisor and educator. Also, this type of Board may be too interested in local or university wide standards instead of providing a universal outlook which will best prepare students.

57. While a bar association may seem like an ideal group because it provides educational and other services for lawyers in a particular jurisdiction, it will not have any control over licensing lawyers and most likely will not have any particular expertise in the educational setting. Furthermore, in the area of sports law or management, few bar associations nationwide have developed sports sections or members who are specialists and could truly assess the type of teaching a nonlawyer educator is providing.

58. The ABA would be the ideal group to set standards on a national level. Furthermore, the ABA is already involved in certifying law schools that provide approved legal training. The ABA also has a large group specializing in the area of sports law, the Forum on the Sports and Entertainment Industries. However, the ABA may not be able to provide experts who could understand the subtle differences in legal standards at the local and state level.

59. The general counsel may be the most qualified individual assuming that the individual is a licensed attorney in the particular state, and that he or she has some exposure to the actual practice of law in the particular jurisdiction. Unfortunately, at many universities, counsel may actually assign outside counsel to handle any type of litigation and so university general counsel is more a specialist of university specific matters. Moreover, there is no reason to believe that this individual would have any particular specialty in the area of sports law.

60. Each state's Board of Bar Examiners or Attorney Licensing or the like is the body that actually licenses attorneys to practice law in the particular jurisdiction. While this group would surely be able to ensure that the legal concepts provided are the standards appropriate for the particular jurisdiction, it may be problematic to get this group involved in monitoring the activities of non-licensed individuals.

its quo warranto rights and clarify whether the use of nonlawyers teaching law-related courses was an accepted practice.

4. *Comprehensively evaluate instruction.* Administrators should rely on more than student-teacher evaluations when ascertaining the nonlawyer professor's competency and teaching effectiveness. As considered in *Martinez*, client's customer satisfaction alone does not excuse the unauthorized practice of law.⁶¹ Peer evaluations,⁶² review of syllabi, pursued professional development, student projects, and student exams, reflect alternative means of evaluation that may be appropriate and useful.

5. *Consider continuing legal education requirements.* It is expected that professors in higher education remain current in their field of academic study and area of course instruction. And, as well known, the best professors pursue continuous learning with great vengeance, pride, and integrity. However, similar to continuing legal education requirements imposed by individual state statutes,⁶³ the NASSM/NASPE curriculum requirements could be amended to require professors teaching law-related courses to maintain a certain level of professional development. Requirements could vary and might include, for example, (a) attendance at one professional conference annually and documentation of sessions pertaining to the law that were attended, (b) completion of a law-related workshop, and/or (c) completed research and publication pertaining to a law-related topic. While this requirement may be perceived by many as an offensive encroachment in to the academic freedoms, a question needs to be asked whether this encroachment is necessary to balance against the improper dissemination of legal information.

The sport law legal education profession is robust with talented, competent professors. This article is merely intended to generate discussion about how we can maintain the quality of education, specifically, legal education. Hopefully this discussion also serves as a warning to those who

61. 996 P.2d at 377.

62. Peer evaluations by other legal educators and/or attorneys could evaluate the accuracy of presented information. Peer evaluations by these individuals and other non legal educators could evaluate the professor's effectiveness in conveying complicated legal concepts in a manner understood by an uneducated audience.

63. See, for example, KAN. SUP. CT. R. 802. Each attorney admitted to practice law in Kansas shall earn a minimum of twelve (12) continuing legal education credit hours annually.

may unknowingly rely on professed legal knowledge from one who is unqualified to give it. In the end, legal educators who do not have particular legal training must always take care to ensure that students are not misled to their detriment.

ABOUT THE AUTHOR

LORI MILLER is the chair of the kinesiology and sport studies department at Wichita State University and a professor in sport administration. Lori's work primarily focuses on legal issues influencing the sport industry. Lori's academic degrees include a BA in Business, a MBA, a M.Ed. in Physical Education, and an Ed.D. in Physical Education.

REFERENCES

- American Bar Association Commission on Nonlawyer Practice (1995). *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations*. Chicago: American Bar Association.
- Black, M.A. (1990). *Black's Law Dictionary* (6th ed.). St. Paul, MN: West Publishing Group.
- CAL. CONST. appx I, art. VI, § 1 (2001).
- Cincinnati Bar Assoc. v. Massengale, 568 N.E.2d 1222 (Ohio 1991).
- Edwards v. Spellman, 504 P.2d 407 (Okla. 1972).
- Family Educational Rights and Privacy Act, Pub. L. No. 93-380, 88 Stat. 57; codified as amended at 20 U.S.C. 1232g (1994 & Supp. IV 1998).
- Healey, P. D. (2002). Pro se users, reference liability, and the unauthorized practice of law: Twenty-five selected readings. 94(1), *Law Library Journal*, 133-139.
- ILL. CONST. art. 6, § 16 (2001).
- In re Baker, 85 A.2d 505 (N.J. 1951).
- In re Flack, 33 P.3d 1281 (Kan. 2001).
- In re Juhnke, 41 P.3d 855 (Kan. 2002).
- In re R.G.S., 541 A.2d 977 (App. Md. 1988).
- IOWA CONST., art. V, §§ 1 & 3 (2002).
- Kansas Bar Assoc. v. Judges of the Third Judicial Dist., 270 Kan. 489 (2000).
- KAN. CONST. art 3, § 1 (2000).

KANSAS RULES OF PROFESSIONAL CONDUCT 5.5 (2002).

KAN. STAT. ANN. §§ 75-6103 - 75-6105 (2001).

KAN. SUP. CT. R. 802 (West 2001).

Little, R. K. (2001). Law professors as lawyers: Consultants, of counsel, and the ethics of self-flagellation. *South Texas Law Review*, 42(1), 345-377.

Martin v. Davis, 357 P.2d 782 (Kan. 1960).

Morgan, T. D. & Rotunda, R. D. (7th ed., 2000). *Professional responsibility*. New York, NY: Foundation Press.

Moss, F. C. (2001). Is you is, or is you ain't my client? A law professor's cautionary thoughts on advising students. 42(1), *South Texas Law Review*, 519-537.

R. J. Edwards, Inc. v. Hert, 504 P.2d 407 (Okla. 1972).

R.J. Hendricks v. Clemson Univ., 529 S.E.2d 293 (S.C. App. 2000).

Sport Management Program Review Council (2000). *Sport Management Program Standards and Review Protocol*. Oxon Hill, MD: AAHPERD Publications.

State ex rel. Jackson v. Anheuser-Busch Brewing Assoc., 90 P. 777 (Kan. 1907).

State ex rel. Boynton v. Perkins, 138 Kan. 899 (1934).

State ex rel. Fatzer v. Schmitt, 258 P.2d 228 (Kan. 1953).

State ex rel. Schneider v. Hill, 573 P.2d 1078 (Kan. 1978).

State ex rel. Stephan v. O'Keefe, 235 Kan. 1022 (Kan. 1984).

State ex rel. Stephan v. Williams, 793 P.2d 234 (Kan. 1990).

State ex rel. Stovall v. Martinez, 996 P.2d 371 (Kan. App. 2000).

TEX. CONST., art. V, § 1 (2002).