

Unauthorized Practice of Law -- Why ONLY Attorneys May Give Legal Advice

If you spend any time reading about notary duties, you will see many statements that a notary must avoid giving legal advice. What is legal advice?

There are at least six areas of knowledge that an attorney is expected to possess. While a notary or a paralegal may have access to some of these, only a lawyer is required to know all of them before rendering a legal opinion or offering legal advice:

1. Statutory law. Even if you look up the statutory law for your state, this does not mean that you will understand the syntax, references to other laws, definitions that appear in one section that apply in other sections, or the legal principles that are learned in law school that allow a lawyer to make sense of the statutes.

2. Case law. Case law is the term used to refer to rulings made by judges.

3. Common law. This is the customary and usual way of doing things and the traditions that are allowed by the relevant parties. Common law can be over-ridden by statutory or case law, although it often underlies both.

3. Legal jargon. If you want to know what a term means in a legal context, you might look it up in a legal dictionary, but the definitions don't always make sense to a non-lawyer, and the statutory or case law in your jurisdiction may give a different meaning than the dictionary gives.

5. Administrative law. Rules adopted by an executive department, agency, bureau, or division that is charged with enforcing the law or administering a program of some sort is known as administrative law.

6. The particular circumstances and desired outcomes of the person seeking legal advice. In order for someone to get good advice, he has to share the details of his situation. There are privacy protections for statements made to an attorney, but there is no such protected status for statements made to a notary. Even if privacy is not a concern, revealing one's circumstances to a notary is not going to give him knowledge in the areas mentioned above, so he cannot determine what legal method may be most likely to allow someone to reach a desired outcome.

In short, only a lawyer can give legal advice because only a lawyer is responsible for knowing statutory law, case law, common law, legal jargon, administrative law, and the particular circumstances of the client who has a desired outcome in mind.

NOTE: This article serves as information purposes to broaden the knowledge of the notary public. The Delaware Notary Association is dedicated in keeping the Delaware Notary with working information in performing their duties to the best they can and to the fullest.