For the Record
By
F. Barry Wilkes
Clerk and Court Administrator
Liberty County, Superior Court, State Court and Juvenile Court

---

The Thin Line

O.C.G.A. § 15-6-51 makes the unauthorized practice of law illegal. Specifically, it bars any person other than a duly licensed attorney at law of this state from rendering or furnishing legal services "of any kind in any actions or proceedings of any nature." This provision, while serving to protect the interests of individuals and preserving the sanctity of the practice of law in Georgia's courts, creates a tenuous fine line that clerks of superior court and our employees have to be careful not to cross as we try earnestly to help persons availing themselves to and seeking relief from the courts we serve.

The practice of law is defined in Code Section 15-9-50 as:

1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or judicial body;
2) Conveyancing;
3) The preparation of legal instruments of all kinds whereby a legal right is secured;
4) The rendering of opinions as to the validity or invalidity of titles to real or personal property;
5) The giving of any legal advice; and
6) Any action taken for others in any matter connected with law.

The illegal practice of law is punishable as a misdemeanor.

Locally, I serve superior court, state court, juvenile court, and magistrate court, which is a means for consolidating services, providing a "one door" court system, eliminating duplication of services and perpetuation of judicial bureaucracies, and, ultimately, saving taxpayers money. Each of these courts has specific functions and jurisdiction (which will be discussed in a later article). The extent of help that the clerk of the court can legally provide varies from court to court.

Superior, state, and juvenile courts are courts of record, which means that all pleadings (documents) must be filed in writing and in a format mandated by statute and Uniform Rules of each court approved by the Supreme Court of Georgia. By law, anyone has the right to represent himself or herself *pro se* (i.e., on his or her own behalf and without the services of a lawyer) in any action civil or criminal action in any court. Laws effective on January 1, 2013 require representation of a juvenile in any action in juvenile court and, in most "children in need of services" (formerly referred to as "deprivation') cases, parents of children are required to have a legal representative and, if they cannot afford an attorney, the court appoints one for them.

The best advice that my staff, anyone else, or I can provide a party in any court case is to hire a competent attorney. When an individual represents himself or herself and tries to litigate issues on his or her own behalf, he or she does so at great risk. It is extremely difficult for anyone to objectively and effectively represent himself or herself in light of the severity of issues involved and the intricacies and technicalities of "practicing law" required for litigating such issues. Even attorneys need legal representation when they are a party to a lawsuit.

Many parties in civil cases are indigent and cannot afford legal representation. By law, indigent criminal defendants are entitled to legal representation through the state's public defender program;

conversely, there is no free legal representation provided for civil litigants in most courts and counties of this state.

Georgia Legal Aid Services Program (GLASP) has an office in Savannah. It offers free legal services in civil cases to persons who cannot afford to hire a lawyer. The program only provides representation to clients who "have 'high stakes' problems, such as domestic violence, eviction or foreclosure, denial of hard-earned benefits such as unemployment, inability to get critically needed healthcare or food aid…" (For more information about GLASP's services, visit www.glsp.org).

Persons ineligible for legal aid services usually have nowhere to turn for help other than the Clerk's Office, which is typically the only office in the local judicial system in which anyone will listen to, talk with, and try to help them. Most commonly, they need help because they are facing ominous circumstances and in desperate need of legal representation. Having nowhere else to turn, they come to the Clerk's Office seeking legal counsel from staff or the clerk. In most cases, we would love nothing more than to be able to help them. This is where the thin line between being trying to help and illegally practicing law becomes an issue.

The chief goal of the Clerk's Office is to help everyone in the most professional, efficient, and impartial manner possible. More importantly, staff and I care about people and their circumstances in life; so, we sincerely endeavor to do all we can to help people within legal parameters. However, even if it were legal, we should not dispense legal advice. While we are adroitly skilled in clerical procedures and the fundamentals of litigation, our expertise does not qualify us to counsel individuals with respect to their legal rights.

Magistrate court (once called "small claims court") is not officially a court of record although, pursuant to state-imposed rules, all claims and pleadings must be reduced to writing on approved forms. The civil division of the magistrate court is structured so that individuals can readily litigate claims for monetary relief up to $15,000.00 without the services of an attorney. Clerk's office staff has more leeway in magistrate court as to the amount and kind of assistance they can provide litigants. Necessary forms are provided to plaintiffs (the party bringing the action) for filing a claim and to defendants (parties being sued) to file answers and defenses to the claim. Perfunctory assistance is also provided for completing court forms. Yet, even in magistrate court, Clerk's Office staff cannot legally advise parties regarding their legal rights or counsel them with respect to strategies or procedures required for litigation of issues of a case.

#####