
EMPOWERMENT ADVOCACY & THE UNAUTHORIZED PRACTICE OF LAW

PRESENTERS:

SUE RYAN, *EXECUTIVE DIRECTOR*

ZAINAB SHAH, *TRAINING SPECIALIST*

TECH SUPPORT: COURTNEY WINKLER, *TRAINING AND OUTREACH COORDINATOR*



WHAT IS EMPOWERMENT ADVOCACY?

DEFINING ADVOCACY

The act or process of supporting a cause or proposal (Merriam-Webster).

- Individual Advocacy
- Policy Advocacy
- Systems Advocacy



CORE VALUES OF DV ADVOCACY

- Safety
- Confidentiality
- Survivors' Voices
 - Victim centered or Victim defined
- Offender Accountability
- System Accountability
- Social Change/Social Justice
- Empowerment

EMPOWERMENT ADVOCACY



- Staples (1990, quoted in Sullivan & Rapp, 1994) defines empowerment as:
“the ongoing capacity of individuals or groups to act on their behalf to achieve a greater measure of control over their lives and destinies” (p. 92-93).”
- Empowerment advocacy
 - Giving the power back to the Survivor
 - Allowing a survivor to understand their own needs
 - Instilling the idea that a survivor is strong enough and capable enough to make choices for themselves
 - Providing options for next steps

STRENGTHS-BASED EMPOWERMENT MODEL

The following are seven important principles of the strengths perspective. People are recognized as having many strengths and the capacity to continue to learn, grow and change.

1. The focus of intervention is on the strengths and aspirations of the people we work with.
2. Communities and social environments are seen as being full of resources.
3. Service providers collaborate with the people they work with.
4. Interventions are based on self-determination.
5. There is a commitment to empowerment.
6. Problems are seen as the result of interactions *between* individuals, organizations or structures rather than deficits *within* individuals, organizations or structures.

(Chapin, 1995; Early & GlenMaye, 2000; Kisthardt, 1992; Miley, O'Melia & DuBois, 2001; Poertner & Rannau, 1992; Rapp, 1992; Saleebey, 1992c; Sullivan & Rapp, 1994; Weick et al., 1989):

WHY WE USE THE EMPOWERMENT MODEL

- Allows survivor to take control over your own narrative
- Gives the power and control back to the survivor
- Lead to survivors maintaining their independence
- Takes responsibility off advocate

**Empowerment Advocacy, at its core, is
supporting survivors to make decisions for themselves!**

EMPOWERMENT ADVOCACY AND LEGAL ADVOCACY

PROVIDING LEGAL INFORMATION WITHOUT ENGAGING IN THE PRACTICE OF LAW

UNAUTHORIZED PRACTICE OF LAW

- Depends on the definition of the “Practice of Law” and varies from state to state
- Each state determines who is legally entitled to practice law within its jurisdiction
- No matter how it is legally defined, it is not Empowerment Advocacy

DELAWARE LAW: UNAUTHORIZED PRACTICE OF LAW

- ❑ Statutes
 - ❑ 10 Del. C. § 1042(d)
- ❑ Professional Codes and Court Rules
 - ❑ Del. Rules of Prof’l Conduct R. 5.5
 - ❑ Del. R. Unauth. Prac. Bd. R. 4, 5, 6
 - ❑ Sup. Ct. R. 86
- ❑ Case Law
 - ❑ In re Estep, 933 A.2d 763 (2007)
 - ❑ Alston v. Issa, 2012 WL 6845666 (Del. Super. Ct. 2012)
 - ❑ In re Arons, 756 A.2d 867 (Del. Super. Ct. 2000)
 - ❑ Snyder v. Martin, 820 A.2d 390 (Del. Fam. Ct. 2001)
 - ❑ In re Tonwe, 929 A.2d 774 (Del. Super. Ct. 2007)

FIRST STEP: DEFINING THE PRACTICE OF LAW DELAWARE CASE LAW

The practice of law is using legal knowledge or skill to provide legal advice
and
the legal advice is about someone's legal rights or obligations or legal remedy.

The practice of law can occur *anywhere*, not just in a court setting.

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

STATUTES, RULES OF COURT, AND PROFESSIONAL CODES

The practice of law is using legal knowledge or skill to provide legal advice

and

- the legal advice is about someone's legal rights or obligations or legal remedy.

The practice of law can occur *anywhere*, not just in a court setting.

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

STEP TWO: EXAMINING DELAWARE CASE LAW

Pre-Litigation Representation:

Legal advice on rights and remedies

Where individual represented clients in negotiations and arbitration hearing, took deposition, arranged settlement, he was engaged in the unauthorized practice of law, despite not litigating within a courtroom.

Legal advice on remedy

--*In re Tonwe*, 929 A.2d 774 (Del.Supr.,2007).

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

STEP TWO: EXAMINING DELAWARE CASE LAW

Drafting legal documents:

Legal knowledge and skill

Court held that the practice of lawyers **drafting legal documents** (wills, deeds) for clients to file before the Register of Wills, and **providing legal advice** (pertinent to probate matters (particularly, **advising client regarding what steps he should take to clear up a title issue** from a real estate settlement) constituted the unauthorized practice of law.

Advice on legal obligations and remedy

--*In re Estep*, 933 A.2d 763 (Del.Supr.,2007).

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

STEP TWO: EXAMINING DELAWARE CASE LAW

Filing Court Documents

Legal knowledge and skill

Legal skill and knowledge

Pursuing a legal remedy

Non-lawyer who filed papers, signed pleadings, and appeared on behalf of mother at custody proceedings had engaged in the unauthorized practice of law, despite the fact that he was the mother's Power of Attorney.

—*Snyder v. Martin*, 820 A.2d 390 (Del.Fam.Ct.,2001).

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

SUMMARY OF WHAT WE KNOW IS NOT

RE:

- Draft legal documents
- Appear as a representative for proceedings
- Represent and Advise Clients negotiations and activities
- Provide legal advice
- File court documents
- Sign any legal document on b

**Importantly:
engaging in
these
activities is
not
Empowerment
Advocacy**

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

WHAT ELSE IS CONSIDERED THE UNAUTHORIZED PRACTICE OF LAW? LOOKING TO OTHER JURISDICTIONS

Advocates MAY:	Advocates MIGHT be allowed to:	Advocates may NOT:
Tell a survivor the information that a specific section of a legal form is requesting (e.g. “those lines are for you to explain what relief you would like the court to grant”)	Suggest a grammar edit or encourage the survivor to be clear in his/her answers	Tell the survivor what to write or request in a legal document (suggestions regarding how to phrase particular responses or what to emphasize)

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

WHAT ELSE IS CONSIDERED THE UNAUTHORIZED PRACTICE OF LAW? LOOKING TO OTHER JURISDICTIONS

Advocates MAY:	Advocates MIGHT be allowed to:	Advocates may NOT:
Act as a scribe for a survivor who is unable to read or write on his/her own	Act as a scribe for a survivor who is able to read and write but would prefer that you write for them (verbatim)	Fill out a legal document on behalf of a survivor; summarizing or altering their statements

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

WHAT ELSE IS CONSIDERED THE UNAUTHORIZED PRACTICE OF LAW? LOOKING TO OTHER JURISDICTIONS

Advocates MAY:	Advocates MIGHT be allowed to:	Advocates may NOT:
Answer questions concerning court rules, procedures, and the types of legal actions that survivors can pursue in general	Suggest that a survivor read a general information book for survivors and the legal system so that she/he may better grasp which legal actions are most relevant to her situation	Answer questions regarding the merits of a person's case or regarding the types of legal actions that a person should pursue based on their particular circumstances

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

WHAT ELSE IS CONSIDERED THE UNAUTHORIZED PRACTICE OF LAW? LOOKING TO OTHER JURISDICTIONS

Advocates MAY:	Advocates MIGHT be allowed to:	Advocates may NOT:
Provide legal definitions or copies of statutes, rules and regulations	Explain the language of the law/rule in layman's terms	Provide interpretations of the law in regard to its application to a particular survivor's case or situation

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

WHAT ELSE IS CONSIDERED THE UNAUTHORIZED PRACTICE OF LAW? LOOKING TO OTHER JURISDICTIONS

Advocates MAY:	Advocates MIGHT be allowed to:	Advocates may NOT:
Identify where court forms may be found, any instruction booklets that are available for those forms, and suggest which court forms <i>might</i> meet the needs of survivors in general	Assist the survivor in understanding any legal guidebooks/instruction booklets (e.g. what does the instruction booklet mean by “petitioner” or “respondent”)	Fill out a legal document on behalf of a survivor; summarizing or altering their statements

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

WHAT ELSE IS CONSIDERED THE UNAUTHORIZED PRACTICE OF LAW? LOOKING TO OTHER JURISDICTIONS

Advocates MAY:	Advocates MIGHT be allowed to:	Advocates may NOT:
Provide information about court procedures and emotionally support the survivor prior to court proceedings	Accompany the survivor to a court proceeding (if no objections from the presiding commissioner or judge)	Advise or represent the survivor during a court proceeding (presence in the court room for emotional support is generally allowed, but usually advocates are not allowed to pass notes or speak to the survivor once the proceeding has begun)

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

WHAT ELSE IS CONSIDERED THE UNAUTHORIZED PRACTICE OF LAW? LOOKING TO OTHER JURISDICTIONS

Advocates MAY:	Advocates MIGHT be allowed to:	Advocates may NOT:
Provide information regarding what date and time a survivor's hearing is scheduled	Provide information to a survivor regarding the status of a criminal case against a perpetrator (e.g. "he is scheduled for an arraignment on X date")	Coach a survivor on potential testimony she may give, evidence which may be introduced, or likely outcome of any criminal case

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

EMPOWERMENT ADVOCACY OR UPL?

Probably Empowerment Advocacy

A survivor brings a Petition for Protection from Abuse to your office and is unsure of the direction, recording exactly what she says to write without any alteration.

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

EMPOWERMENT ADVOCACY OR UPL?

Not
Empowerment
Advocacy -
UPL

A survivor comes into the office and tells you she has been violently abused by her daughter's boyfriend. The church told her she should file for a Protection from Abuse (PFA). You ask her what her chances are for obtaining the order and she shares with you the experiences she has just recounted to you. You tell her that if she has pictures of the injuries and can obtain witnesses for testimony, she would likely be granted a PFA.

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

EMPOWERMENT ADVOCACY OR UPL?

Empowerment
Advocacy

A survivor asks whether she should file for sole or joint custody and whether the fact that she has been charged with 3rd degree assault would guarantee her sole custody. You give her a pamphlet that describes the custody options and you explain the difference between joint and sole custody. You tell her that you are not a lawyer and do not know how the 3rd degree assault would be taken into consideration by the court in the custody proceedings, but that she should preserve any evidence of this incident that she does have.

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

EMPOWERMENT ADVOCACY OR UPL?

Probably Not
Empowerment
Advocacy -
UPL

A survivor asks whether an act that she was victim of constitutes "abuse" or "harassment" so that she can obtain an Order of Protection from Abuse.

You respond by telling her "yes" and you can get an Order of Protection from Abuse based on that act"

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

EMPOWERMENT ADVOCACY OR UPL?

Empowerment
Advocacy

You accompany a survivor during a PFA hearing, during which the survivor asks you whether she should disclose certain information that she had brought with her.

You do not respond to the note and you encourage her to keep her attention on the judge.

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

POLL QUESTION:

A survivor who has just obtained a Protection from Abuse Order against her children's father asks you whether she can now move out of state with the children since she was awarded sole custody in the PFA.

You respond that she can likely move and shouldn't have any problems given that she was awarded sole custody in the PFA.

EMPOWERMENT ADVOCACY OR UPL?

Probably Not
Empowerment
Advocacy -
UPL

A survivor who has just obtained a Protection from Abuse Order against her children's father asks you whether she can now move out of state with the children since she was awarded sole custody in the PFA.

You respond that she can likely move and shouldn't have any problems given that she was awarded sole custody in the PFA.

POLL QUESTION:

You offer a community education seminar to survivors of domestic violence, providing information such as: language of domestic violence laws, remedies the statute allows, how to file a Petition for Protection from Abuse, and referrals to various attorneys which may be able to assist survivors.

EMPOWERMENT ADVOCACY OR UPL?

You offer a community education seminar to survivors of domestic violence, providing information such as: language of domestic violence laws, remedies the statute allows, how to file a Petition for Protection from Abuse, and referrals to various attorneys which may be able to assist survivors.

**Empowerment
Advocacy**

POLL QUESTION:

While meeting with a victim of sexual violence at the hospital, she asks you whether what happened to her constitutes “rape” and if so, what sentence the perpetrator will receive.

You respond, saying that the act as she has recounted is rape and that she should definitely stay involved with the attorney general so that the charges aren’t dropped.

EMPOWERMENT ADVOCACY OR UPL?

Probably Not
Empowerment
Advocacy -
UPL

While meeting with a victim of sexual violence at the hospital, she asks you whether what happened to her constitutes “rape” and if so, what sentence the perpetrator will receive.

You respond, saying that the act as she has recounted is rape and that she should definitely stay involved with the attorney general so that the charges aren’t dropped.

POLL QUESTION:

You are in the hospital with a survivor of sexual violence and a friend who witnessed the violence. You question the friend about what happened and advise her what information to emphasize when speaking with the police or in the courtroom.

EMPOWERMENT ADVOCACY OR UPL?

Not
Empowerment
Advocacy -
UPL

You are in the hospital with a survivor of sexual violence and a friend who witnessed the violence. You question the friend about what happened and advise her what information to emphasize when speaking with the police or in the courtroom.

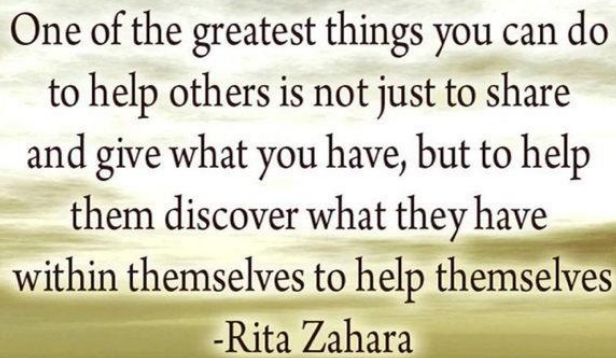
RECOMMENDATIONS FOR ADVOCATES:

- Advise all survivors that you are not an attorney or legal representative
- Alert survivors that attorney-client privilege will not apply to conversations with an advocate
- In general, avoid answering any “should I” questions (e.g. “Should I file for sole custody of my children?”) and instead focus on answering “How do I” questions (e.g. “How do I file for an Order of Protection?”)

DELAWARE COMMUNITY LEGAL AID SOCIETY, INC. 2013

THE DO'S OF EMPOWERMENT ADVOCACY

- Do provide support by listening
- Do empower through information about how the court process works
- Do engage in safety planning
- Do connect to community resources



One of the greatest things you can do
to help others is not just to share
and give what you have, but to help
them discover what they have
within themselves to help themselves
-Rita Zahara

Legal Resources:

Community Legal Aid:

New Castle: 302-575-0660

Kent: 302-674-8500

Sussex: 302-856-0038

Delaware Volunteer Legal Services:

New Castle: 302-475-8680

Kent & Sussex: 1-888-225-0582

Legal Helplink:

New Castle, Kent & Sussex: 302-475-8850



For further
questions or
information:

- www.dcadv.org
- training@dcadv.org
- **Phone:** 302-658-2958

