



**Legal Assistance
for Crime Victims**
An OVC Capacity Building Initiative

A High Wire Act: Advocating for Victims While Avoiding the Unlawful Practice of Law

Presented in collaboration with
the National Crime Victim Law Institute

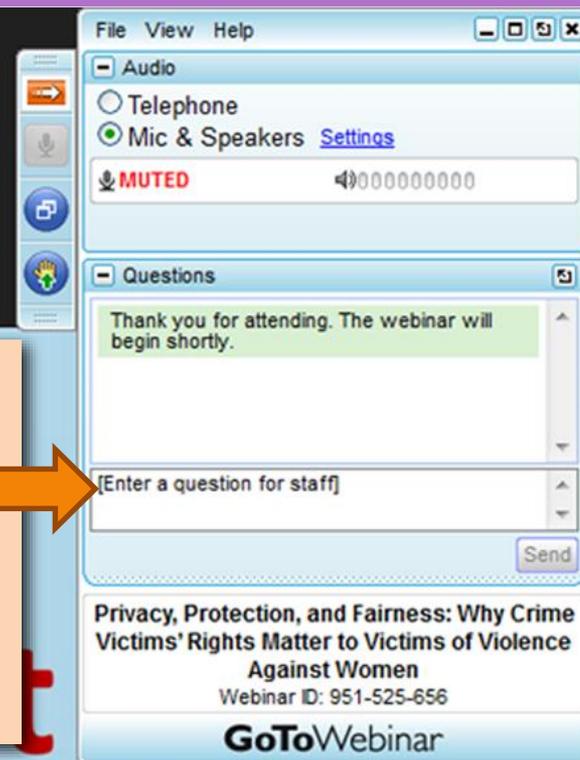


Flow of the Webinar

- You are muted but you can ask questions & participate – and we hope that you do
- You will receive an email with the powerpoint slides and the recording of the Webinar will be available online
- Please provide feedback

How to Ask Questions During the Webinar

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The screenshot shows a GoToWebinar control panel. At the top, there is a menu with 'File', 'View', and 'Help'. Below this, the 'Audio' section is expanded, showing options for 'Telephone' and 'Mic & Speakers' (selected). A 'MUTED' indicator is visible next to a volume slider. The 'Questions' section is also expanded, displaying a message: 'Thank you for attending. The webinar will begin shortly.' Below this message is a text input field containing the placeholder text '[Enter a question for staff]' and a 'Send' button. At the bottom of the interface, there is a footer with the text: 'Privacy, Protection, and Fairness: Why Crime Victims' Rights Matter to Victims of Violence Against Women', 'Webinar ID: 951-525-656', and the 'GoToWebinar' logo.

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Overview and Learning Objectives

During today's webinar we will:

- Discuss what constitutes the unlawful practice of law
- Learn why it is important to avoid the unlawful practice of law
- Use a hypothetical scenario to explore the boundaries of the unlawful practice of law while providing meaningful assistance to victims

What is



“unlawful practice of law”?

What Unauthorized Practice of Law Looks Like

- An individual intentionally holding him/herself out as an attorney when not licensed to practice law (e.g., notarios)
- An attorney practicing law in a jurisdiction without a license from that jurisdiction
- Non-attorney legal staff (e.g., paralegal, legal secretary) providing legal advice in the course of employment
- **An individual providing assistance that unintentionally crosses over into legal advice**

Practicing Law / Giving Legal Advice

Generally occurs in two forms:

1. The exercise of professional judgment
2. The application of legal principles to the facts of an individual case/circumstance

Exercise of Professional Judgment

Ask yourself:

Am I exercising “intelligent choice” or “informed discretion” in advising another of his/her legal rights or duties?

Examples of prohibited conduct:

- Telling the victim what form to use when there are several options available
- Telling the victim how to complete the form

Example of allowable conduct:

- Filling in the blanks on documents chosen by the victim with information provided by the victim (e.g., scrivener)

Application of Law to Facts

Legal information vs. Legal advice

While anyone can provide legal information to an individual, it must not become legal advice.

Examples of prohibited conduct:

- Recommending that the victim take a course of action
- Applying the law to the victim's specific circumstances

Red Flags

Be wary if you are:

- Telling the victim what to do versus how to do it
- Interpreting a law, rule or procedure for the victim (not just reading the legal provision)
 - Explaining the meaning of a term is acceptable
- Determining what is in the victim's best interest

Why is avoiding the unlawful practice of law important?

1. Unintentionally harm victims
2. Criminal and/or civil consequences

Potential Harm to Victims

- Victim law is a new area of law and is still developing
- Attorneys are trained to understand and analyze law
- Bad advice can result in termination of rights without remedy

Criminal and/or Civil Penalties

- Injunction
- Contempt of court
- Criminal fine and/or incarceration

HYPOTHETICAL CASE

Exploring the Boundaries of the Unauthorized Practice of Law

You are a victim advocate working in a domestic violence nonprofit organization. Karen comes to your organization seeking help. She tells you that her husband, Ben, has been abusive during their entire 5 year marriage, but the abuse became especially brutal last week. Ben left the house after the attack (before anyone called the police) and is staying with his mother. He promised to stay away if Karen did not call the police. Karen asks you if she should report the incident to the police.

POLL #1

DISCUSSION

Karen tells you that she needs a place to stay because her landlord finally got fed up with all the neighbors' complaints and evicted them. She says that her daughter, J.D., has been in therapy for about 6 months and Karen has been paying out of pocket because they don't have insurance. She is financially wiped out and doesn't have any money for a deposit on a new place. You know that you are in a state where the law prohibits landlords from evicting domestic violence victims.

POLL #2

DISCUSSION

Karen decides to obtain a protective order against Ben. She has downloaded a form off the state's website that petitioners are to use when seeking a civil protection order. When she comes to your office she is clearly exhausted and upset and tells you she "just can't do this alone." She asks you to help her fill out the form.

POLL #3

DISCUSSION

Filling out Legal Forms

Permissible:

- Providing the victim with a legal form that he/she requested

Generally impermissible:

- Using legal judgment to inform a victim which competing form to use
- Giving advice about the legal effect of executing a form

Filling out a Legal Form, cont.

Permissible:

- Asking the victim questions to enable you to fill out the form for the victim

Generally not permissible:

- Asking more questions than necessary to fill out the blank spaces in a standardized form
- Using the information given in the form to advise the victim of his/her rights
 - For example, predicting the outcome of the proceeding

Karen's daughter, J.D., disclosed to her that Ben had been sexually abusing her for about a year. This motivated Karen to report the domestic violence and sexual abuse to the police and prosecution is underway. You are a prosecution-based victim advocate. Karen stops by your office and tells you that the prosecutor, who is doing a great job, has asked her to get him J.D.'s therapy records to help with the prosecution. J.D. told Karen that she does not want anyone to see her records.

POLL #4

DISCUSSION

You are an attorney working for a nonprofit that does a lot of work on criminal restitution. Karen calls your organization because she found a legal article on the Internet that you wrote. She informs you of the facts of her case. Ben has now been convicted and the prosecutor gave her a form to fill out regarding restitution. He also asked her to get a copy of all the therapist's bills that she has paid up until now. Karen tells you that the bills only represent "a drop in the bucket" of all that J.D.'s therapy has cost her. She explains how she took time off from work to drive J.D. to and from therapy and used up all her vacation days. Not to mention the therapist told her that J.D. will likely need "years" of therapy to recover from this. Karen tells you, "there is no space on the form for future therapy costs, can I add that to the form?"

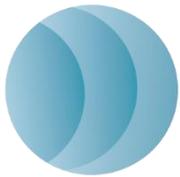
POLL #5

DISCUSSION



Even when not giving legal advice, but merely providing legal information, know that you may be influencing a victim to act in a certain way that could effect his/her legal rights.

QUESTIONS?



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The Office for Victims of Crime's Legal Assistance for Crime Victims Initiative is a comprehensive capacity-building effort to expand the availability of pro bono/no-cost legal assistance for victims of crime. The initiative aims to ensure that all victims of crime have access to quality representation on myriad legal issues that can arise following victimization.

Through this effort, OVC TTAC and the National Crime Victim Law Institute are working collaboratively to offer training and technical assistance for attorneys, especially those currently providing legal assistance to victims.

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