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ABA Task Force  
On the Model Definition of the Practice of Law  
ABA Center for Professional Responsibility  
Chicago, IL 60606

Attn: Art Garwin

To the Task Force:

I am the Chair of the Indiana State Bar Association's Unauthorized Practice of Law (UPL) Committee. The following are my comments on the draft Model Definition of the Practice of Law issued on September 18, 2002.

The Task Force is to be commended on its initial draft of the Model Definition of the practice of law. The proposed Model Definition takes a very significant step toward providing needed clarity in the UPL area. In my view, the present situation is that there is a distinct lack of clarity and uniformity in the UPL area throughout the country. What constitutes UPL activity varies widely among the states. The result is that there exists a crazy quilt of case law and interpretation of existing professional rules that has left both the general public as well as members of the bar confused about what actually constitutes the unauthorized practice of law.

Also adding to the problem is that state courts tend to be very tepid in their UPL decisions. In Indiana, while our state supreme court generally has not ventured beyond the context of the specifics of the facts presented in UPL cases to lay down many "markers" which could be used to judge UPL conduct in other types of situations -- particularly with regard to non-lawyers who may be engaged in the unauthorized practice of law. A more expansive definition of what constitutes the practice of law could only serve to provide clarity not only to the general public and members of the bar, but also to state courts that must deal with UPL issues.

While the Task Force has taken a bold significant step with its initial draft Model Definition, it does need to go farther. By purposefully avoiding getting too much into the minutiae of defining the practice of law and leaving it to individual states to fill in the

detail, the Task Force draft definition falls short of providing the clarity and uniformity that is needed on a national basis in this area. Increasing, the UPL complaints that the Indiana State Bar UPL Committee deals with concern non-lawyers or entities or schemes that are national or interstate in scope. This situation begs for a more detailed uniform or national rule that can be uniformly applied to all non-lawyers and their activities.

To address the need for more uniformity in this area, I would urge that the Task Force to provide more substantive detail to the proposed Model Definition. Experience has shown with the Model Rules that most states will adopt a Model Rule or a Model Definition without change. However, by leaving the Model Definition purposefully incomplete, this will invite tinkering and change by various states (or not further change) that will result in a hodgepodge of UPL standards across the country. This will send a very confusing signal to the general public and will ultimately wind up providing less protection to the general public. This is because the general public will be unlikely to see the nuances of the situation whereby a non-lawyer who engages in an activity in some states that is not considered UPL while in other states the same activity is considered UPL.

In providing more detail to the Model Definition, I would also suggest the following changes to (c). One is that the definition of the term “person” also include any “entity” engaged in any of the enumerated conduct. Two is that the person (or entities) engaged in the enumerated conduct must charge a fee or must otherwise receive a *quid pro quo* for their services. As worded, a family member or friend who is assisting an individual as a favor could be caught seen as engaging in the unauthorized practice of law. Since most courts or UPL committee would likely never pursue UPL charges against such individuals, the Model Definition should recognize this fact and exempt any one who does not charge a fee (or demand a *quid pro quo*) for their services.

Under (d), a clear exception should be provided for employees of an entity who are engaged in any of the enumerated activities in (c) for the exclusive benefit of their employer. For example, “contract specialists” for government agencies or private corporations routinely negotiate legal documents on behalf of their employer. Also, employees of corporations routinely represent their employer in small claims or administrative settings. These and other types of activities enumerated in (c) have been well accepted and it is unlikely that courts or UPL committee would ever pursue government or corporate employees involved in such activities, the Model Definition should recognize this fact and not try to be so overbroad in its application of who is engaged in the unauthorized practice of law.

In closing, I want to again commend the Task Force for taking the bold step in proposing its draft Model Definition for the Practice of Law. In doing so, I would also urge that the Task Force take the further step to provide more substantive detail to make the Model

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Definition more or a uniform model standard that can be adopted by states without minimal change in order to provide maximum clarity and uniformity that is needed in this area.

Sincerely,

John Conlon, Chair  
Indiana State Bar Association  
Unauthorized Practice of Law Committee