

ABA Standing Committee on Group and Prepaid Legal Services

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To: Lish Whitson, Chair, ABA Task Force On The Model Definition Of The Practice Of Law
From: W. Anthony Jenkins, Chair
Re: Proposed Model Definition of the Practice of Law

I serve as chair of the ABA Standing Committee on Group and Prepaid Legal Services. I am writing you on behalf of our Committee to offer our comments on the draft Model Definition of the Practice of Law issued by your Task Force on September 18, 2002.

We have reviewed the draft and discussed it at our meeting on January 3, 2003. As you may know, we have a close relationship with the ABA's American Prepaid Legal Services Institute (API) on whose Board sits a number of national authorities on group and prepaid legal service plans. After consulting with the API Board and reviewing the comments submitted to you by Mary Kay Ryan, chair of the Standing Committee on Delivery of Legal Services, our Committee agrees in principal with the comments submitted by Ms. Ryan in her memo of December 19, 2002.

Group and prepaid legal service plans use a variety of mechanisms to increase the availability of legal services, information about the law and other tools to help consumers solve and prevent legal problems. The majority of services available through these plans are provided by practicing lawyers in their local communities. However, legal plans also use other mechanisms to make legal information, self-help solutions and other tools available to their subscribers to encourage early identification and resolution of legal matters.

For example, one plan is providing members with access to document generation software which will allow them to generate letters that are effective in resolving disputes with businesses about products or services and to prepare their own healthcare powers of attorney. Another keeps costs down by limiting the role of plan lawyers to reviewing documentation that already has been completed by real estate brokers or title companies. Such individuals and companies routinely complete legal documents involved in the purchase and sale of real estate.

We are concerned that the broad categories describing the practice of law under Section (c) of the proposal encompass activities, information and services which legal service plan members regularly seek from a variety of legitimate sources other than lawyers. In recognition of this common practice, plans are designed with specific benefits to encourage members to consult a lawyer to seek guidance regarding documents prepared or advice given by other service providers, or even relatives or acquaintances, for that matter. To define such activities as performed by non-lawyers as the per se practice of law would place unreasonable restrictions on access to information and services needed by moderate income people to deal with personal, financial and legal matters as they arise.

We therefore respectfully urge you to reconsider the approach you've taken in promulgating this definition. We suggest that any definition issued should be more focused on defining what unique qualities and benefits lawyers afford their clients - representation that is provided diligently, confidentially and with full fidelity - rather than on restricting the legitimate activities of others who deal with matters involving the law in the normal course of their business or personal affairs.

We stand ready to consult with your task force and explain further our position on these issues. Thank you very much for your consideration of our views.

