



Professional Responsibility Counselors

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December 17, 2002

Mr. Arthur Garwin
American Bar Association
Center for Professional Responsibility
Lake Shore Drive
Chicago, IL
agarwin@staff.abanet.org

RE: Definition of "Practice of Law"

Dear Mr. Garwin:

Professional Responsibility Counselors is a non-profit corporation whose members are Michigan lawyers who represent private clients in malpractice, risk management, discipline, and other professional responsibility matters. PRC recently had an opportunity to review and discuss the proposed Definition, and I have been asked to submit comments for your consideration.

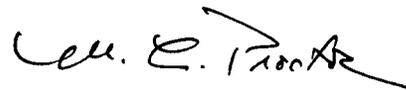
There has been considerable discussion about the difficulty of defining "practice of law." Testimony before the ABA Commission on Multistate Practice noted that both lawyers and nonlawyers engage in activities that could be called "practice of law," that many activities of lawyers do not require a law license, and that there are numerous state-by-state exceptions. It does appear, however, that the list of activities in the Draft ABA Definition paragraph (c) represents a basic core of commonly agreed upon parameters that have been effectively working in the majority of states in prosecutions for the unauthorized practice of law.

We believe the ABA Task Force would accomplish its mission by redrafting its operative provision paragraph (c) to be a condition of licensure, rather than attempting a definition. If drafted as a condition of licensure, special licenses for inside counsel, foreign lawyers, or legal assistants would not be "exceptions" under paragraph D. Since pro se representation by individuals has constitutional protection, and pro se representation by entities is widely accepted, provided that nonlawyers do not appear before tribunals on behalf of entities, the pro se "exception" would similarly be unnecessary. Pro se representation by entities should be clarified in commentary.

We oppose any liability clause, such as draft paragraph (e), in what we view as a licensing law. The liability clause opens up an entire area of substantive law that differs from state to state, and would inhibit any attempts any national uniformity. The liability questions could be addressed in commentary or in a cover memorandum. We further believe the requirement in paragraph (e) for nonlawyers to declare their status in writing is unnecessarily burdensome, given that nonlawyers commonly serve as arbitrators and mediators.

Our suggested language is enclosed; we have not attempted to redraft commentary at this point. If you desire additional information, please do not hesitate to contact me or one of the other board members reflected on this letterhead.

Sincerely,

A handwritten signature in black ink that reads "Marcia L. Proctor". The signature is written in a cursive style with a long, sweeping underline.

Marcia L. Proctor

Enc.

cc: PRC Board Members