

# Response of PRC to

## ABA Draft (9/18/02)

### DEFINITION OF THE PRACTICE OF LAW

~~(a) The practice of law shall be performed only by those authorized by the highest court of this jurisdiction.~~

~~(b) Definitions:~~

~~(1) The "practice of law" is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.~~

(2) "Person" includes the plural as well as the singular and denotes an individual or any legal or commercial entity.

(3) "Adjudicative body" includes a court, a mediator, an arbitrator or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

~~(c)(b) Unless licensed and in good standing as a lawyer by the state supreme court, A person may not engage in any of the following activities on behalf of another person or entity: is presumed to be practicing law when engaging in any of the following conduct on behalf of another:~~

(1) Giving advice or counsel to persons as to their legal rights or responsibilities or to those of others;

(2) Selecting, drafting, or completing legal documents or agreements on behalf that affect the legal rights of a another person;

(3) Representing any person or entity a person before an adjudicative body, including, but not limited to, preparing or filing documents or conducting discovery; or

(4) Negotiating legal rights or responsibilities on behalf of another person.

(d) Exceptions and exclusions: Whether or not they constitute the practice of law, the following are permitted without a law license:

~~(1) Practicing law authorized by a limited license to practice;~~

~~(2) Pro se representation;~~

(3) Serving as a mediator, arbitrator, conciliator or facilitator; and

**(4) Providing services under the supervision of a lawyer in compliance with the Rules of Professional Conduct.**

~~(e) Any person engaged in the practice of law shall be held to the same standard of care and duty of loyalty to the client independent of whether the person is authorized to practice law in this jurisdiction. With regard to the exceptions and exclusions listed in paragraph (d), if the person providing the services is a nonlawyer, the person shall disclose that fact in writing. In the case of an entity engaged in the practice of law, the liability of the entity is unlimited and the liability of its constituent members is limited to those persons participating in such conduct and those persons who had knowledge of the conduct and failed to take remedial action immediately upon discovery of same.~~

~~(f) If an unlicensed person or entity engages in activities prohibited by this section, who is not authorized to practice law is engaged in the practice of law, that person or entity shall be subject to the civil and criminal penalties of this jurisdiction.~~

#### **Comment**

[1] The primary consideration in defining the practice of law is the protection of the public. Thus, for a person's conduct to be considered the practice of law, there must be another person toward whom the benefit of that conduct is directed. That explains the exception for pro se representation. The conduct also must be targeted toward the circumstances or objectives of a specific person. Thus, courts have held that the publication of legal self-help books is not the practice of law.

[2] The exception for pro se representation in paragraph (d)(2) contemplates not only self-representation by an individual but also representation of an entity by an authorized nonlawyer agent of the entity in those jurisdictions that permit such representation.