

MEMORANDUM

To: Task Force on the Model Definition of the Practice of Law

From: Debbie Segal, Chair, Standing Committee on Pro Bono and Public Service

Re: Comments on the Draft Model Definition of the Practice of Law

Date: February 27, 2003

We appreciate the opportunity to submit comments on the draft Model Definition of the Practice of Law (“Model Definition”).

The Standing Committee on Pro Bono and Public Service is dedicated to increasing pro bono legal work on the part of attorneys and expanding the pool of volunteer legal services available to the poor and underserved. As such, the Committee has reviewed the draft Model Definition and the comments presented at the public hearing in Seattle at the Mid-Year Meeting.

Assuming that the road towards a Model Definition has already been paved, the Pro Bono Committee is in favor of a definition that encourages innovation and creativity in the delivery of legal services to the needy. The Committee believes that the definition proposed by the Standing Committee on the Delivery of Legal Services (SCDLS) is well-suited to balancing the need for protecting the public from unscrupulous non-lawyers with the desire for allowing non-attorneys to perform certain functions in conjunction with lawyers that do benefit the public and do help the poor to gain access to more legal assistance than would otherwise be available.

The Pro Bono Committee notes that there are many situations where collaborative or holistic assistance is provided in the delivery of legal services and pro bono work. As the SCDLS noted in its comments, non-lawyer clerks, paralegals, social workers and pro bono coordinators help in filling out forms and assisting clients in conjunction with discrete legal issues. In family law, probate and housing courts across the country, help desks have been established to address the increasing flow of litigants – most often low-income – who appear in court unrepresented by counsel.

Pro bono and legal services programs have designed one-stop shopping models in conjunction with social service providers in an effort to better serve poor clients. The Pro Bono Committee believes that finding innovative and effective models for lawyers partnering with non-legal advocates to provide pro bono services is a worthy goal and one that should not be discouraged by an overly restrictive definition of the practice of law.

Below is a list of just a few active pro bono projects where lawyers partner with social service providers, translators, accountants, community advocates, paralegals and others to provide free legal assistance:

- **Family Law Assisted Self Help**
Helping at the courthouse with forms and workshops for low-income people who are doing divorces for themselves.
- **Homeless Advocacy Project**
Serving as an advocate helping people who are homeless or at imminent risk of becoming homeless. Negotiating with landlords, assisting with completion of applications for disability benefits.
- **Restraining Order Clinic**
Helping women prepare requests for restraining orders against batterers.
- **Eviction Defense**
Interviewing people who are being evicted and helping them to prepare papers to appear in court without legal representation.
- **Detained Immigrant Children's Assistance**
Serving as an interpreter for detained juveniles who are dealing with the Immigration and Naturalization Service.
- **Violence Against Women Act**
Assisting battered immigrant women with applying for legal permanent residency under the Violence Against Women Act.

As the director of one leading pro bono program notes, “[C]lients’ legal crises are often caused or exacerbated by crippling social, economic, health or psychological difficulties.” The effectiveness of lawyers working with non-lawyers in tandem is becoming more and more evident.

The Pro Bono Committee appreciates the need for protecting clients from being misled by non-attorneys. At the same time, however, the Committee believes that many non-attorneys are fully skilled and trained to assist in the delivery of legal services. Moreover, since lawyers are able to meet only a small fraction of the legal needs of the poor, the reliance on non-lawyers to provide legal services is in some sense born out of economic necessity. If non-lawyers were prohibited from providing legal services to the poor, the result would not be that the poor would gain access to other lawyers, only that they would be denied access to any justice whatsoever.

As such, the definition proposed by SCDLS more easily allows for a holistic approach to providing pro bono legal services while maintaining the distinction of a lawyer’s practice of law as a combination of skills, knowledge, a strong ethical framework and disciplinary remedies.