

**Standing Committee on  
Legal Aid and Indigent  
Defendants**

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January 21, 2003

Lish Whitson, Chair

ABA Task Force on the Definition of the Practice of Law

Lish Whitson PLLC

Ste 3800

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Dear Lish:

The Standing Committee on Legal Aid and Indigent Defendants examines issues relating to state and local programs providing civil legal services to the poor, and to state and local programs that provide representation to indigent persons accused of crimes. The Committee favors the promulgation of policies that permit such local programs to effectively represent their clients, and to operate efficiently within extremely limited resources.

I appreciate the complexity of the initiative undertaken by the Task Force, and commend your swift work in offering a proposed definition for evaluation by interested groups. Because the definition has the potential to impact the ability of civil and defender legal services programs to continue to serve poor clients with maximum efficiency, I submit these comments.

These comments are necessarily preliminary, as our full committee has not yet had an opportunity to review and discuss your proposal. Also, these comments merely respond to the construct offered in your Task Force's draft definition. We have not yet analyzed the merits of an alternative approach, as has been suggested by the Delivery Committee. I will bring this matter before our committee at its February meeting, and will likely provide further comments soon thereafter.

These are my initial reactions:

- The draft definition states that a person is presumed to be practicing law when "giving advice & counsel." There may well be substantial ambiguity in that phrase. Is there a distinction between advice and counsel offered in-person by a lawyer as opposed to information provided on a web site or in a brochure? Is the latter necessarily the practice of law? Legal services programs make extensive use of web sites and written materials in seeking to educate poor clients and empower them to help themselves with legal problems when limited resources prevent the program from providing lawyer assistance. The definition adopted should therefore clarify what constitutes "advice and counsel," and insure that the definition does not impede provision of assistance via various self-help and document assembly systems.

- Civil and defender legal services programs often utilize non-lawyer case handlers (paralegals and other trained advocates) to provide a variety of services to clients, again attempting to leverage very limited resources to maximum effect. In some situations, these case handlers are authorized by other law to provide direct representation before administrative forums and in other circumstances. For example, federal law permits non-lawyers to represent persons in various administrative forums where benefits are at issue such as Social Security benefits, food stamps, public housing tenancies, and the like. These advocates do not necessarily need to be under the supervision of a lawyer. Paralegals doing this kind of practice are a critical part of legal services operations. For that reason, any definition that is adopted should specifically recognize that federal and state law often authorizes some direct forms of client service and representation by non-lawyers.
- Civil and defender legal services program also often rely on non-lawyer case handlers/paralegals to attend to a myriad of largely ministerial tasks that do not require legal judgments. These sometimes include the completion of forms and documents. While selecting an appropriate form/document or drafting such a document almost always involves the application of legal judgment and usually should be considered the “practice of law,” the mere insertion of relevant information into an existing form/document by a carefully trained but otherwise unsupervised non-lawyer may or may not be legal work, depending on the particular circumstances. For example, many legal services programs and courthouse pro se projects offer assistance to poor pro se clients in “filling in the blanks” in forms that have been selected by a client or by a lawyer or judicial officer. While it may be preferable to have a lawyer supervise this type of work, limited resources available to a legal services program or to a person proceeding pro se often make it infeasible. For these reasons, any definition that is adopted should not contain a broad prohibition of document completion, but should permit the unencumbered assistance by non-lawyers in appropriate circumstances.

Thank you for this opportunity to comment on the work of the Task Force. We look forward to the opportunity to work with the Task Force as it completes its work.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Jonathan Ross', with a stylized flourish at the end.

L. Jonathan Ross  
Committee Chair