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January 15, 2003

Arthur Garwin
Counsel and Publications on Professionalism
American Bar Association Task Force on
the Model Definition of the Practice of Law
750 North Lakeshore Drive
Chicago, IL 60611

Re: *Proposed Model ABA Standards on the Definition of the Practice of Law*

Dear Mr. Garwin:

It is my understanding that the task force on the model definition of the practice of law at the American Bar Association will be in Seattle on February 7, 2003 to take testimony with respect to the model definition. As a former justice of the Washington Supreme Court, and someone who has been involved with the definition of the practice of law in Washington State, I do not believe the so-called model definition is acceptable.

I am aware that the United States Justice Department as well as the Federal Trade Commission are very concerned that this new model definition is designed to prevent non-lawyers from offering legal advice. The definition is designed to carve out a special niche for lawyers, and to prevent non-lawyers from offering legal advice in a fashion that competes with attorneys.

Non-lawyers offer legal advice in a variety of situations in the State of Washington and elsewhere that would run afoul of the proposed model definition. For example, in many courts across Washington state, courthouse facilitators offer legal advice to persons who cannot afford traditional legal services. This program is exceptionally well-received and provides a needed service to people in Washington superior courts. Similarly, insurance adjustors frequently negotiate legal rights and responsibilities on behalf of insurance carriers. It would appear that such conduct will constitute the practice of law and insurance adjustors would be foreclosed from such negotiating.

Washington's definition of the practice of law has been offered as a model for the ABA definition. However, Washington found it necessary to exempt a number of activities from its definition of the practice of law. The rule resembles Swiss cheese, given the many exceptions to the general definition.

I believe it is time for the American Bar Association, and state bar associations, to finally acknowledge that non-lawyers can provide appropriate legal advice and certain legal services to clients. It would be far better for the ABA to acknowledge the efforts of non-lawyers and lend its efforts to self directed licensing of non-lawyers, rather than focusing on the kind of exclusionary effort that the so-called model definition represents. If the ABA is interested in looking at an effective kind of regulatory scheme for non-lawyer practice, I strongly urge the ABA to consider the Washington state rules regarding Limited Practice Officers who are authorized to close real estate transactions. LPO's are regulated by the Washington Supreme Court and provide a needed and valuable service, at a lesser cost than attorneys, to the public. This is a better model than the one that the ABA is considering.

If you need further information from me regarding this matter, I would be more than happy to provide additional thoughts to you at your convenience.

Very truly yours,

Philip A. Talmadge

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