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VIA E-MAIL - agarwin@staff.abanet.org

Mr. Art Garwin
Task Force on the Model Definition
of the Practice of Law
American Bar Association
750 North Lake Shore Drive
Chicago, Illinois 60611

Dear Mr. Garwin:

At the suggestion of Lish Whitson, chair of the Task Force, I am writing this summary of the comments I would like to present to the Task Force at its hearing in Seattle. Mr. Whitson indicated that it still might be possible to be placed on the agenda and, if that possibility arises, would very much appreciate that opportunity as I believe my comments would bring a perspective not yet being brought to the Task Force from those now scheduled to appear.

My comments are presented on behalf of a fledgling organization, the NATIONAL ASSOCIATION OF LEGAL DOCUMENTS ASSISTANTS ("NALDA"). NALDA membership is composed of persons who assist individuals in the preparation of documents to be used by those individuals to represent themselves, *pro se*, in uncomplicated civil matters. NALDA members provide those individuals with the ability to represent themselves in the grand tradition of citizen participation.

There are three objectives which NALDA seeks to realize through its presentation to the Task Force: first, to restate and reinforce individuals' rights

to represent themselves; second, to assure the community of lawyers that NALDA members do not see themselves as substitutes for competent legal counsel; and, third, that NALDA members do and will conduct their affairs only pursuant to stringent operating guidelines and the highest of ethical standards.

The Draft Model Definition of the Practice of Law, if adopted by any State, could present a NALDA member operating in that State with the possibility of being considered to be engaged in the unauthorized practice of law, a result NALDA cannot believe the American Bar Association either intends or would countenance. The facilitation of individuals' abilities to represent themselves, which is NALDA's and its members' *raison d'etre*, cannot be an objective which the ABA wishes to prejudice, inhibit or eliminate. Yet, that clearly will be the effect were the Draft Model Definition to become a standard.

NALDA does not believe the ABA seeks to foster development of a paradigm which contributes nothing to the welfare of its members, the legal community at large or the general public but which could be used as the basis for disadvantaging many individuals who wish to represent themselves and those who would be of assistance to them. Whatever might be the force which impels the Task Force, there clearly is an element of the "road to hell . . ." which, however unanticipated or unintended, does attend upon it. It would be most unfortunate that a project undertaken with the best of intentions should become, by its very nature, a force for divisiveness and consternation.

Individuals' rights to represent themselves is a time-honored tradition in this country which NALDA seeks to honor. It is the tradition which NALDA honors and not the specific motivation of the individuals who come to its members. That is an important element of NALDA's creed for, in the honoring of the tradition of self-representation, the standards and guidelines which NALDA members must adopt and adhere to embody the facilitation of that self-representation through assistance with document preparation and the providing of information and not the giving of advice. NALDA members simply are conduits through which pass tools individuals choose for their own determined purpose; NALDA members in no way contribute to that determination.

There are members of the legal profession who see in NALDA's members transgressors into their sacred vineyards. NALDA members do not, and NALDA itself does not, see document preparation assistance as an activity Karl Nickerson Llewellyn called or would have included in "law work". Indeed, that portion of the Draft Model Definition at sub-section (a)(1) seems to recognize that, but, nevertheless, is problematic. The providing of assistance in the preparation of certain legal documents does not entail the "application of legal

principles and judgment” which requires “the knowledge and skill of a person trained in the law.”

No doubt an argument can be made that every aspect of “law work” itself constitutes “law work” and there is no boundary which can be identified to separate “law work” from document preparation assistance. That, however, depends upon a tautology: what lawyers do is “law work” or “law work” is what lawyers do. The definition referred to above, however, begs the same type of question: what are the situations which require the application of legal principles and judgment, as compared with those which require only the possession of certain information and the ability to relay it.

Because NALDA and its members do not see document preparation assistance as falling within the penumbra of “law work” and, therefore, within the singular purview of the legal profession, there should be a willingness of the ABA to proceed with this exercise in a manner which recognizes the distinction spoken of here. NALDA and its members hereby offer to do everything and anything to contribute to that exercise.

Finally, because document preparation assistance does require NALDA members interact with the general public, there are standards, guidelines and ethical norms which NALDA believes appropriate, indeed, necessary, as a requirement of membership and which constantly must be monitored. Document preparation assistance also should be treated as a respected endeavor, one which the public can come to rely upon for the highest and most trusted quality of performance by its participants. That is a singular objective of NALDA and its members. There should exist, and NALDA will work diligently to realize the objective of adoption by every State of, standards, guidelines and ethical norms, within the framework of appropriate regulatory and enforcement mechanisms, to assure document preparation assistance is undertaken in the best interest of the public. The recent adoption by the State of Arizona of such a program is an example which NALDA is proud to point to. One of NALDA’s founding members, We The People Forms and Service Centers USA, Inc., was instrumental in that accomplishment.

NALDA appreciates the time you have taken to read this and restates its strong desire to be represented on the agenda in Seattle, if that it is at all possible.

Sincerely,

/s/

Charles F. Vihon