



**Washington State Paralegal Association**

PLEASE REPLY TO:

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Arthur Garwin  
Counsel on Publications and Professionalism  
American Bar Association  
Task Force on the Model Definition of the Practice of Law  
750 North Lake Shore Drive  
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***RE: Definition of the Practice of Law***

Dear Mr. Garwin and Task Force Members;

We are appreciative of this opportunity to give feedback as to the current Draft Definition of the Practice of Law. As both Messers. Whitson and Weldon are aware, we worked on this issue in the great state of Washington, and we look forward to your visit here on February 7, 2003.

Our comments are considerably less detailed than they might be if we understood the range of affected persons and groups comments have been solicited from; what alternatives have been reviewed; and what credence the ABA and others' work-product regarding the Multi-Disciplinary Practice (MDP) debates have been. We appreciate and understand the breadth and depth of your assignment.

We do not believe the time has come to codify in a national “Model” the definition of the practice of law. Alternatively, if such a codification is attempted, we very strongly believe that a framework must accompany such a definition to allow the limited practice of law by non-lawyers to address access to justice needs and key criteria such as was done in Washington with these principles:

[W]hether regulation . . . is necessary to protect the public interest. Any recommendation that non-lawyers be authorized to engage in the limited provision of legal or law-related services shall be accompanied by a determination:

(A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by permitting non-lawyers to engage in the defined activities set forth in the recommendation;

(B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained non-lawyers;

(C) if the public interest requires regulation under authority of the Supreme Court, such regulation is tailored to promote access to affordable legal and law-related services while ensuring that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those non-lawyers who will provide such services;

(D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with . . . [IOLTA]; and

(E) that the costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime.<sup>1</sup>

***Washington State Paralegal Association (WSPA):***

WSPA was formed in 1975 to support and promote the educational and professional standards of paralegals; to uphold and elevate the standard of honor, integrity and courtesy in the legal profession; and to promote the employment and advancement of paralegals. WSPA represents hundreds of paralegals throughout the State that actively work in the legal system. Our membership is diverse. We have many members who work with attorneys in a law firms, we have members who perform contact work for attorneys, members who work in corporate legal departments, members who are limited practice officers, and members who are authorized by federal or state law to provide legal services. Many of our members have worked as paralegals for more than 10, 15 and even 20 years, and have achieved a level of experience and expertise to offer legal services that are contemplated for regulation, either as traditional paralegals

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<sup>1</sup> General Rule 25, Washington State

practicing under the supervision of attorneys or directly to the public under a responsible regulatory scheme.

***Is there an unmet need for legal services?*** Yes. It is apparent that as resources dwindle, those in need of legal services increases. It will be a delicate task to strike the proper balance in assuring quality services through regulation without increasing the cost of such service to levels that are unaffordable to the target market. For instance, there may not be a reason to develop a regulatory scheme for non-lawyer practice in the area of business law, because so many non-lawyers currently provide these services, without apparent harm to the consumer. Your draft definition does not address these business practices.

***Can non-lawyers assist in the access to justice crisis?*** It is our hope that the Task Force and others working towards this Model have given serious consideration and study to the history and study of current non-lawyer practice including, the Bankruptcy Preparers Act, the California Document Preparers Act and other models of administrative practice and assisted pro bono and empirical studies by those such as Professor Deborah L. Rhode and others. Further, we anticipate (knowing the strong pro bono and public service background of your members) that there is recognition by the Task Force of the extraordinary services victims' advocates, social service workers and the like perform every day, and that would be in violation of the proposed definition. Every day non-lawyers provide individuals with advice, counsel and restatement of the law. Paralegals and other professionals have developed skills and expertise that are used in many areas of the law. The skills necessary to complete forms and provide specific services in one particular law area are readily transferable to other law areas, especially in those areas of the law that are well defined by statute.

A non-lawyer practice should encourage those authorized to practice to advise individuals to seek the services of an attorney if the complexities of a matter exceed the abilities of the non-lawyer. We believe the liabilities inherent in providing legal services itself will encourage non-lawyers not to act beyond their abilities. However, if non-lawyer services are too severely restricted by the authorized scope of practice, it is likely that the services allowed will be ineffective.

***Can non-lawyers provide quality competent service?*** Most assuredly so. Competent legal services are being provided in most, if not all, of the helping professions. The critical and profound needs and interests of consumers do not just exist in the legal arena. Health care providers have also had to deal with maintaining systems to address the critical and profound nature of patient problems, while creating a delivery system that can meet the needs of patients in a safe environment. In finding solutions to meet those needs, health care providers have developed a tiered system for delivery of services through the use of physicians' assistants, nurse practitioners, registered nurses, limited practice nurses, medical assistants, physical therapists, occupational therapists, pharmacists, pharmacists' assistants, etc. The medical profession has been successful in developing a tiered delivery system that works. We should look at their system of delivery to help create successful models for the legal profession.

***Conflict of Interest/Anti-Trust Questions.*** While the ABA has an exemplary history and provides extraordinary leadership, the perception of a conflict between two regulated areas (attorney practice and non-lawyer practice) is inherent. If regulated by a State Bar, will a future president of the Bar be a non-lawyer? What representation rights would non-lawyers have? Physicians do not regulate nurses, nor physicians' assistants, nurse practitioners or occupational therapists, but instead, they serve the public in a team atmosphere respecting each others' contribution and services to desired results. Further exploration of this issue following either the ABA models with respect to the Non-lawyer Commission or the MDP groups and debate, seems appropriate. The diversity of the regulation of the practice of law throughout the country, representation, due process and the conflict of advisory opinions with current statutory and case law and with the ever-increasing threat of criminal prosecutions may make the enforcement of these areas impossibly complicated. The MDP debate issues and concerns are appropriate to review with this draft definition.

We do not believe based on only the review of the materials published on the Task Force's webpage ([http://www.abanet.org/cpr/model\\_def\\_home.html](http://www.abanet.org/cpr/model_def_home.html)) that the President's Challenge has been met:

**Challenge:** To determine the best approach for the Association to address whether to create a model definition of the practice of law that would support the goal to provide the public with better access to legal services, be in concert with governmental concerns about anticompetitive restraints, and provide a basis for effective enforcement of unauthorized practice of law statutes.

There are currently mechanisms to enforce the unauthorized practice of law. Dismissals based on vagueness (the proposed need for a definition codification) do not appear to be the limiting factor for spotty enforcement and increased criminalization of UPL, the complexity of needs, practice delivery structures and lack of monetary funds appear to be the self-limiting factors.

A Model Definition of the Practice of Law that is sure to be cited as dicta in opinions and serve as a basis for appeals, as well as any proposed regulatory scheme, must protect both the practitioner and the consumer and address anti-trust concerns that are not accomplished with this draft definition. However, expanding the role of non-lawyers in a responsible fashion to allow practice in a safe environment will result in creating increased quality access to our legal system at less expense.

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Mr. Garwin  
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WSPA members, and we believe other trained experienced and responsible paralegals throughout the nation, are ready, willing and able to be a part of the solution.

Respectively submitted,

**WASHINGTON STATE PARALEGAL ASSOCIATION**

A handwritten signature in cursive script that reads "Kelli Wilcox".

Kelli Wilcox, President

cc: WSPA Board & Membership  
AaFPE Board  
NFPA Board & Delegates  
Deborah J. Rhode  
Washington State Access to Justice Board  
Washington State Practice of Law Board  
Department of Justice, Anti-Trust Division