Definition of the Practice of Law

[Adopted March 28, 1947, effective May 1, 1947. Amended June 27, 1961, effective July 1, 1961. Amended December 30, 2019, effective January 1, 2020.]

It is essential to the administration of justice and the proper protection of society that only qualified persons duly admitted be licensed and permitted to engage in the practice of law. It is harmful to the public interest to permit anyone to represent falsely that they are qualified to perform legal services.

Unlicensed persons are excluded from the practice of law to protect the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the courts could exercise little, if any, control.

The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore it is from the relation of attorney and client that any definition of the practice of law must be derived.

The relation of attorney and client is direct and personal, and a person who undertakes the duties and responsibilities of an attorney-at-law is nonetheless practicing law though such person may employ or select others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others in matters connected with the law shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.

In general, one is deemed to be practicing law whenever they furnish to another advice or service under circumstances which imply the possession and use of legal knowledge and skill.

More specifically but without purporting to formulate a precise and completely comprehensive definition of the practice of law or to prescribe limits to the scope of that activity, one is deemed to be practicing law whenever (1) one undertakes, with or without compensation and whether or not in connection with another activity, to advise another in any matter involving the application of legal principles to facts, purposes or desires; (2) one undertakes, with or without compensation and whether or not in connection with another activity, to prepare for another legal instruments of any character; or (3) one undertakes, with or without compensation and whether or not in connection with another activity, to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures. Nothing in this paragraph shall be deemed to prohibit a lay person from appearing as agent before a magistrate or to prohibit a bona fide

full-time lay employee from performing legal services for his regular employer (other than in connection with representation of his employer before any judicial, executive or administrative tribunal, agency or officer) in matters relating solely to the internal affairs of such employer, as distinguished from such services rendered to or for others.

[CLERK'S COMMENTS: Minimal changes were made to eliminate references to artificial persons who could practice law and to add gender-neutral references. The outdated reference to justices of the peace was also eliminated, but the ability to appear as a lay agent in magistrate court on a casual, non-recurring and non-pay basis is retained in accordance with syllabus point 4 of *State ex rel. Frieson v. Isner*, 168 W.Va. 758, 285 S.E.2d 641 (1981).]