

The West Virginia State Bar Adopts ABA Legal Assistant Definition

by Doris J. Graley, V. Jane Lambert and Wendi Ellis

The West Virginia State Bar held its Annual Meeting on July 16-17, 1999. Marc Williams, chair of the Legal Assistant Committee of The West Virginia State Bar, presented the following legal assistant definition for approval by The West Virginia State Bar Board of Governors which was unanimously approved:

A legal assistant is a person, qualified through education, training or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity, in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistance, the attorney would perform the task.

This definition follows the definition adopted by the American Bar Association in 1986 with only one change. After many meetings and discussions, the committee decided to remove the word 'specifically' before the wording 'delegated substantive legal work.' For several years, Legal Assistants of West Virginia (LAWV) has been attempting to develop a definition which could be approved by The West Virginia State Bar. Through the efforts of LAWV, Marc Williams, and Tom Tinder, those attempts have now been realized.

The members of The State Bar Legal Assistant Committee felt the adoption of the definition of a legal assistant/paralegal by The State Bar important to the legal profession in providing uniformity in the identification of legal assistants. The adopted definition will provide assistance to State Bar members in understanding more about how to utilize a legal assistant and how a legal assistant may assist lawyers in their practice.

West Virginia can now be added to the list of states which have formally adopted a definition of a legal assistant. There are only 12 other states that have adopted the ABA's 1986 definition or some variation thereof. Those states are: Ohio, Indiana, Illinois, Arizona, Washington, Nevada, Idaho, New York, Connecticut, Michigan, Missouri, and Tennessee. Through their bar associations, legislatures, or supreme courts, there are 33 states which now have some form of a definition for a legal assistant.

The common thread in these legal assistant definitions are:

- 1) have received specialized training through formal education or many years of experience;
- 2) work under the supervision and direction of an attorney; and
- 3) perform non-clerical, substantive legal work in assisting an attorney.

All definitions describe a professional group working under the direct supervision of an attorney, and acknowledge that the terms "paralegal" and "legal assistant" are used

synonymously. They intentionally exclude persons who do not work under attorney supervision even though they may perform law related work. This direct supervision is required whether the legal assistant is utilized in the course of full time employment or is being utilized on a contractual basis by an attorney or firm. In both instances, the work product of the legal assistant becomes merged into the final product of the supervising attorney.

LAWV, a voluntary, non-profit organization, is an affiliate of the National Association of Legal Assistants (NALA). It is comprised of approximately 250 legal assistants in seven regions throughout the state. The regions independently conduct monthly business and educational meetings but are governed by one central board of directors. LAWV is a result of a need for an organized educational and professional association for legal assistants in West Virginia.

NALA is a professional association composed of individual members and 92 state and local affiliated associations, representing over 18,000 legal assistants. NALA has developed a voluntary national certification program which is a comprehensive two-day exam. The exam covers substantive law on the federal level. As of September 3, 1999, over 21,000 legal assistants have taken the CLA exam but only 9,993 have successfully completed the seven sections. Approximately 48% of the examinees pass all seven sections on the first sitting. West Virginia has 55 Certified Legal Assistants and four CLA Specialists. The CLA Specialists consist of one each in Real Estate, Probate, Civil, and Criminal law.

About the authors:

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