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**Additional Comment Regarding Rule Petition 07-09;
Regarding the Proposed Practice of Law Definition Before
the Supreme Court of Wisconsin
Submitted by James C. Turner, Executive Director and,
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October 6, 2008**

Pursuant to a request from the Supreme Court of Wisconsin, HALT, Inc.¹ hereby submits comments on the State Bar of Wisconsin's latest revision to Rule Petition 07-09 regarding the proposed practice of law definition before the Court.

HALT believes it is absolutely essential for this Court to retain its key rule language defining the attorney-client relationship as one "where there is a client relationship of trust or reliance."

The Bar's claim that this language is vague and "unduly complicates the administration of the rule to the detriment of consumers" is wrong. At the core of the practice of law is a special fiduciary concept, the attorney-client relationship. Unless the individual is falsely claiming to offer this unique service, she is not practicing law. Consumers understand this, and so should the profession.

In fact, it is exactly this language that has been identified by the US Department of Justice and the Federal Trade Commission as being appropriate.²

¹ HALT, Inc. is a national, nonprofit public interest group dedicated to increasing access and accountability in the civil justice system. HALT's *Freedom of Legal Information Project* believes that consumers should have access to a continuum of legal services provided by both attorneys and qualified nonlawyers that meet the full range of their legal needs. Details about our education and advocacy programs are available at www.halt.org.

² The same language is found in Rule 49(b)(2) of the District of Columbia Court of Appeals, which defines the practice of law as "the provision of professional legal services *where there is a client relationship of trust or reliance.*" Also, the Federal Trade Commission and the Department of Justice in comments to the Supreme Court of Hawaii write that they "believe that the definition of the practice of law should be limited to activities for which specialized legal knowledge and training is demonstrably necessary to protect consumers *and an attorney-client relationship is present.*" Comments on Proposed Definition of the Practice of Law, January 25,

This critical clarifying language is especially important because the proposed rule provides a list of exemptions for nonlawyers providing law-related services (such as those provided by financial planners, bankers, Realtors and insurers), which cannot cover every legal situation where a consumer could benefit from the help of a nonlawyer. By being absolutely clear that it is regulating only activities that require an attorney-client relationship, this Court can allow innovative approaches by non-traditional legal service providers that meet consumers needs in Wisconsin.

If the Court believes that a lengthier list of exceptions is what is needed to better define the practice of law in Wisconsin, we respectfully ask the Court to protect consumer choice by also including these important exemptions:

(x) legal document preparers and independent paralegals

If the Court finds a need for some form of licensure for nonlawyers providing legal services, it would do well to follow the example of the Arizona Supreme Court, which has created by court rule a reasonable system of regulation of independent paralegals that acts to protect the interests of consumers, rather than those of lawyers. Arizona Supreme Court Rule 31(c)(21) provides an exception to the prohibition on unauthorized practice of law for certified legal document preparers. The regulatory structure for Arizona document preparers is delineated in Arizona Code of Judicial Administration, Section 7-208. It sets minimum requirements for education and experience for document preparers and establishes a Board of Legal Document Preparers composed of paralegals, lawyers, court officials and members of the public.

2008. In comments to the Wisconsin Supreme Court, Department of Justice Assistant Attorney General Thomas O. Barnett writes, “we suggest that the proposed definition be limited to services where specialized legal skills are required *and an attorney-client relationship is present.*” Comments on Petition for Supreme Court Rule 07-09, December 10, 2007.

(x) web-based legal document services

HALT believes an exemption should exist for web-based legal document services such as *LegalZoom.com*, *completeness.com*, *mylawyer.com*, *docupro.net* and *buildawill.com*. Web sites offering legal information, legal forms *and* direct legal services—at a fraction of the fee a lawyer would charge—have proliferated since the late 1990s. These online companies are expanding consumer choice and lowering legal costs by embracing new Internet technologies. Despite the Bar’s long and storied history of opposing the latest innovations in legal services delivery—unbundling legal services, multijurisdictional practice, self-help court centers, do-it-yourself legal software—the future of the legal profession is with those who embrace new innovations and compete accordingly. The Court should acknowledge web-based legal document services and explicitly include an exemption for them.

(x) online attorney rating services

At least one consumer-oriented lawyer rating service, *www.Avvo.com*, offers an area for consumers to ask their legal questions. Called “Avvo Answers,” the Web site encourages participating attorneys to answer legal questions from consumers across the country, provides consumers with free legal advice and allows consumers to form opinions, based on the quality of the answer given, about whom they might want to work with. Attorneys can earn points and become a featured contributor the more questions they answer. The Web site also encourages consumers to share their legal knowledge on questions asked. The Court should embrace the interactive nature of these Web sites and explicitly include an exemption for them.