

1 **H. B. 2438**

2
3 (By Delegate Hunt)

4 [Introduced February 14, 2013; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend of the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §30-2A-1, §30-2A-2,
12 §30-2A-3, §30-2A-4 and §30-2A-5, all relating to establishing
13 the "Certified Legal Assistant Act"; defining terms;
14 establishing minimum qualifications; setting forth
15 responsibilities of the lawyer and the certified legal
16 assistant; and providing rule-making authority to the Supreme
17 Court of Appeals in conjunction with the West Virginia State
18 Bar.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §30-2A-1, §30-2A-2,
22 §30-2A-3, §30-2A-4 and §30-2A-5, all to read as follows:

23 **ARTICLE 2A. CERTIFIED LEGAL ASSISTANT ACT.**

24 **§30-2A-1. Short title.**

1 This article is known and cited as "Certified Legal Assistant
2 Act."

3 **§30-2A-2. Definitions.**

4 For the purposes of this article:

5 "Certified legal assistant" means a person qualified by
6 education, training or work experience who is employed or retained
7 by a lawyer, law office, corporation, governmental agency or other
8 entity who performs specifically delegated substantive legal work
9 for which a lawyer is responsible; and

10 "Law firm" means a lawyer, law office, corporation,
11 governmental agency or other entity that performs substantive legal
12 work.

13 **§30-2A-3. Qualifications for certified legal assistants.**

14 A certified legal assistant shall meet certain minimum
15 qualifications. A certified legal assistant shall either:

16 (1) Successfully complete the Certified Legal Assistant
17 (CLA)/Certified Paralegal (CP) certifying examination of the
18 National Association of Legal Assistants, Inc.;

19 (2) Graduate from an ABA approved program of study for legal
20 assistants;

21 (3) Graduate from a course of study for legal assistants which
22 is institutionally accredited but not ABA approved, and which
23 requires not less than the equivalent of sixty semester hours of
24 classroom study;

1 (4) Graduate from a course of study for legal assistants,
2 other than those set forth in (2) and (3) above, plus not less than
3 six months of in-house training as a legal assistant; or

4 (5) Demonstrate through life experience and previous
5 employment in the specialty which they are certified, that they
6 should be grandfathered with all rights and privileges thereof. A
7 grandfather request must be made within twenty-four months of the
8 date of enactment of this article.

9 **§30-2A-4. Responsibilities of lawyer and certified legal**
10 **assistants.**

11 (a) A lawyer may ethically assign responsibility to a legal
12 assistant for the performance of tasks relating to the
13 representation of a client and the law firm's delivery of legal
14 services, commensurate with the experience and training of the
15 legal assistant, and where the lawyer directly supervises the legal
16 assistant and reviews the legal assistants work product before it
17 is communicated outside the law firm if:

18 (1) The legal assistants participation as a nonlawyer is
19 clear;

20 (2) The legal assistant preserves the confidences and secrets
21 of all clients;

22 (3) The legal assistant does not convey to persons outside the
23 law firm the legal assistant's opinion regarding the applicability
24 of laws to the particular legal situation of another, the legal

1 effect of acts or omissions of another or the legal rights,
2 responsibilities or obligations of another person regarding their
3 particular legal matter, except for their certified area of
4 practice; or

5 (4) The legal assistant does not appear on behalf of any
6 person or entity in proceedings before state or federal courts,
7 except for their certified area of practice; administrative
8 agencies, and tribunals, and including participation on behalf of
9 another in depositions, discovery, and settlement negotiation,
10 except to the extent that a nonlawyer is authorized by law to
11 represent the interests of another person or entity and the lawyer
12 has obtained the other person's or entity's consent to the legal
13 assistants participation as representative in those proceedings
14 except for their certified area of practice.

15 (b) A lawyer may not delegate to a legal assistant:

16 (1) Responsibility for establishing a lawyer-client
17 relationship; and

18 (2) Responsibility for establishing intakes, fee arrangements
19 with clients and concluding normal agreements.

20 (c) A lawyer may identify legal assistants by name and title
21 on the lawyers letterhead and on business cards identifying the
22 lawyer's firm.

23 (d) In employing a legal assistant, or assigning a legal
24 assistant to any particular client matter, a lawyer should take

1 reasonable measures to ensure that no conflict of interest is
2 presented arising out of the legal assistants current or prior
3 employment or from the legal assistants other business or personal
4 interests.

5 (e) In establishing a fee arrangement with a client, a lawyer
6 may include a reasonable charge for work performed by a legal
7 assistant, provided that the client consents after consultation.

8 (f) A lawyer may not split legal fees with a legal assistant
9 nor pay a legal assistant for the referral of legal business. A
10 lawyer may compensate a legal assistant based on the quantity and
11 quality of the legal assistant's work and the value of that work to
12 the law practice. A lawyer may include nonlawyer employees in a
13 compensation or retirement plan, even though the plan is based, in
14 whole or in part, on a profit-sharing arrangement.

15 (g) A lawyer who employs a legal assistant should facilitate
16 the legal assistant's participation in appropriate continuing
17 education and public service activities.

18 **§30-2A-5. Rulemaking.**

19 The Supreme Court of Appeals in conjunction with the West
20 Virginia State Bar may propose rules for legislative approval in
21 accordance with the provisions of chapter twenty-nine-a of this
22 code in order to carry out and implement the provisions of this
23 article.

NOTE: The purpose of this bill is to establish the "Certified Legal Assistant Act"; to define terms; to establish minimum qualifications; to set forth responsibilities of the lawyer and the certified legal assistant; and to provide rule-making authority to the Supreme Court of Appeals in conjunction with the West Virginia State Bar.

This article is new; therefore, it has been completely underscored.