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To: The ABA Commission on the Future of Legal Services

From: Allan Tanenbaum and Judge Eric Washington, Co-Chairs, ABA Legal Access Job Corps Task Force

Re: Issues on the Future of Legal Services

On behalf of the ABA Legal Access Job Corps Task Force, we thank you for the opportunity to provide information about the landscape that has been the subject matter of the Task Force and pertains to the issues being addressed by the Commission on the Future of Legal Services.

Prior to assuming the Presidential mantle at the 2013 Annual Meeting, President Silkenat watched an increasing number of newly-admitted lawyers struggle to find positions in public service and in practices focused on meeting the legal needs of underserved populations, including those of low and moderate incomes, at the same time that vast numbers of people had unmet legal needs. His primary Presidential initiative was to address this disconnection. At the 2013 Annual Meeting, with the approval of the Board of Governors, President Silkenat created the Legal Access Job Corps Task Force. This group was charged with the task of identifying, promoting and creating models that would look to the resources of un- and under-employed newly-admitted lawyers to better serve the unmet legal needs of underserved populations in sustainable ways.

To briefly summarize the work of the Task Force, it collected those initiatives that were underway and created a resource center that provides information on and links to post-graduate fellowships, incubators, rural assistance programs, mentoring projects and modest means referral services. The Task Force advanced the conversation about these models through an award-winning video entitled "Be the Change," through a Midyear Meeting hearing, and of course President Silkenat's use of the bully pulpit. The Task Force stimulated emerging models through a series of catalyst grants. It also advanced a resolution calling upon all stakeholders to collaborate and advance the effort to promote the resource of newly-admitted lawyers to address unmet legal needs in sustainable ways. The resolution, which was brought to the House of Delegates at the 2014 Annual Meeting, was co-sponsored by 11 entities and had support of four others. It passed without dissent. Now in its second year, the Task Force is tracking the catalyst grants, providing a second round of grants and planning a national conference in the summer of 2015 that will explore models designed to expand access to legal services.

Based on its work, the Task Force addresses two issues that pertain to the topics set out by the Commission. We do not address here the scope of unmet legal needs in anticipation that others will provide the Commission with that information. However, we do offer the resources of the Task Force to address that issue if the Commission would find it helpful. We do address, first, the supply of resources to meet legal needs. The second matter focuses on emerging models and projects designed to facilitate delivery by solo and small firm practitioners.

A. The Supply of Legal Service Providers

It is difficult to overstate the current supply of legal service providers who are in a position to address personal legal services. As of 2012, there were 1,268,011 lawyers admitted in the US.¹ This has been a 430 percent increase in the past 50 years, while the US population increased about 74 percent.

Approximately 75 percent of lawyers practice law in the private sector. Of those, nearly two-thirds are in solo practices or firms of five or fewer lawyers. In round numbers, this means that approximately 600,000 lawyers practice law in firms of five or fewer lawyers. While we do not have information about the number of lawyers who focus their practices on personal legal services, such as family law, consumer matters, debtor's bankruptcies, DUI and criminal defense, estate planning and probate, and immigration, we know anecdotally that personal legal service lawyers practice as solos or in small firm settings, while Big Law serves the domain of corporate and institutional legal services. Although the issue is complicated because small boutique practices serve corporate interests, we presume that a high proportion of the solo and small firm lawyers serve the legal interests of people. We believe it is not unreasonable to assume that somewhere between 400,00 and 500,000 lawyers in the US provide personal legal services as a foundation of their practices.

Paralegals, who work under the direction of lawyers, just as paramedics and nurse-practitioners work under the direction of doctors, provide an additional supply of legal service providers. The US Bureau of Labor Statistics reports there are 277,000 paralegals in the US, with an additional 46,000 jobs projected to be added by 2022.² As with lawyers, it is impossible to determine the number of paralegals in firms that provide personal legal services, but the sheer aggregate number is substantial.

Not surprisingly, newly-admitted lawyers are struggling to find permanent employment in positions requiring a law degree. As the Task Force stated in the report to its resolution to the House of Delegates at the 2014 Annual Meeting:

According to the ABA Section of Legal Education and Admission to the Bar, the percentage of law school graduates who had long-term, full-time positions requiring a law degree nine months after graduation was 54.9 percent for the class of 2011, 56.2 percent for the class of 2012 and 57.0 percent for the class of 2013. Even though the class of 2013 showed a slight improvement in this metric, at 57.0 percent, unemployment increased in each of these years. The percentage of unemployed lawyers nine months after graduation was 9.7 for the class of 2011, 10.6 percent for the class of 2012 and 11.2 percent for the class of 2013.³

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http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf

² <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm>

³ ABA Section of Legal Education and Admission to the Bar, 2012 Law Graduate Employment Data, AM. BAR Ass'N at: http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf; and ABA Section of Legal Education and Admission to the Bar, 2013 Law Graduate Employment Data, AM. BAR Ass'N at: http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_graduate_employment_data.authcheckdam.pdf.

According to the Bureau of Labor Statistics, unemployment in the United States was at 6.7 percent, while it was 11.2 percent for recent law school graduates.⁴ At the same time unemployment in general dropped from 8.3 percent to 6.7 percent, unemployment of recent law school graduates rose from 9.7 percent to 11.2 percent.

In terms of sheer numbers, 5,229 members of the class of 2013 reported they were unemployed, at the same time that 2,227 members of that class had entered public service positions and 1,068 had begun their own private practices.⁵

Law schools have addressed the limitations of newly-admitted lawyers finding employment by reducing enrollment. The number of law students enrolling in 2015 is projected to be 28 percent less than the pinnacle in 2010.⁶ Reduced enrollment, an improving economy and retirements resulting from an aging profession lead some to the conclusion that we should prepare for a lawyer shortage. One law professor suggests that recent law school graduates are “standing at the threshold of the most robust legal market that ever existed in the country.”⁷ However, Professor Bill Henderson concludes that a reliance on “the passage of time” as a cure for the current circumstances is naïve and potentially dangerous.⁸

A few anecdotal examples illustrate the extent to which lawyers in today’s marketplace may not be comforted by a cure that involves the passage of time. While a select few new lawyers become associates in large firms with starting salaries at or over \$160,000, a Boston law firm advertised in 2011 for associates, offering them annual salaries of just \$10,000, which is \$1,490 below the Federal Poverty Guidelines for an individual. The firm had 50 applicants.⁹

The crisis in un- and underemployment is not limited to newly admitted lawyers. In January 2013, a California lawyer posted an ad seeking a job. It states in part:

Experienced Attorney Seeking Employment – Single Father, Please Help

After my last company went out of business, I have been unable to find another job. Quite frankly, I am quite desperate and willing to learn and dedicate myself to any area of law. Anyone who hires me will get a loyal and grateful employee who will learn fast and excel in the job . . .

.¹⁰

At a time when we have up to half a million lawyers and perhaps more than 100,000 paralegals providing personal legal services, a time when more than four out of ten new law school graduates cannot find full-time permanent employment as lawyers and have an unemployment rate nearly twice that of the nation as a whole, a time when lawyers are willing to work for salaries under the poverty guidelines, we have the supply of human resources to dramatically increase legal services for underserved and moderate-income

⁴ United States Department of Labor Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (2004-2014) at: <http://data.bls.gov/timeseries/LNS14000000>.

⁵ Supra note 4.

⁶ <http://www.nationallawjournal.com/id=1202663837843/Law-School-Enrollment-Slump-Continues?slreturn=20141109112647>

⁷ <http://lawprofessors.typepad.com/legalwhiteboard/2014/03/a-counterpoint-to-the-most-robust-legal-market-the-ever-existed-in-this-country.html>

⁸ Id

⁹ http://www.abajournal.com/news/article/more_than_50_have_now_applied_for_10000-a-year_boston_law_firm_associate_job/

¹⁰ <http://jobs.aol.com/articles/2013/01/30/unemployed-lawyer-craigslist/>

populations. We need to build and advance the models that intervene and better address the imperfect system of supply and demand for the delivery of personal legal services by lawyers.

B. Models and Projects to Facilitate Delivery of Personal Legal Services

In the report to the resolution the Task Force submitted to the House of Delegates at the 2014 Annual Meeting, it set out information about a series of models designed to improve access to legal services through the resources of newly-admitted lawyers. That resolution and report are included as an appendix to this memo and we do not repeat that information here, except to briefly note the various models and to expand upon two of them.

Some of the models designed to advance the mission of the Task Force have unfolded over a substantial period of time and are more mature than other models. Post-graduate public interest fellowships have been in place for decades and provide the opportunity for the participating lawyers to gain substantive expertise while directly meeting the needs of the program's client base. Similarly, mentoring programs have been in place for many years, serve as a valuable resource to younger lawyers and enable newly-admitted practitioners to expand on their skill-sets. More recently, lawyer referral services have implemented modest means panels, using the resources of lawyers willing to provide services at a reduced rate for those who cannot afford full-fare representation.

However, we want to focus here on the potential of newly emerging models that facilitate the services of newly-admitted lawyers in ways that expand access. These include rural support programs and incubators.

The legal profession is aging. Many states have vast rural areas with practitioners at or near retirement age; practitioners who have no succession plan and may leave current and prospective clients without accessible legal services when they leave practice. As an extreme example, the nearest lawyer for those who live in Martin, South Dakota is 129 miles away. As a result, some states have initiated programs to encourage law students and newly-admitted lawyers to explore rural practices. The State Bar of South Dakota's Project Rural Practice is working with communities to provide financial incentives to lawyers interested in creating practices in rural areas. The Bar even screens the economic viability of the rural locations to maximize the prospect that the community can support the practice. Other state bars, including those in Iowa, Nebraska and Maine are working with law schools to enable students to intern with mature practitioners prior to law school graduation, in anticipation of joining a rural practice after admission.

Beyond bar association endeavors, the professional liability company ALPS has created ALPS Attorney Match, an online matching service that links those anticipating retirement with those seeking to transition into a new practice setting. This program illustrates one of the roles of technology, but there is substantial opportunity for a greater role. While face-to-face encounters between lawyers and their clients are advantageous in many circumstances, technology-based interface provides a broader opportunity to span distance when those direct encounters are not feasible. Therefore, we need a broader conversation about the role of technology and the possibilities of virtual practices in our efforts to expand access to those in rural areas.

The Task Force is optimistic about the potential for enhanced rural services in the range of methodologies. It has awarded catalyst grants to two programs exploring options in this arena and will track those models and support their replication as is appropriate. It also recognizes that innovations beyond succession models can be developed to better serve rural populations. Perhaps we should experiment with pop-up clinics that provide legal health check-ups. These could be done on a pro bono basis through bar sponsorship and result in referrals to lawyers capable of addressing the legal issues that are identified. In those rural areas that do not have a population base to justify a full-time lawyer, lawyers

could ride circuit and visit different communities at different days of the week. Law firms could also develop a hub and spoke model, where the firm resides in a metropolitan area, draws in clients through a centralized website and social media and relies on a network of of-counsel lawyers in the rural areas.

The second emerging model advanced by the Task Force and discussed here involves incubators. Similar to incubators that assist with the launch of businesses, law firm incubator and residency programs are designed to provide the necessary tools for newly-admitted lawyers to have successful, innovative practices, often with a focus on underserved populations. The first incubator was launched by the City University of New York (CUNY) under the direction of Fred Rooney in 2007. Since then, over 30 programs have emerged with several others under consideration.

One of the most impressive aspects of the incubator movement is its organic nature. Every program is different, responds to the needs of both the communities and the participating lawyers and serves as a laboratory to assess the various ways that new lawyers can address underserved populations. Most programs are under the auspices of law schools and serve their graduates. Some are bar-affiliated programs and others are collaborations between law schools, bar associations and legal aid organizations.

Most programs operate as incubators, with each participating lawyer operating his or her own practice with the support of the program. A few programs are based on the medical residency model, where the lawyers are employed by an overarching law firm, like residents who work within the structure of teaching hospitals. Both models provide varying degrees of support for the participants to develop substantive skills in varied practice areas, which are typically consumer or small business oriented. Incubators tend to also provide support for the development of practice management and client development. The notion is that after a period of time, typically 12 to 18 months, the participants will have sufficiently developed practices so that they can spin off of the program and enable new lawyers to step in.

While incubators provide skill sets that pertain to personal legal service practitioners in most settings, some foster innovative thinking through both networking and the provision of resources from the local legal community. For example, alumni of the CUNY incubator created the Health Care Rights, a nonprofit legal project that represents people in their disputes with insurance claims. A participant from the Chicago Bar Foundation's Justice Entrepreneurs Project (JEP) created a website that provides an option for clients not only to unbundle the lawyer's services but to also use a cost-estimate feature so that they know the range of possible costs for that service before opting for the representation.

There are currently hundreds of lawyers participating in incubators at a time when the need for this type of support mechanism extends into the thousands, if not millions. There are two things to keep in mind here. First, incubators are scalable in innovative ways. While there is a finite number of law schools and bar associations that may be capable of establishing and overseeing incubators, there are far more law firms that are able to do so. Current models should be evaluated and to the extent they are successful in meeting access goals, should be advanced among all stakeholders, including firms that recognize the value of a community that has access to personal legal services. Even, or especially, firms that do not themselves provide personal legal services should be encouraged to foster incubators for lawyers developing practices that do.

Second, it is important to keep in mind that each incubator participant that builds a successful practice will be providing services to underserved and moderate-income populations throughout their practices, potentially for decades to come. In addition, they may be more willing to experiment with alternative client arrangements and elevate the potential for transformative models that could broadly change the nature of legal services delivery.

In addition to advancing current and emerging models to improve access to legal services for a broadly defined underserved population, the Task Force is dedicated to the examination of innovative business models and modalities that enable lawyers to maintain sustainable practices serving these populations in the private sector. How do lawyers collaborate to reduce the back office costs of technology, staff support and related overhead, for example? How can compensation models expand the alternatives to billable hours? How can technology be used to maximize intake and unbundled portions of personal legal services? This challenges the entire spectrum of stakeholders to re-examine the status quo for the delivery of personal legal services, identify specific innovations with the potential to broaden access and to foster laboratory settings that will evaluate newly created options.

We believe the Legal Access Job Corps Task Force has meaningfully advanced the vision set out by President Silkenat last year and hope the Commission on the Future of Legal Services will benefit from its findings and experiences as the Commission moves forward to further address the fundamental concern shared by us all to improve access to justice.