December 20, 2014

Re: Comments Submitted In Response to Issues Paper on the Future of Legal Services

Dear Commission Members:

Thank you for this opportunity to share our thoughts on the future of legal services. Although the Commission’s Issues Paper covers a number of different areas, we’d like to focus on one thing in particular: the disconnect between attorney underemployment and unmet consumer demand for legal services.

The issues facing the legal industry are well documented: from declining legal salaries, to anemic job growth, to the inability of many legal graduates to find employment. Yet at the same time, consumers are with increasing frequency “going it alone” on legal matters. Pro se representation has become the norm in most high-volume state courts, Google sees over 2 million searches per month for “DIY legal help online,” and forms providers and document preparation services are proliferating.

How bad is it? According to research undertaken as part of the 2012-2013 World Justice Project Rule of Law Index, 81% of low-income Americans feel priced out of the legal market, compared with just 55% of their peers in Finland.

Why, then, is the American legal profession not able to meet this consumer need? We believe there are two fundamental issues, one stemming from a lack of lawyer training and one stemming from over-regulation.
Training: Provide Legal Services Products That Meet Consumer Needs

Over the last twenty years, the internet has ushered in a revolution in consumer awareness and empowerment. Consumers can now research, shop for, and buy virtually every kind of good or service online. The only notable exception? Legal services.

This situation exists because the vast majority of lawyers continue to approach their service offerings from a “bespoke” mindset: that each client’s problem is unique and requires a customized, and usually in-person, solution. But while such an approach provides the highest-quality offering, it doesn’t address the needs of those potential clients who simply can’t afford full-service representation – or those whose legal needs can be adequately met with an “off-the-shelf” product.

Consider the fashion industry, which offers purchasers of clothing a wide range of choices, including the vast categories of ready-to-wear and off-the-rack. The legal industry? We’re basically making consumers choose between haute couture or sewing their own clothes.

Or as one of Avvo’s consumer research study participants put it, expressing frustration at shopping for legal services:

“I was looking for the cost of divorce and what paperwork I had to file. I ended up just having to go to Google.”

Lawyers are in desperate need of training to build products to serve this vast middle between fully-custom and do-it-yourself. Such training can start where regulation of limited-scope representation leaves off, by educating lawyers on:

- Establishing business processes to competently and efficiently handle high volume practices.
- Marketing and consumer education to expand the market for legal services.
- The economics of creating and offering packaged legal products.

It would also be tremendously helpful if the Commission encouraged Bars to amend their continuing education programs to permit some portion of the CLE requirement to be met via courses on business management, processes and marketing. Such considerations are critical not only to practice success, but also to providing clients with quality legal services.

Over-Regulation: Vague and Confusing Advertising Ethics Rules Make it Harder than it Should be For Lawyers to Communicate About – And Offer – Legal Services

The detailed Rules of Professional Conduct around lawyer advertising – specifically, ABA Model Rules 7.1 through 7.4 – make it far harder than it should be for consumers to get adequate information about the availability, type and quality of legal services. Many parts of these rules pre-date Bates v. Arizona, and are confusing in that they imply greater
limitations on lawyer speech than that permitted by the First Amendment.

This confusion and uncertainty has a chilling effect on the ability of attorneys to communicate freely with potential clients, each other and the public at large. And frankly, it obfuscates what should be the overarching goal of the attorney advertising rules: ensuring that consumers aren’t being deceived or misled by members of the bar. That end isn’t achieved by trying to ensure technical compliance with an increasingly lengthy set of rules.

The Commission should recommend radically shortening the Model Rules by eliminating Model Rules 7.2 and 7.3 and replacing Model Rule 7.4 with a rule prohibiting in-person or third party solicitation involving coercion or duress.

This would leave as the centerpiece of the rules the simple prohibition against false and misleading advertising. It would also preserve the prohibition against what has long been regarded as the single most offensive and oppressive legal marketing tactic: in-person pressure and harassment. But it would eliminate all of the extraneous “noise” that confuses practitioners and regulators alike when trying to apply the rules to new forms of communication and marketing, and allow for clearer focus on those communications that are actually misleading consumers.

Simple, straightforward guidance like this works for every other seller of goods and services. It works for LegalZoom, which has 60% consumer brand awareness and doesn’t have to contend with a tangled web of outdated advertising restrictions. There is nothing about the practice of law that demands the detailed regulation of commercial speech, and the ABA could go a long way toward making it easier for lawyers to communicate effectively by cutting the rules back to focus on the basics.

Finally, the Commission’s issues paper asked what additional data the Commission could collect to inform its activities. As one of the largest and most highly trafficked legal websites, with over 70 million annual visits from legal consumers, Avvo has a large amount of data regarding lawyers and legal consumers, including data gleaned from:

- Nearly 2 million legal questions asked by consumers
- Over 4.5 million legal answers from lawyers
- Over 3.5 million annual contacts between consumers and lawyers

We are working closely with Marty Smith, a Special Advisor to the Commission, to arrange a time that we can share that data and some related insights. We are looking forward to that opportunity.

If there are further questions, please feel free to contact us at the numbers or email addresses provided below.

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