

Unregulated Legal Service Provider Entities

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Submitted by: Avvo, Inc.

Introduction

Avvo would like to thank the Commission for the opportunity to comment on its Unregulated LSP Entities Issues Paper. As the web's largest online legal resource for consumers, Avvo has long had a keen interest in helping consumers get better-equipped to handle their legal issues. That help may come in the form of full-scope representation by a lawyer, limited-scope services, forms, or self-help. One of the key animating themes of this proceeding is that any attempt to regulate Legal Service Providers ("LSPs") must start with a recognition that this consumer choice must be preserved.

Choice

It's been repeated, over and over again, that access to justice - help with legal issues - is a huge problem in America today. However, while few would dispute this premise, the Commission should be very mindful of a tendency among lawyers to fall back on a default view: that full-blown legal services - or the theoretical equivalent of such services - are the only acceptable solution for legal problems. This ignores a fundamental point: consumers routinely choose, quite rationally, to accept putatively lower-quality products. They may do so because they believe the quality difference is outweighed by the cost savings, or because the higher-quality product is simply beyond their means. This happens every day, in every other industry: shopping for clothes at Wal-Mart rather than Prada; buying a Chevy instead of a Mercedes-Benz; picking the store-brand Cheddar cheese.

The commission should also recognize that other types of services may be viewed by consumers as actually *superior* to traditional legal representation, and not just for reasons of cost. Such services may provide more control, more information, or a heightened level of responsiveness. Many consumers may consider such matters far more relevant to their choice of service provider than the questions of whether bar complaints or malpractice liability are available in the event something goes wrong.

Any effort to categorize and consider regulating LSPs must start with this recognition that not all products seeking to meet these needs will be the functional equivalent of traditional legal services, and that regulation seeking to make such services "equivalent to" traditional legal services will be counter-productive to the goal of expanding consumer access to justice. Rather, the focus should be on whether basic consumer protections are in place - which they already are, via the Federal Trade Commission and state unfair trade practices laws.

The "Practice of Law"

One related concern is that regulation is necessary to ignite innovation - the idea being that companies are sitting on the sidelines, concerned about offering legal services to consumers out of fear that the Bars will sue them for UPL violations. This is likely a legitimate concern. However, rather than "regulating into compliance," the Commission should explore taking another run at a workable definition of "the practice of law." If one of the biggest impediments to access to justice is the uncertainty created by the organized Bars grabbing so much territory as being "legal," why not cede that ground and focus on regulating what's within the key areas of the practice of law? In England, only a core set of legal functions are reserved for licensed lawyers. This seems to have improved access to justice without driving any appreciable spikes in poor outcomes, shoddy work, or consumer dissatisfaction.

The Legal Landscape

There are also legal reasons for the Commission to seek a mandate that hews more closely to a narrow definition of "the practice of law." First, it is unlikely that a Bar monopoly on providing legal advice or legal forms would survive First Amendment scrutiny. As long as those offering such services don't hold themselves out as lawyers, Bar control of such activities would be a form of content-based speech regulation.

There are also antitrust concerns. Last year's *North Carolina State Board of Dental Examiners v. FTC* case has brought increased focus to the question of industry self-regulation. Many voices on this front are calling for an environment where the legacy industry participants - the lawyers - expand their regulatory sphere to include a host of non-lawyer LSPs. It beggars belief that such a scenario would provide the best outcomes for consumers, particularly given how transparent many lawyers have been about their desire to use the regulatory hammer to preserve the broadest possible monopoly.

Conclusion

The surest path to clarity for non-lawyer LSPs would be if the organized bars took on a more well-defined, and limited, definition of "the practice of law." Within that structure, lawyers and LSPs alike could be regulated by the Bars. But for services falling outside of this definition - in the world where consumers use forms and get help from non-lawyers in navigating routine legal matters - such regulation should be left to existing consumer protection laws, or to the legislatures should additional, specific protections be required.

Questions or comments:

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