Feb. 4, 2015

ABA Commission on the Future of Legal Services
By Email: katy.englishart@americanbar.org

Dear Commission Members:

I recently received reprints of a law review article I wrote last year entitled *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*. In looking over the article, it occurred to me that the Commission might find the article of interest.

The thesis of my article was that the ABA Commission on Ethics 20/20 was more successful with the technology portion of its work than it was with the globalization portion of its work. The article contrasted the “structural” approach that the 20/20 Commission took with respect to its technology mission with the “specific issue” approach the Commission took with respect to its globalization mission. Looking back at the work of the 20/20 Commission, I thought it was regrettable that the Commission had not created a “big picture committee” whose mission would have been to ask the very broad question of whether there was anything the ABA could be doing differently that would help U.S. lawyers and the ABA operate in a global world.

The article identified what I consider to be the ABA’s strengths and weaknesses. In my view, when it comes to lawyer regulation, the ABA strengths include: (1) its ability to serve as an information aggregator; (2) its role as a network facilitator; (3) its ability to bring together a relatively diverse group of stakeholders; and (4) its ability to speak for more U.S. lawyers than any other organization, given the occasional request from U.S. governmental bodies and others to hear about the views of “the U.S. legal profession.” On the other hand, I believe that it is difficult for the ABA to move quickly, particularly with respect to complex, controversial lawyer regulation issues. Moreover, if issues are complex and controversial, it is easier for inappropriate lawyer self-interest to become a part of the discussion. (This is one reason why I have urged regulators to adopt explicit regulatory objectives.)

Although I wrote my article after the 20/20 Commission had disbanded, I concluded that it was not too late for the ABA to think about what it could be doing with respect to globalization that would leverage the ABA’s strengths. Some of my recommendations may be relevant to your Regulatory Opportunities Working Group. For example, although the 20/20 Commission webpage remains exceedingly useful, it is not a living webpage. As a result, the materials from the Regulatory Innovation session
at the May 2014 ABA National Conference on Professional Responsibility have not been added to the 20/20 Commission webpage nor is there anywhere else I am aware of where regulatory innovation materials are aggregated on an ongoing basis.

I have written this letter in the hope that some of my observations might prove useful as the Commission continues its work. I commend the ABA and the Commission for tackling very important issues that the legal profession should be discussing. I suspect, however, that there isn’t a “quick fix” for these issues. Thus, I would encourage each of the Commission’s Working Groups to ask the very broad and general question of whether there is anything the ABA or the legal profession could be doing differently that would lead to ongoing conversations, information sharing, and networks devoted to the topic of improving the delivery of legal services.

I was pleased to see that the Commission has a Working Group on Legal Services Delivery Data whose charge is to assess the availability of current, reliable data, identify areas where additional data would be useful, and make existing data more readily accessible. I was also pleased to see that the Commission has a webpage devoted to resources and has identified “Grassroots Resources” that will help promote discussion of these issues. In light of these actions, my observations may be unnecessary. But given the importance of the issues, I wanted to write to encourage the Commission to put structures in place that will outlast the Commission and that will lead to ongoing dialogue, data development, information sharing, and experimentation. In short, with respect to delivery issues as well as globalization, I hope that the Commission finds ways to leverage the ABA’s strengths as an information aggregator, a network facilitator, and a convener of diverse stakeholders. I hope that the Commission’s work leads to permanent changes in how information is shared and these issues are discussed. I also would not underestimate the value that might come from having the ABA adopt policy that acknowledges the unacceptable gaps in access to legal services, even if the Commission is not able to develop comprehensive solutions.

I hope these comments have been helpful. Thank you for the time you are devoting to this project.

Sincerely yours,

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