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To: Judy Perry Martinez, Chair, Commission on the Future of Legal Services

From: Terry Harrell, Chair, Commission on Lawyer Assistance Programs (CoLAP)

Re: Proposed Resolution Regarding Model Regulatory Objectives

Date: January 11, 2016

Thank you for your letter in response to the concerns advanced by the Commission on Lawyer Assistance Programs. We appreciate the careful consideration obviously given to our suggestions. However, we are concerned that CoLAP has not made its point with sufficient clarity. As you will recall, CoLAP encouraged the Future Commission to add a regulatory objective that would promote the well-being of legal service providers, the judiciary and law students. CoLAP explained in that letter the depth of impairment, the mental health crises and the inordinate rate of suicides suffered by lawyers and judges. As my letter of October 28, 2015, stated:

Even though the Commission on the Future of Legal Services has admirably included some of the issues that pertain to the matters involving impairment, such as the foremost objective of public protection, CoLAP is concerned that the [Future] Commission has not enumerated objectives that would lead to regulatory innovations addressing the needs of legal service providers to confront impairments in the most effective manners for individuals and our legal system.

In response, your letter of November 24, 2015, stated in part:

The [Future] Commission concluded that the Model Regulatory Objectives, as written with regard to ensuring the competent and ethical delivery of legal services, should be read to encompass regulations designed to help address impairments and protect consumers.

The Future Commission then included a footnote in the report accompanying the proposed resolution stating:

Existing court rules providing for alternatives to discipline programs exemplify how the Objective of ensuring the efficient, competent and ethical delivery of legal services should be read to encompass the need to confront legal services provider impairments in the most effective manner for the good of the legal system. *See, e.g.,* Rule 11(G) of the ABA Model Rules for Lawyer Disciplinary Enforcement.

CoLAP has now had the opportunity to determine whether it believes the footnote to a report that is attached to the proposed resolution sufficiently addresses the issue of lawyer well-being in the context of regulatory objectives. We are concerned that CoLAP has not made its point with sufficient clarity. The issue is not limited to efficient, competent and ethical delivery of legal services. Indeed, the well-being of lawyers and judges is not limited to addressing the problems created by impaired lawyers and judges once they have been identified, but encompasses many prevention strategies to maintain lawyer wellness. As part of our regulatory system, the more effective lawyer assistance programs are in promoting and maintaining wellness in the legal profession and intervening with impaired practitioners, the better that system's resources are able to be applied to those who systematically and intentionally harm clients and undermine our system of justice. CoLAP believes that the footnote is insufficient and minimizes the breadth of the proposed objective. Therefore, CoLAP plans to bring its objection to the House of Delegates when the resolution is introduced.

CoLAP is holding its business meeting on the morning of February 7th. If you or a representative from the Future Commission would like to further discuss this, please let me know and I will arrange CoLAP's agenda to accommodate that discussion.