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2015-16 Term

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December 3, 2015

Ms. Katy Englehart
American Bar Association
Office of the President
321 N. Clark Street
Chicago, IL 60610

Re: Report of ABA Commission on the Future of Legal Services

TRUSTEES 2016

John F. Gillick
Meryl A.G. Gonchar
Louis J. Seminski, Jr.
Elliot S. Solop
Charles D. Whelan, III

Dear Ms. Englehart:

The Middlesex County (New Jersey) Bar Association (hereinafter referred to as “MCBA”) has learned that the ABA Commission on the Future of Legal Services is seeking feedback as to whether United States jurisdictions should be encouraged to create new categories of judicially-authorized-and-regulated legal services providers (LSP or LSPs) who would perform some legal tasks. It is hoped that this would improve access to legal services. The MCBA opposes the current proposal.

The MCBA recognizes that the ABA and state bar associations are interested in finding ways to match individuals who need legal services with people who can provide them at an affordable rate. The MCBA is aware of, and works to promote, the goal that all individuals have access to legal representation. However, the MCBA believes that although impediments to accessing justice may be broadly grouped, digging down to get to the root of the problems uncovers unique local challenges. We believe that in order to work effectively towards legal representation for all, the local problems must be identified and resolved with a local approach. Furthermore, the MCBA is concerned about the quality of the advice the public would get from non-lawyers who are not subject to the supervision of lawyers.

This issue is being studied in the State of New Jersey by our New Jersey State Bar Association, and has been studied by our Association. We conduct several programs to solve the problem of unmet legal needs in Middlesex County, including a reduced fee program and a partnership with Rutgers University to provide legal representation for students at costs they can afford. A “one size fits all” approach ignores the local challenges that states experience.

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Katy Englehart

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For example, according to research compiled by the ABA Market Research Department, there were 40,993 resident and active attorneys in New Jersey in 2013. Per capita, New Jersey has 46 lawyers for every 10,000 residents. Thus, it can hardly be said there is an insufficient number of attorneys in the State of New Jersey to address our public's demand.

In a State such as New Jersey, the real issue is not "access to justice"; rather it is ensuring that people know there are programs available to help them. The key is creating a mechanism to match those individuals who need legal services with the appropriate trained and licensed attorney. As I indicated earlier, the MCBA operates a Reduced Fee Legal Referral Program which helps overcome this problem in our county. In that program, member lawyers accept cases at greatly reduced retainer and hourly rates. In addition, in many New Jersey vicinages, the judiciary and court staff work with legal advocates from various agencies in assisting self-represented litigants. Moreover, the New Jersey Judiciary has mandated that court forms, with instructions, be available online and at the Courthouse. More recently, Rutgers Law School has established a law firm consisting of newly admitted attorneys working under the supervision of an experienced attorney to provide low-cost legal services. This program seeks to serve both people of modest means with their legal issues, and new attorneys who cannot find jobs and are seeking to launch their legal careers.

There are no doubt other ways state bar associations can further facilitate the pairing of individuals in need of counsel with the appropriate licensed attorneys. Rather than pairing individuals in need of legal assistance with non-lawyers who lack the proper knowledge or education, surely the goal of state bar associations, and the ABA, should be to study and create ways to pair those licensed attorneys who would no doubt offer competitive/attractive hourly rates with individuals in need.

Perhaps other jurisdictions where there is an actual shortage of lawyers causing an "access to justice" issue wish to consider LSPs. The question those jurisdictions must ask is whether or not an LSP is a proper stop-gap measure. Would we do a disservice by permitting non-lawyers to provide legal advice? A "simple" divorce is only "simple" until there is a problem and the property settlement agreement is unclear or becomes the subject of litigation. Would LSPs eventually result in causing members of the public to retain lawyers to address their mistakes?

There are other questions about your proposed regulatory scheme: Will the licensure of non-lawyers to practice law open the door to non-lawyer ownership of law firms, or fee sharing with non-lawyers (e.g., Avvo and Rocketlawyer)? Shouldn't people who are giving legal advice be supervised by attorneys? Does the concept of an LSP suggest that lower-income individuals have simpler legal issues than do higher-income individuals? If an LSP has the same operating costs as an attorney (e.g., office overhead, malpractice insurance, etc.), what would lead anyone to believe that a

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LSP can offer access to justice at fees significantly lower than an attorney's? If the level of education for an LSP is so inferior to that of a licensed attorney, may States not be doing more of a disservice than a service to individuals when there are alternative ways to ensure access to justice, as we have outlined above?

In conclusion, the MCBA does not believe there is a need in New Jersey or Middlesex County to create a new category of licensed non-lawyers to give legal advice. Moreover, we believe the ABA's proposal would expose the public to substantially inferior advice on significant matters. A better solution would be (1) a public education campaign informing people that there are organizations to help them find a lawyer, and (2) the creation of one or more mechanisms to match lawyers willing to provide representation at reduced rates with clients having this need.

Thank you for your attention to and consideration of our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Craig M. Aronow'.

CRAIG M. ARONOW, ESQ.
President
Middlesex County Bar Association

cc: NJSBA