



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

DAVID P. MIRANDA

President, New York State Bar Association

Heslin Rothenberg Farley & Mesiti P.C.
5 Columbia Circle
Albany, NY 12203
518/452-5600
FAX 518/452-5579
dpm@hrfmlaw.com

December 22, 2015

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

Dear Ms. Englehart:

As President of the New York State Bar Association, I offer the Association's comments on the Issues Paper of October 15, 2015 of the Commission on the Future of Legal Services.

The Commission has asked for comments on questions concerning (1) the concept and definition of "legal service providers", and (2) the possibility of judicially-created categories of authorized and regulated providers.

With regard to number 1, I am resubmitting the letter I sent to the Commission on August 25, 2015. Although this letter was not mentioned in the Issues Paper, our Association continues to believe that the structure described meets the objectives of the Commission by permitting those who are not lawyers to be involved in the representation of otherwise unrepresented litigants, but continue to have lawyers ultimately responsible for the matters. We again urge this Commission to support the ultimate responsibility for provision of legal services to remain with lawyers.

As to number 2, our Association is considering the issue in connection with the Resolution that is on the agenda of the House of Delegates meeting in San Diego. Thus, we will reserve our formal comments until we have completed this effort. However, in conversations I have had with leaders and members of our Association, significant opposition has been expressed to giving "judicial authorities" the powers that are suggested. The manner in which the concept by which legal licensed technicians was developed and instituted by the judiciary in the State of Washington was over the strong objections of the state bar association of that state. This is not a model that has been well received. We have strong concerns about any proposal that may diminish the independence of the legal profession, or that modifies rules of ethics to permit non lawyers to offer legal services to the public.

As I have noted, our Association expects to be actively involved in the discussion of the Resolution to be presented in San Diego, and we are likely to offer further thoughts as we get closer to the meeting date.

Sincerely,

David P. Miranda

Enclosure



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

DAVID P. MIRANDA

President, New York State Bar Association

Heslin Rothenberg Farley & Mesiti P.C.

5 Columbia Circle

Albany, NY 12203

518/452-5600

FAX 518/452-5579

dpm@hrfmrlaw.com

August 25, 2015

ABA Commission on the Future of Legal Services

Judy Perry Martinez, Chair

321 North Clark Street

Chicago, Illinois 60654

Dear Ms. Martinez:

Among the many topics discussed at the recent ABA meeting in Chicago was the role non-lawyers could play in assisting unrepresented litigants, with some attention focused on the use of Legal Licensed Technicians in the State of Washington. We, in New York, having been considering this question, and I would like to share with you a proposal put forth by our state's court system and fully supported by the New York State Bar Association. We believe that our proposal far better assists those unable to afford counsel and better protects the public than the LLT program in Washington.

In New York City, about 90 percent of the tenants appearing in Housing Court are unrepresented, which is a very serious problem. Many face the possibility of eviction or rent increases that will be beyond their means. For these tenants, most of whom are not sophisticated, appearing in crowded, overworked courts, with the often chaotic conditions that surround the courtrooms, is, in most instances, terribly confusing. Some have limited experience with the English language. In many, if not most, instances, these individuals have little comprehension of the situation in which they find themselves. It is unarguable that they badly need assistance.

The reason these tenants mainly appear unrepresented is that they cannot afford to pay for the cost of a lawyer, even for a lawyer who charges fees at the lower end of the fee scale, and legal services programs do not have nearly enough in the way of resources to come close to meeting the overall needs. Clearly, there is a critical need to find some means of assisting these tenants.

Under the NY proposal a non-lawyer trained and certified by the Chief Administrator of the court system can appear to assist unrepresented tenants, but the non-lawyer must be supervised by a lawyer employed by a not-for-profit service provider, which can be, but need not be, a legal services provider organization. The not-for-profit provider must be approved by the Chief Administrator after having submitted a plan demonstrating how it intends to implement the authority granted.

The State of Washington has developed a program whereby non-lawyers can be licensed to provide limited legal assistance. While this might help the unrepresented, it leaves them vulnerable to the limitations of those not trained in the law. These technicians, while licensed, are not subject to the full panoply of ethics requirements imposed on lawyers, nor are they subject to the comprehensive regulation which applies to lawyers. Thus, the unrepresented, while receiving some assistance, are not given the benefit and protections of having a lawyer responsible for their matters. We believe that there is a mechanism for providing the type of assistance provided by legal licensed technicians, but, at the same time, affording each tenant with a lawyer who can oversee his or her matter.

Under the NY proposal, the non-lawyer, operating under the supervision of the employed attorney can, in defined proceedings, advise and assist with the preparation of pleadings or, where needed, an order to show cause, and can sign the answer or the order to show cause; negotiate with the tenant's adversary with respect to the terms of a stipulation or order; and address the court on behalf of the tenant. While these actions may be taken by a trained non-lawyer, all of them are performed under the supervision of a lawyer, who remains responsible for the matter and, of course, is subject to all of the ethical obligations imposed on every lawyer.

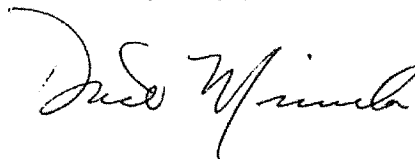
Since this program is intended for litigants who cannot afford an attorney, the bill that has been submitted to the legislature limits client eligibility to persons living at or below 200 percent of the federal poverty level. The bill also permits eligible clients to receive the same type of representation in consumer credit cases, but the current focus is on housing cases, given the crisis in New York City's Housing Court. Significantly, Washington's LLT program is not directed specifically to providing pro bono service, but rather permits legal technicians to charge for their services, presumably below rates charged by fully educated and duly licensed lawyers.

As I mentioned, our Association fully supports this legislative proposal, as it believes that its adoption would offer significantly greater protections to clients than does a program in which there is no participating lawyer. Not only is the lawyer under our proposal ultimately responsible for the representation of the client, but, critically, the lawyer is available should any complexity arise in the matter that takes the case beyond the limited training of the non-lawyer. This assures that each and every client has in the representation the skills and experience that may be needed.

Let me be clear - - the New York State Bar Association believes that it would be preferable that every client were represented by a lawyer, either through a private attorney or a legal services provider. While our Association will continue to advocate for adequate funding to assure that all are represented, it recognizes that this is a goal, and something needs to be done until that goal is achieved. Our proposal represents a solution that leaves each client with the assurance that there is a fully trained lawyer standing behind them.

We hope that this proposal is useful to the Commission as it considers new and different ways to provide legal services.

Very truly yours,

A handwritten signature in black ink, appearing to read "David P. Miranda". The signature is written in a cursive style with a large initial "D" and "M".

David P. Miranda

Cc: Katy Englehart