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TO: ABA Commission on the Future of Legal Services

FROM: ABA Solo, Small Firm and General Practice Division
Stephen B. Rosales, Chair
Stephen D. Williams, Chair, Task Force
On the Future Delivery of Legal Services

RE: Issues Paper Concerning New Legal Categories of Legal Service Providers

DATE: December 30, 2015

The Solo, Small Firm and General Practice Division has had an opportunity to review the Issues Paper Concerning New Legal Categories of Legal Service Providers prepared by the Commission on the Future Legal Services and have the following comments in regard to the issues presented.

First, on general terms, the members of our Division are opposed to any programs which will be adverse to the practice of law by Solo and Small Firm Practitioners. It appears that the measures which would allow for non-lawyer Legal Service Providers (LSP) will directly have an adverse impact on Solos and Small firm Attorneys which will be far greater than those on large firms. This disproportionate impact will cause a further divide between those in Solo and Small firm practices and large firm members and could lead to a greater reticence for Solo and Small Firm members to join the ABA if the Association supports such non-lawyer LSP programs.

The Division does not believe the concept and definition of “legal service providers” should include lawyers and non-lawyers. If the definition of LSP’s includes both lawyers and non-lawyers there will be a blurring of the distinctions between the two and could lead to confusion among the public as to the distinctions. To become an

Attorney, a person must graduate from college and then undertake the rigors of a law school education. Upon graduation, a law student must pass a Bar Exam in the jurisdiction they plan on practicing which establishes that they have the requisite proficiency to practice law. The practice of law is also regulated by the Rules of Professional Ethics in each state which helps maintain the standards an attorney must adhere to in his/her professional life. Attorneys are bound by these ethical standards, including standards on client confidentiality, conflict of interest, zealous representation, candor, truthfulness in statements to others and the like. It seems doubtful that LSP's, especially unlicensed LSP's will be bound by these ethical tenets. Attorneys are also afforded the opportunity to obtain Professional Liability Insurance to protect their clients and themselves, an opportunity which the Division assumes most attorneys avail themselves. It is doubtful that LSP's would have such opportunity to obtain such insurance thereby putting the LSP's "customers" at greater risk.

Based upon the information contained in the Issues Paper, to become a LSP one may or may not have to undergo training and there are very little in the way of regulations as to what the LSP can and cannot do. Many of the LSP's are not allowed to give legal advice but there does not appear to be any way to enforce that requirement. Washington State's LLLT (Limited Licensed Legal Technicians) are licensed but there are no long range studies into the type of advice those providers give to their "customers" and the long term effect this may have on the quality of services being provided to the people they represent.

While there is no doubt that there is a perceived, if not real, Justice Gap in the United States, as the Commission found, the cause of that Gap is not always because of the cost of legal services in this Country. As the Issues Paper states "Even those who can afford a lawyer often do not use one because they do not recognize their problem as having a legal solution *or they prefer less expensive alternatives.*" (Emphasis added).

This in the view of the Division is not really a Justice Gap. If a person who has the means of hiring an attorney elects for whatever reason to handle a case *Pro Se* that individual's action does not equate to a Gap in Justice.

Authorizing non-lawyers to do work that traditionally a lawyer performed will lead to an even greater public perception that they do not need a lawyer to represent them and those lawyers as a whole, charge excessive fees when they can obtain legal services from a LSP. This as a whole will lead to a further diminishing of the profession as the public will only understand the cost factor and disregard the knowledge, experience, service and protection an attorney can provide to a client.

As a practical matter, it is generally understood and believed that there is already a glut of lawyers with many new graduates unable to obtain employment which will allow them to make a suitable living. In addition, many practicing attorneys (Solo and Small Firms) are having trouble making a livable wage practicing law. The introduction of LSP's will further exacerbate this situation. There is no suggestion in the Issues Paper that these attorneys could do the work that LSP's are being introduced to perform. Until such time as there is a true shortage of attorneys to adequately serve the public, to expand the ability of non-lawyers to provide services once reserved for attorneys is both self-defacing and suicidal to our profession.

The Division does not believe that the ABA should endorse state judicial authorities being encouraged to create new categories of judicially authorized and regulated legal service providers to perform discreet and limited legal tasks in an effort to facilitate greater access to justice. First, the programs that are cited in the Issues Paper are very new and the long term effects of those programs cannot be determined at this time. It is very possible that what the LSP's are doing could in the long run cause more legal problems for their customer/clients than is perceived at this time. Second,

the ABA should be at the forefront at protecting the American Public and its membership and should be advocating and educating the public as to why one should retain a lawyer and not advocating or endorsing non-lawyers offering legal services which will directly compete with the solo and small firm lawyer.

As one of our leaders from the State of Washington has indicated the LLLT's are permitted to practice certain areas of family law totally independent with no lawyer supervision. As a result of this she has been telling all Washington law students to stay clear of Family law in their practices as it is doubtful that a young attorney, opening their own firm, can compete with the LLLT's given the amount of debt load and overhead the new attorney would have. She also indicated that the State may expand the program into immigration law and has encouraged law students to avoid that area of practice as well.

Perhaps rather than creating new programs to fill the gap in legal services the states could use funds necessary to establish these programs to employ attorneys that already have offices, computers, education and licenses to practice law to fill these gaps. Also there are many eager young attorneys which may jump at the opportunity to cut their teeth practicing law by representing these individuals. In addition to young attorneys there are other avenues for the public to get more affordable legal services such as group and prepaid legal service plans where they obtain the services of an experienced attorney often at substantially discounted rates based upon the agreements these attorneys have with the plans.

In the March 2011 issue of the ABA Journal the cover story was What America's Lawyers Earn. That survey, *which did not include solo attorneys*, revealed that throughout the country many attorneys earn far less than the public's general perception. Many of our Division's members perform many of the tasks that are being

proposed for LSP's to perform. Many of these actions make up the bread and butter of a solo and small firm practitioner. For the ABA to take a position that will harm Solo and Small Firm Attorneys across the country, both members and nonmembers of the Organization is not something that we as a Division can support.

As Miles Winder, New Jersey State Bar President, stated in his letter of October 27, 2015 to Judy Perry Martinez setting forth New Jersey's opposition to the measures being considered by the Commission, "The ABA is uniquely situated to protect the public and the justice system from unethical and illegal infringement by non-lawyers into the justice system. The ABA Should avail itself of its unique roll, as opposed to abrogating it to the argument of inevitability."

For the above reasons the Solo, Small Firm and General Practice Division opposes both the inclusion of non-attorneys from the definition of Legal Service Providers and states authorizing non-attorneys to provide limited tasks traditionally performed by attorneys.

Respectfully submitted,

SBR, SDW