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To: ABA Issues Paper Comments

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Subject: For Comment: Issues Paper Concerning Unregulated LSP Entities

Katy Englehart
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Dear Madam,

Our organization is diverse, and includes members of law firms and eDiscovery vendors, which may include but are not limited to eDiscovery service providers, Digital Forensic services providers, Court Reporters, Information Technology services providers and others.

The New England Litigation Technology Professionals Board of Directors would like to respond to your request for comments which were described as follows:

“(1) data and evidence about currently unregulated LSP entities, including the types of entities that currently exist, the extent to which any public protection issues have emerged as a result of the operation of those LSPs, and the extent to which any particular types of LSP entities should be subject to new regulatory structures; and (2) information concerning any efforts to regulate these LSP entities. The Commission also seeks input on whether state judicial authorities should be encouraged to regulate currently unregulated LSP entities and, if so, what form those regulations should take.” (taken from http://www.americanbar.org/content/dam/aba/images/office_president/final_unregulated_lsp_entities_issues_paper.pdf)

In Massachusetts, criminal and civil investigations may not be conducted without specific credentials (Mass. Gen. Laws Ch.147 §§22 & 23). EDiscovery vendors in Boston fall under regulation where lawyers who contract for these services oversee the investigations and therefore should be exempted from regulation (Mass. Gen. Laws §23(6)).

It is clear that investigatory activities should be regulated – from a regulatory standpoint, it makes sense that the Commonwealth of Massachusetts has legislated that individuals who conduct investigations should be granted a license that can be sanctioned or taken away if conduct is egregious. Massachusetts eDiscovery vendors therefore fall under this purview when the contracting attorney conducts the investigation or oversees eDiscovery related services.

From a purely financial standpoint, excessive regulation could drive hundreds of vendors in Massachusetts out of business if the ABA's suggested regulation becomes law, and will drive costs up for basic legal services, where vendors could potentially be required to have, for instance, lawyers on staff to oversee the process of practices such as eDiscovery.

Common litigation tactics can lead to inflated discovery costs as it is, and further regulation such as you describe will surely be a detriment to law firms, vendors, and plaintiffs and defendants in suits where such services are a necessary part of the discovery process.

We collectively urge the Commission to reject recommendation of regulation – the system in place in Massachusetts provides sufficiently for this and further regulation would be to the detriment of all.

Dana Willis, M.S.D.F.S.

President
NELTP

and

Collectively,

The Board of Directors,
New England Litigation Technology Professionals

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