



NEW JERSEY STATE BAR ASSOCIATION

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Judy Perry Martinez

Chair, ABA Commission on the Future of Legal Services

Dear Chair Martinez:

On behalf of the New Jersey State Bar Association (“NJSBA”), please accept these comments in response to the Commission on Legal Services’ resolution proposing Model Regulatory Objectives (“Resolution”). The NJSBA appreciates the Commission’s efforts to address the seemingly intractable problem of access to legal services. However, after reviewing the Resolution, the NJSBA Board of Trustees voted unanimously to submit written opposition to the Resolution because it is contrary to our profession’s core values, and promotes a tiered system of justice that will imperil those most vulnerable in our society.

The Resolution assumes that non-lawyers should be permitted to provide legal services, and its report details its intent is “*to guide the creation . . . of a wider array of legal services regulations, such as regulations covering new categories of legal services providers.*” The Resolution also implicitly endorses alternative business structures (“ABS”), where non-lawyers can own law firms.¹ Prior to proposing a regulatory framework for these activities, the Commission should first address the underlying questions of *whether* non-lawyers should be permitted to

¹ In discussing the need and for the Model Regulatory Objectives, the Report refers to the many jurisdictions that have adopted regulatory objectives, including Australia, England, Ireland, Scotland, Wales, and New Zealand. The Report, however, omits that the objectives were only adopted as a result of these jurisdictions revising their standards to permit ABS.

provide legal services, and *whether* non-lawyers should be permitted to own law firms and/or share in their profits.

We believe the answer to both questions is an unequivocal “No.”

The American Bar Association (“ABA”) has long been a leader in the area of unmet legal needs, and New Jersey has proudly supported those efforts. In 2006, the ABA House of Delegates unanimously adopted Resolution 112A, a civil *Gideon* Resolution drafted by the ABA Task Force on Access to Civil Justice. 112A called upon the federal government, states and territories to provide *counsel as a matter of right* in adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody.

In 2013, ABA President Silkenat’s Legal Access Job Core called upon states to meet unmet legal needs by connecting those in need of legal services with the vast number of under-employed and unemployed attorneys.

In response, my predecessor NJSBA President Paris P. Eliades launched the New Jersey Blue Ribbon Commission on Unmet Legal Needs to study how to leverage these potential synergies, and that Commission continues to study innovative methods to bridge the access divide.

The Future Commission’s Resolution is in direct conflict with these prior initiatives and contrary to the core principle of our legal system that lawyers are singularly and uniquely qualified to provide legal counsel. The Commission should not support, let alone encourage, the creation of a second tier of legal providers, whose creation will result in an unequal system of justice. Rather, the Commission should focus on solutions that live up to our justice system’s promise of providing “*equal justice under the law.*”

The proponents also argue the Resolution is necessary because non-lawyers have expended billions of dollars to penetrate the legal services market. Proponents point to the vast array of non-lawyer service providers operating on the Internet and argue that their continued existence is inevitable. However, the fact that non-lawyers have invested significantly into the legal profession is not a

basis to allow them to continue. It certainly is not a basis for the ABA to endorse their continued existence. The fact that companies develop on the Internet does not insulate them from complying with state and federal laws. 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 role, as opposed to abrogating it to the argument of inevitability.

Finally, the Commission should withdraw the Resolution until such time as the House of Delegates has reviewed and approved the Commission's substantive recommendations. If the Commission believes that non-legal providers serve the public interest, or that ABS can function without compromising attorney independence and confidentiality requirements, it should propose and pass resolutions in support of those concepts. Until such time as the House of Delegates agrees and approves of such substantive resolutions, there is simply no basis to pass a framework for the regulation of "new" practices that are contrary to existing and long-standing ABA policy.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Miles S. Winder III", with a horizontal line underneath.

Miles S. Winder III

President

New Jersey State Bar Association