

2015-16

**CHAIR**

Jayne Reardon  
Il. S. Ct. Commission on  
Professionalism  
180 N. Stetson Ave.  
Ste. 1950  
Chicago, IL 60601

**MEMBERS**

Josh Camson  
Washington, PA

Dolores Dorsainvil  
Washington, DC

Daisy Hurst Floyd  
Macon, GA

Benjamin K. Grimes, LTC USA  
Fort Belvoir, VA

Lori L. Keating  
Columbus, OH

Robert E. Lutz  
Los Angeles, CA

Neal R. Sonnett  
Miami, FL

Amy Timmer  
Lansing, MI

**LIAISONS:**

**BOARD OF GOVERNORS**  
E. Fitzgerald Parnell III  
Charlotte, NC

**SECTION OF BUSINESS LAW**  
Lawrence A. Goldman  
Newark, NJ

**TORT TRIAL & INSURANCE  
PRACTICE SECTION**  
Perrin Rynders  
Grand Rapids, MI

**NATIONAL ORGANIZATION  
OF BAR COUNSEL**  
William D. Slease  
Albuquerque, NM

**ASSOCIATION OF  
PROFESSIONAL  
RESPONSIBILITY LAWYERS**  
Jan L. Jacobowitz  
Coral Gables, FL

**CENTER  
FOR PROFESSIONAL  
RESPONSIBILITY**

**DIRECTOR**

Arthur Garwin  
(312) 988-5294

[Art.Garwin@americanbar.org](mailto:Art.Garwin@americanbar.org)

**LEAD COUNSEL,  
StC on PROFESSIONALISM**

Paul A. Haskins  
(312) 988-5175

[Paul.Haskins@americanbar.org](mailto:Paul.Haskins@americanbar.org)

Via Email

April 28, 2016

Judy Perry Martinez, Chair  
Commission on the Future of Legal Services  
c/o Katy Englehart, ABA Office of the President

Re: Standing Committee on Professionalism Comment  
On Issues Paper Concerning Unregulated LSP Entities

Dear Judy:

As chair of the Standing Committee on Professionalism, I submit this Comment of the Committee addressing the Commission on the Future of Legal Services' Issues Paper Concerning Unregulated LSP Entities:

This is the Professionalism Committee's position on the desirability of regulation of certain nontraditional legal service providers:

- i. We agree with the Commission that the legal service needs of Americans have been conclusively shown to exceed the capacity of the legal profession to serve those needs. The structure and economics of the legal services marketplace prevent the vast majority of society's legal needs from being served by lawyers. Even full employment of the nation's lawyers would not come close to filling the access-to-justice gap in this country. The evidence on this point is compelling and incontrovertible.
- ii. Americans increasingly are turning to web-based and other nontraditional sources of legal services, other than lawyers.
- iii. As an integral aspect of our professional duty of service, we in the legal profession have an ethical obligation to work to enhance access to justice, for all who require legal services.
- iv. That obligation extends not only to supporting adequate quantity of legal services, including nontraditional services by nonlawyer providers as needed, but also to acting to ensure that such services are of adequate quality. Indeed, as the Preamble to the Model Rules of Professional Conduct makes manifest, as lawyers we have "a special responsibility for the quality of justice." MRPC, *Preamble* [1].

- v. Therefore, it stands to reason that we cannot responsibly advocate in favor of the provision of non-traditional legal services to help close the vast justice gap, without advocating for meaningful regulation of such services to ensure sufficient service quality and other protections of legal consumers' interests.
- vi. We believe entity regulation, which has proven effective and successful in other nations, would likely not only be appropriate for alternative legal service providers, it may be the only practical option for regulation of services provided by corporate or other entities, not by individual practitioners.

If, as the Commission's Issues Paper suggests, such regulation might best be accomplished through a new regulatory framework to be created by each state's supreme court, new jurisdictional law or rules may be required for such court regulation of nontraditional LSPs to proceed.

The Professionalism Committee believes that any ABA policy resolution encouraging supreme courts to embark on such regulation might acknowledge that, in at least some jurisdictions, changes in state laws or rules may be necessary precursors to any new supreme court regulations authorizing provision of legal services by certain types of nontraditional, nonlawyer legal service providers. It strikes us that there is a fundamental difference between the courts' existing regulatory function of policing and preventing the *unauthorized* practice of law and the contemplated function of recognizing and regulating the *authorized* provision of nontraditional legal services.

We are inclined to agree with the Commission's assertion that "even if the work of a particular unregulated LSP entity or its employees does not fall under a jurisdiction's definition of the practice of law, an entity's services might nevertheless warrant some form of regulation beyond consumer protection laws in order to protect the public." That said, in many jurisdictions enactment of new jurisdictional authority would presumably be required for the state supreme court to begin regulating such LSP entities engaged in activity that does not meet the definition of the practice of law.

Finally, a nontraditional LSP's provision of legal services may qualify as the "practice of law" under a given state's practice rules, but still be prohibited where the provider cannot be qualified as a licensed member of the bar. A rule change presumably would be required for such a state's supreme court to regulate the authorized legal services activities of such a provider.

Thank you for the opportunity to comment on this important subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Jayne R. Reardon", is centered on a light gray rectangular background.

Jayne R. Reardon, Chair

CC: Standing Committee on Professionalism  
Paul A. Haskins, Professionalism Counsel  
Paula Littlewood, Co-Chair, Regulatory Opportunities Project Team  
Chief Justice Barbara Madsen, Co-Chair, Regulatory Opportunities Project Team  
Lucian T. Pera, Chair, CPR Coordinating Council  
Arthur Garwin, Director, Center for Professional Responsibility