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2015-16 Term

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February 5, 2016

Hon. Stuart Rabner, Chief Justice
Supreme Court of New Jersey
Hughes Justice Complex
25 West Market Street
PO Box 970
Trenton, NJ 08625-0970

TRUSTEES 2016

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Re: Report of ABA Commission on the Future of Legal Services

Dear Chief Justice Rabner:

TRUSTEES 2017

Andrew Carey
Risa M. Chalfin
Patrick Heller
Edward Testino
Kimberly Yonta

The Middlesex County Bar Association (hereinafter referred to as “MCBA”) has reviewed carefully the report of the ABA Commission on the Future of Legal Services, and the proposed regulatory scheme that is being drafted and referred to state supreme courts for consideration. The MCBA opposes the current proposal.

TRUSTEES 2018

Daniel H. Brown
Angela F. Pastor
Kim M. Connor
Megha R. Thakkar
Eugene S. Wishnic

The MCBA recognizes that the ABA and state bar associations are interested in finding ways to match individuals who need legal services with people who can provide them at an affordable rate. We also understand that the New Jersey Courts are interested in finding new ways to move cases through our court system. The MCBA is aware of, and works to promote, the goal that all individuals have access to legal representation and fair and just resolution of disputes. The short answer from our report is that the ABA proposal is not the right fit for our State. We recognize the need for outreach and innovation to make legal services affordable for those in New Jersey who want representation but are unable to obtain it. However, the MCBA believes that although impediments to accessing justice may be broadly grouped, digging down to get to the root of the problems uncovers unique local challenges. We believe that in order to work effectively towards legal representation for all, and the fair and just resolution of disputes, the local problems must be identified and resolved with a state-based approach. The ABA’s recommendation for states to adopt a scheme wherein the public gets legal advice from unsupervised non-lawyers is not a solution to these problems for New Jerseyans.

NJSBA TRUSTEE

Craig M. Aronow

EXECUTIVE DIRECTOR

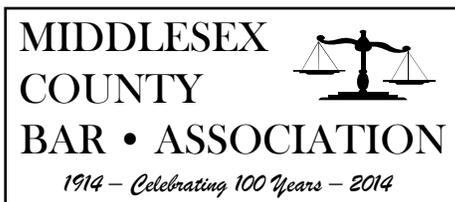
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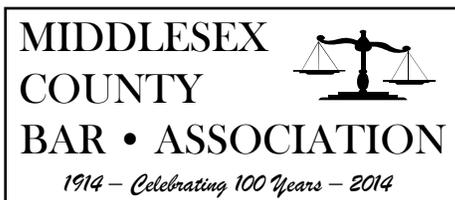
The MCBA has studied this issue and is preparing a report of our findings which will be shared with the public.

Currently, in New Jersey, there are several programs capable of addressing these issues through statewide expansion and bar association cooperation. For example, the MCBA currently operates two reduced fee programs. The first is for members of the general public who need legal assistance, but cannot afford a lawyer at the standard market rate. The second is a program that we instituted in cooperation with Rutgers University, under which county lawyers agree to represent, at reduced rates, Rutgers University students. Through the Association of County Bar Presidents and county-to-county cooperation, the Rutgers program is expanding to other counties. We see no reason why these programs could not be implemented on a larger scale. The implementation of a program like this would also assist those lawyers who are looking to take on new clients and building practices.

We cannot imagine a situation where it would not be better for a member of the public to get legal advice from a legally trained and licensed lawyer rather than a non-lawyer. Such an arrangement provides the greatest likelihood that members of the public will get good legal advice and have recourse in the event that they are given incorrect advice. A lack of available lawyers is certainly not the issue. The ABA Market Research Department noted in its 2013 report that there were 40,993 resident and active attorneys in New Jersey. Per capita, New Jersey has 46 lawyers for every 10,000 residents. Thus, it can hardly be said there is an insufficient number of attorneys in the State of New Jersey to address our public's need.

In a state such as New Jersey, the real issue is not "are there enough lawyers"; rather it is ensuring that people know there are lawyers and programs available to help them. Our problem is different from those faced in other states that are much larger and less densely populated. In those states, physical access to a lawyer may actually be a problem because people live in remote locations and there are fewer lawyers. The best solution for those states and their residents' unmet legal needs may be very different from the best solution for New Jersey's residents.

The MCBA believes that the keys to successfully meeting the needs of the New Jerseyans that we are targeting are two-fold: (1) development of a statewide plan to make lawyers available to them and (2) educating these people that there are lawyers and programs available to help them.



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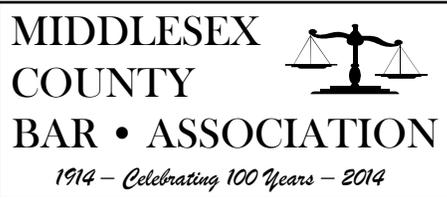
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While we believe that a statewide reduced legal fee program, operated in conjunction with a statewide lawyer referral service, will go a long way to helping us fill the public's unmet legal needs, we also believe that there are other programs currently in operation that can be expanded to help as well. Rutgers Law School has established a law firm consisting of newly admitted attorneys working under the supervision of an experienced attorney to provide low-cost legal services. This program seeks to serve both people of modest means with their legal issues, and new attorneys who cannot find jobs and are seeking to launch their legal careers.

There are no doubt other ways that our county and state bar associations can further facilitate the pairing of individuals in need of counsel with the appropriate licensed attorneys. Rather than sending those in need to non-lawyers who lack the proper knowledge or experience, surely the goal of the bar associations and the courts should be to study and create ways to pair those licensed attorneys who would no doubt offer competitive/attractive hourly rates with individuals in need. Currently, other than the limited reduced fee programs that exist, people in need of legal services who do reach out are directed to Legal Services of New Jersey ("LSNJ") and often there are people who do not qualify for assistance, or the legal problems they face do not lend themselves to LSNJ's assistance. A statewide reduced fee program and lawyer referral service can fill that gap.

Perhaps other jurisdictions will find alternative legal service providers to be a proper solution. Those jurisdictions must ask whether they are doing a disservice by permitting non-lawyers to provide legal advice. A "simple" divorce is only "simple" until there is a problem and the property settlement agreement is unclear or becomes the subject of litigation. Would members of the public who have used LSPs eventually have to retain lawyers to address their mistakes?

There are other questions about the proposed regulatory scheme: Will the licensure of non-lawyers to practice law open the door to non-lawyer ownership of law firms, or fee sharing with non-lawyers (*e.g.*, Avvo and RocketLawyer)? Shouldn't people who are giving legal advice be supervised by attorneys? Does the concept of an LSP suggest that lower-income individuals have simpler legal issues than do higher-income individuals? If an LSP has the same operating costs as an attorney (*e.g.*, office overhead, malpractice insurance, etc.), what would lead us to believe that a LSP can offer access to justice at fees significantly lower than an attorney's? If the level of education for an LSP is so inferior



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to that of a licensed attorney, might states be doing more harm than good when there are alternative ways to ensure access to justice, as we have outlined above?

In conclusion, the MCBA does not believe there is a need in New Jersey or Middlesex County to create a new category of licensed non-lawyers to give legal advice. Moreover, we believe the ABA's proposal would expose the public to substantially inferior advice on significant matters. A better solution would be (1) a public education campaign informing people that there are organizations to help them find a lawyer, and (2) the creation of one or more mechanisms to match lawyers willing to provide representation at reduced rates with clients having this need.

Thank you for your attention to and consideration of our comments.

Respectfully,

Craig M. Aronow

CRAIG M. ARONOW, ESQ.
President
Middlesex County Bar Association

cc: Miles Winder, Esq., President, New Jersey State Bar Association
All NJ County Bar Associations

CMA/jpc