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BUSINESS OF LAW

Avvo readies rollout of fixed-fee legal services

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BY ROBERT AMBROGI

The lawyer directory website Avvo has begun testing a service that offers fixed-fee, limited-scope legal services through a network of attorneys, and plans to roll out the service more broadly over the next few months.

Called Avvo Legal Services (https://advisor.avvo.com/providers/welcome), the service offers a variety of limited-scope legal services at a fixed fee. Services range from review of legal documents such as business contracts and nondisclosure agreements to more involved matters such as uncontested divorces and citizenship applications.

Avvo is testing the service in five cities: Atlanta, Chicago, Dallas, Houston and Phoenix. It will begin rolling it out to additional markets in February, said Laura Moriarty, Avvo's vice president of communications. Moriarty declined to identify the markets where it will initially be offered except to confirm that one will be Massachusetts.

Avvo first got into the business of offering legal advice last year when it launched Avvo Advisor (http://www.abajournal.com/news/article/avvo_launches_on_demand_legal_advice_for_a_fixed_fee), a service that provides on-demand legal advice by phone for a fixed fee of $39 for 15 minutes. With this new service, Avvo will determine the types of services to be provided and the prices. Attorneys who sign up will be able to select which services they want to offer. When a client buys a service, Avvo sends the client's information to the attorney. The attorney then contacts the client directly and completes the service.

Clients will be able to choose the attorney they want from a list of those within their geographic area who have registered to participate. Clients pay the full price for the service up front.

After the service is completed, Avvo sends the attorney the full legal fee, paid once a month for fees earned the prior month. As a separate transaction, the attorney pays Avvo a per-service marketing fee. This is done as a separate transaction to avoid fee-splitting, according to Avvo. Attorneys pay nothing to participate except for the per-case marketing fee.

Among the services to be offered will be document review for $199, for which the attorney will pay a $50 marketing fee; formation of a single-member LLC for $595, with a $125 marketing fee; uncontested divorce for $995, with a $200 marketing fee; and green card application for $2,995, with a $400 marketing fee.

The terms of the service require attorneys to contact a new client within one business day for a 30-minute introductory call. If the attorney determines the client is not the right fit, the attorney can decline the representation.

In an FAQ about the service (http://www.avvo.com/support/avvo_legal_services_attorney_faq) on Avvo's website, Avvo's general counsel Josh King says lawyers should not be concerned about the ethics of the fee arrangement.

AMERICAN BAR ASSOCIATION

COMMISSION ON THE FUTURE OF LEGAL SERVICES
STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE
CRIMINAL JUSTICE SECTION
LAW PRACTICE DIVISION
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
STANDING COMMITTEE ON CLIENT PROTECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association adopts the ABA Model Regulatory Objectives for the Provision of Legal Services, dated February, 2016.

ABA Model Regulatory Objectives for the Provision of Legal Services

A. Protection of the public
B. Advancement of the administration of justice and the rule of law
C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
E. Delivery of affordable and accessible legal services
F. Efficient, competent, and ethical delivery of legal services
G. Protection of privileged and confidential information
H. Independence of professional judgment
I. Accessible civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct
J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system

FURTHER RESOLVED, That the American Bar Association urges that each state's highest court, and those of each territory and tribe, be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court's existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.

REPORT

I. Background on the Development of ABA Model Regulatory Objectives for the Provision of Legal Services

The American Bar Association's Commission on the Future of Legal Services was created in August 2014 to examine how legal services are delivered in the U.S. and other countries and to recommend innovations that improve the delivery of, and the public's access to, those services.[1] As one part of its work, the Commission engaged in extensive research about regulatory innovations in the U.S. and abroad. The Commission found that U.S. jurisdictions are considering the adoption of regulatory objectives to serve as a framework for the development of standards in response to a changing legal profession and legal services landscape. Moreover, numerous countries already have adopted their own regulatory objectives.

The Commission concluded that the development of regulatory objectives is a useful initial step to guide supreme courts and bar authorities when they assess their existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers. Given that supreme courts in the U.S. are beginning to consider the adoption of regulatory objectives and given that providers of legal assistance other than lawyers are already actively serving the American public, it is especially timely and important for the ABA to offer guidance in this area.

This Report discusses why the Commission urges the House of Delegates to adopt the accompanying Resolution.

II. The Purpose of Model Regulatory Objectives for the Provision of Legal Services

The Commission believes that the articulation of regulatory objectives serves many valuable purposes. One recent article cites five such benefits:

> First, the inclusion of regulatory objectives definitively sets out the purpose of lawyer regulation and its parameters. Regulatory objectives thus serve as a guide to assist those regulating the legal profession and those being regulated. Second, regulatory objectives identify, for those affected by the particular regulation, the purpose of that regulation and why it is enforced. Third, regulatory objectives assist in ensuring that the function and purpose of the particular [regulation] is transparent. Thus, when the regulatory body administering the [regulation] is questioned—for example, about its interpretation of the [regulation]—the regulatory body can point to the regulatory objectives to demonstrate compliance with function and purpose. Fourth, regulatory objectives can help define the parameters of the [regulation] and of public debate about proposed [regulation]. Finally, regulatory objectives may help the legal profession when it is called upon

[1] Additional information about the Commission, including descriptions of the Commission's six working groups, can be found on the Commission's website as well as in the Commission's November 3, 2014 issues paper. That paper generated more than 60 comments.

to negotiate with governmental and nongovernmental entities about regulations affecting legal practice.[2]

In addition to these benefits, the Commission believes Model Regulatory Objectives for the Provision of Legal Services will be useful to guide the regulation of an increasingly wide array of already existing and possible future legal services providers.[3] The legal landscape is changing at an unprecedented rate. In 2012, investors put $66 million dollars into legal service technology companies. By 2013, that figure was $458 million.[4] One source indicates that there are well over a thousand legal tech startup companies currently in existence.[5] Given that these services are already being offered to the public, the Model Regulatory Objectives for the Provision of Legal Services will serve as a useful tool for state supreme courts as they consider how to respond to these changes.

A number of U.S. jurisdictions have articulated specific regulatory objectives for the lawyer disciplinary function.[6] At least one U.S. jurisdiction (Colorado) is considering the adoption of regulatory objectives that are intended to have broader application similar to the proposed ABA Model Regulatory Objectives for the Provision of Legal Services.[7] In addition, the development and adoption of regulatory objectives with broad application has become increasingly common around the world. Nearly two dozen jurisdictions outside the U.S. have adopted them in the past decade or have proposals pending. Australia, Denmark, England, India, Ireland, New Zealand, Scotland, Wales, and several Canadian provinces are examples.[8]

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[2] Laurel Terry, Steve Mark & Tahlia Gordon, *Adopting Regulatory Objectives for the Legal Profession*, 80 FORDHAM LAW REVIEW 2685, 2686 (2012), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2085003. The original quote refers to "legislation" rather than "regulation," but regulatory objectives serve the same purpose in both cases.

[3] As noted by the ABA Standing Committee on Paralegals in its comments to the Commission, paralegals already assist in the accomplishment of many of the Commission's proposed Regulatory Objectives.

[4] Joshua Kubick, *2013 was a Big Year for Legal Startups; 2014 Could Be Bigger*, TechCo (Feb. 14, 2015), *available at* http://tech.co/2013-big-year-legal-startups-2014-bigger-2014-02.

[5] https://angel.co/legal

[6] For example, in Arizona "the stated objectives of disciplinary proceedings are: (1) maintenance of the integrity of the profession in the eyes of the public, (2) protection of the public from unethical or incompetent lawyers, and (3) deterrence of other lawyers from engaging in illegal or unprofessional conduct." *In re Murray,* 159 Ariz. 280, 282, 767 P.2d 1, 3 (1988). In addition, the Court views "discipline as assisting, if possible, in the rehabilitation of an errant lawyer." *In re Hoover,* 155 Ariz. 192, 197, 745 P.2d 939, 944 (1987). California Business & Professions Code Section 6001.1 states that "[T]he protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) adopted the following: "The mission of the ARDC is to promote and protect the integrity of the legal profession, at the direction of the Supreme Court, through attorney registration, education, investigation, prosecution and remedial action."

[7] A Supreme Court of Colorado Advisory Committee is currently developing, for adoption by the Court, "Regulatory Objectives of the Supreme Court of Colorado."

[8] For a more extensive history of the "regulatory objectives movement," see Laurel Terry, *Why Your Jurisdiction Should Jump on the Regulatory Objectives Bandwagon*, THE PROFESSIONAL LAWYER (2013), *available at* http://www.personal.psu.edu/faculty/l/s/lst3/Terry_Regulatory_Objectives_Bandwagon_2013.pdf.

These Model Regulatory Objectives for the Provision of Legal Services are intended to stand on their own. Regulators should be able to identify the goals they seek to achieve through existing and new regulations. Having explicit regulatory objectives ensures credibility and transparency, thus enhancing public trust as well as the confidence of those who are regulated.[9]

From the outset, the Commission has been transparent about the broad array of issues it is studying and evaluating, including those legal services developments that are viewed by some as controversial, threatening, or undesirable (e.g., alternative business structures). The adoption of this Resolution, however, does not predetermine or even imply a position on those issues by the ABA. If and when any other issues come to the floor of the House of Delegates, the Association can and should have a full and informed debate about them.

The Commission intends for these Model Regulatory Objectives for the Provision of Legal Services to be used by supreme courts and their regulatory agencies. As noted in the Further Resolved Clause of this Resolution, the Objectives are offered as a guide to supreme courts. They can serve as such for new regulations and the interpretation of existing regulations,[10] even in the absence of formal adoption. As with any ABA model, a supreme court may choose which, if any, provisions to be guided by, and which, if any, to adopt.

Although regulatory objectives have been adopted by legislatures of other countries due to the manner in which their governments operate, they are equally useful in the context of the judicially-based system of legal services regulation in the U.S., which has been long supported by the ABA.

Regulatory objectives can serve a purpose that is similar to the Preamble to the Model Rules of Professional Conduct. In jurisdictions that have formally adopted the Preamble, the Rules provide mandatory authority, and the Preamble offers guidance regarding the foundation of the black letter law and the context within which the Rules operate. In much the same way, regulatory objectives are intended to offer guidance to U.S. jurisdictions with regard to the foundation of existing legal services regulations (e.g., unauthorized practice restrictions) and the purpose of and context within which any new regulations should be developed and enforced in the legal services context.

III. Relationship to the Legal Profession's Core Values

Regulatory objectives are different from the legal profession's core values in at least two respects. First, the core values of the legal profession are (as the name suggests) directed at the

[9] As Professor Laurel Terry states in comments she submitted in response to the Commission's circulation of a draft of these Regulatory Objectives, if "a regulator can say what it is trying to achieve, its response to a particular issue – whatever that response is – should be more thoughtful and should have more credibility. It seems to me that this is in everyone's interest."

[10] Existing court rules providing for alternatives to discipline programs exemplify how the Objective of ensuring the efficient, competent and ethical delivery of legal services should be read to encompass the need to confront legal services provider impairments in the most effective manner for the good of the legal system. *See, e.g.*, Rule 11(G) of the ABA Model Rules for Lawyer Disciplinary Enforcement.

"legal profession."[11] By contrast, regulatory objectives are intended to guide the creation and interpretation of a wider array of legal services regulations, such as regulations covering new categories of legal services providers. For this reason, some duties that already exist in the Model Rules of Professional Conduct (e.g., the duty of confidentiality) are restated in the Model Regulatory Objectives for the Provision of Legal Services to emphasize their importance and relevance when developing regulations for legal services providers who are not lawyers. Second, while the core values of the legal profession remain at the center of attorney conduct rules, they offer only limited, though still essential, guidance in the context of regulating the legal profession. A more complete set of regulatory objectives can offer U.S. jurisdictions clearer regulatory guidance than the core values typically provide.[12]

The differing functions served by regulatory objectives and core values mean that some core values are articulated differently in the context of regulatory objectives. For example, the concept of client loyalty is an oft-stated and important core value, but in the context of regulatory objectives, client loyalty is expressed in more specific and concrete terms through independence of professional judgment, competence, and confidentiality.

IV. Recommended ABA Model Regulatory Objectives for the Provision of Legal Services

The Commission developed the Model Regulatory Objectives for the Provision of Legal Services by drawing on the expertise of its own members,[13] discussing multiple drafts of regulatory objectives at Commission meetings, reviewing regulatory objectives in nearly two dozen jurisdictions, and reading the work of several scholars and resource experts.[14] The Commission also sought input and incorporated suggestions from individuals and other entities, including the

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[11] *See* ABA House of Delegates Recommendation 10F (adopted July 11, 2000), *available at* http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/mdprecom10f.html. This recommendation lists the following as among the core values of the legal profession: the lawyer's duty of undivided loyalty to the client; the lawyer's duty competently to exercise independent legal judgment for the benefit of the client; the lawyer's duty to hold client confidences inviolate; the lawyer's duty to avoid conflicts of interest with the client; the lawyer's duty to help maintain a single profession of law with responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibilities for the quality of justice; and the lawyer's duty to promote access to justice.

[12] The Commission notes that there also are important professionalism values to which all legal services providers should aspire. Some aspects of professionalism fold into the Objectives related to ethical delivery of services, independence of professional judgment and access to justice. Others may not fit neatly into the distinct purpose of regulatory objectives for legal services providers, just as they do not fall within the mandate of the ethics rules for lawyers,

[13] The Commission includes representatives from the judiciary and regulatory bodies, academics, and practitioners.

[14] Materials reviewed include Steve Mark, Tahlia Gordon, Marlene LeBrun & Gary Tamsitt, *Preserving the Ethics and Integrity of the Legal Profession in an Evolving Market: A Comparative Regulatory Response, available at* http://www.olsc.nsw.gov.au/agdbasev7wr/olsc/documents/pdf/preserving%20ethics%20integrity%20legal%20profession%20uk_paper.pdf; Andrew Perlman, *Towards the Law of Legal Services* (2015), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2561014; Laurel Terry, Steve Mark &Tahlia Gordon, *Adopting Regulatory Objectives for the Legal Profession*, 80 FORDHAM LAW REVIEW 2685, 2686 (2012), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2085003; THE LAW SOCIETY, THE MINISTRY OF JUSTICE'S CALL FOR EVIDENCE ON THE REGULATION OF LEGAL SERVICES IN ENGLAND AND WALES: THE LAW SOCIETY'S RESPONSE (Sept. 2, 2013), *available at* https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/regulation-of-legal-services/.

ABA Standing Committee on Discipline and the ABA Standing Committee on Ethics and Professional Responsibility.

Respectfully submitted,

Judy Perry Martinez, Chair
Andrew Perlman, Vice-Chair
Commission on the Future of Legal Services

February 2016

GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on the Future of Legal Services

Submitted By: Judy Perry Martinez, Chair

1. Summary of Resolution(s).

The Commission on the Future of Legal Services seeks adoption of ABA Model Regulatory Objectives for the Provision of Legal Services by the House of Delegates. The Commission further requests that the House recommend that each state's highest court, and those of each territory and tribe, be guided by clearly identified regulatory objectives such as those contained in the proposed ABA Model Regulatory Objectives for the Provision of Legal Services. Given that supreme courts in the U.S. are beginning to consider the adoption of regulatory objectives and given that providers of legal assistance other than lawyers are already actively serving the American public, it is especially timely and important for the ABA to offer guidance in this area.

It is important for regulators to be able to easily identify the goals they seek to achieve through existing and new regulations. The adoption of ABA Model Regulatory Objectives for the Provision of Legal Services would create a valuable framework to guide the courts in the face of the burgeoning access to justice crisis and fast paced change affecting the delivery of legal services in order that the courts can assess their existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers. Use of ABA Model Regulatory Objectives for the Provision of Legal Services also will help courts continue to ensure credibility and transparency in the regulatory process, which enhances not only the public's trust in judicial regulation, but also the confidence of those who are regulated.

2. Approval by Submitting Entity.

   The Commission on the Future of Legal Services approved the filing of this Resolution at its meeting on September 25 and 26, 2015.

3. Has this or a similar resolution been submitted to the House or Board previously?

   No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

   This Resolution is consistent with existing and longstanding ABA policies supporting state-based judicial regulation and does not affect them.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

   The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to successfully implement any policies relating to the regulation of the legal profession that are adopted by the House of Delegates. The Policy Implementation Committee works with the Conference of Chief Justices as part of its process. The Commission on the Future of Legal Services has been in communication with Center for Professional Responsibility volunteer leadership and the Center Director in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Commission on Ethics 20/20, Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct. The Commission will also engage the ABA Legal Services Division regarding the implementation effort should the House adopt the Resolution.

8. Cost to the Association. (Both direct and indirect costs)

   None

9. Disclosure of Interest. (If applicable)

10. Referrals.

    On September 29, 2015 the Commission released for comment to all ABA entities, state and local bar associations, and affiliated entities a draft of this Resolution and the accompanying draft Report. In addition, the Commission consulted with the ABA Standing Committee on Professional Discipline and Standing Committee on Ethics and Professional Responsibility at an earlier stage during its study of regulatory objectives. The Commission carefully considered the feedback from those entities in the development of this Resolution.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

    Ellyn S. Rosen
    Deputy Director and Regulation Counsel
    ABA Center for Professional Responsibility
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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Judy Perry Martinez
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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Commission on the Future of Legal Services is proposing for House of Delegates adoption ABA Model Regulatory Objectives for the Provision of Legal Services. The Commission also requests that the House adopt the part of the Resolution that recommends that each state's highest court, and those of each territory and tribe, be guided by clearly identified regulatory objectives such as those contained in the proposed ABA Model Regulatory Objectives for the Provision of Legal Services.

The adoption of ABA Model Regulatory Objectives for the Provision of Legal Services would create a valuable framework to guide the courts as they, in the face of the burgeoning access to justice crisis and fast paced change affecting the delivery of legal services assess their existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers. Use of ABA Model Regulatory Objectives for the Provision of Legal Services would also help courts continue to ensure credibility and transparency in the regulatory process, and that enhances not only the public's trust in judicial regulation, but also the confidence of those who are regulated.

2. Summary of the Issue that the Resolution Addresses

The ABA Commission on the Future of Legal Services was created in August 2014 to examine how legal services are delivered in the U.S. and other countries and to recommend innovations that improve the delivery of, and the public's access to, those services. As one part of its multifaceted work, the Commission engaged in extensive research about regulatory developments in the U.S. and abroad. The ABA has long supported state-based judicial regulation; its policies doing so do not, however, set forth a centralized framework of broad and explicit regulatory objectives to serve as a guide for such regulation. This Resolution, if adopted, would fill this policy void and serve as a useful tool to help courts easily identify the explicit goals they seek to achieve when they assess their existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers. Given that supreme courts in the U.S. are beginning to consider the adoption of broad regulatory objectives, and given that providers of legal assistance other than lawyers are already actively serving the American public, the Commission believes that it is timely and important for the ABA to offer guidance in this area.

3. Please Explain How the Proposed Policy Position will address the issue

The adoption of ABA Model Regulatory Objectives for the Provision of Legal Services would create the valuable and needed framework to help courts as they, in the face of the burgeoning access to justice crisis and fast paced change affecting the delivery of legal services: (1) assess their existing regulatory framework and (2) identify and implement regulations related to legal services beyond the traditional regulation of the legal profession. While allowing for jurisdictional flexibility, the centralized framework set forth in the ABA Model Regulatory Objectives for the Provision of Legal Services would also facilitate jurisdictional consistency.

Use of ABA Model Regulatory Objectives for the Provision of Legal Services would also help courts continue to ensure credibility and transparency in the regulatory process, which enhances not only the public's trust in judicial regulation, but also the confidence of those who are regulated.

4. Summary of Minority Views

From the outset, the Commission on the Future of Legal Services has been committed to and implemented a process that is transparent and open. The Commission has engaged in broad outreach and provided full opportunity for input into its work. Inherent in any undertaking of this scope and complexity is the recognition that there will be disagreements about the approach to issues as well as the substance of proposals.

On September 29, 2015 the Commission released for comment to all ABA entities, state and local bar associations, and affiliated entities a draft of this Resolution and the accompanying draft Report. At the time this Executive Summary was filed with the House of Delegates, the Commission was aware only that the following disagree with the Resolution:

The New Jersey State Bar Association has expressed its belief that the Resolution is contrary to the profession's core values and promotes a tiered system of justice.

Larry Fox filed comment in opposition in his individual capacity.