

Sorry, this time the ABA has gone too far....

So, earlier this week, the ABA announced its Commission on the Future of Legal Services. Sounds harmless enough - an exploration of ways to expand access to justice. Except, guess who the ABA wants to serve the poor? Solos and smalls.

I'm serious. Look at the list of issues to be addressed by the Committee here:

<http://virtuallawpractice.org/wp-content/uploads/2014/11/Issues-Paper-FINAL-Nov-3-2014-3.pdf>

The Commission seeks comment on the following:

How can small law practices (e.g., solo practitioners, lawyers in rural communities, small firm lawyers, etc.) sustainably represent those who do not have access to legal services?

No other sector - biglaw, academia or government - is the subject of the same topic.

Don't solos and smalls do enough? Now we have to figure out ways to represent those who can't pay? And that makes us sustainable...how? I am all for pro bono - schedule permitting, I do my share - lots of solos do. But this is beyond pro bono - now we're supposed to relegate ourselves to a steady diet of low income work.

I've got a blog post coming on this, but I'm just about at the end of my rope. (rant off)

Carolyn Elefant, Washington, D.C.

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I noticed that, too.

I was at an ABA YLD conference in early October in Portland. President Hubbard was part of a panel seeking ideas on how to address the needs of the underserved. The panel presenting included Mr. Hubbard, Ms. Knake, and a couple of others.

While the general focus was how we could reinvent legal services, it seemed to boil down to "how do we meet these needs with new attorneys who can't find jobs" or "solo are the most flexible & able to change to meet this challenge."

I think those in the audience did a great job thinking outside the box and giving the panel many truly creative ideas, the end message was that as young lawyers the onus is on us to meet the challenge because 1) we're more tech savvy, 2) we're more adaptable, & 3) we're more likely to be part of a solo or small firm. And, it's wise to go after this piece of the pie because this slice of America needs / wants legal services & it's up to us to figure out how to meet that need creatively.

I'd be interested to see how the larger firms and/or law schools are attacking this issue, if at all. Seems this would be a great area for law schools to tackle (with larger law firm sponsorship) which would serve two purposes: 1) to give people who need legal help somewhere else to turn (like going to a beauty school for a hair cut) & 2) it gives students practical, real lawyering experience. This would take the place of the

training that used to be done on a large scale inside law firms. If students get jobs great, but if not, they're prepared so that if they want or need to go solo they can handle at least one type of case.

Expecting new lawyers to work for very low fees is not practical. We all gave a TON of school debt, as well as personal bills. Starting any business no matter how judiciously you plan a budget or how much you bootstrap a start up, the endeavour still costs money many new grads just don't have. Lower fees certainly aren't going to help us get started.

-AnnMichelle Hart, Washington

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They've done much worse. Just depends on what issues float your boat.

Shell Bleiweiss, Illinois

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I'm with Carolyn on this. We solos and smalls do our share (often more than our share) and it is a myth that we develop business out of our pro bono work. We benefit from the experience and comply with the preamble to the RPC, but it does not generate new business. This is the reason why BigLaw avoids it; if they can't bill for it, they are not interested. Oh sure, they do the minimum they can get away with and then publicize the heck out of it, like they are the unsung heroes, when in reality they are like the worker who only does the bare minimum required to earn their paycheck and nothing more.

And now the ABA has a committee to expand our service to the community? I sure hope that some solos and smalls are on this committee so they can ask the important question, "Why don't we explore how big firms can expand their service to the low income and poor communities? Because solos are doing enough; they just don't get the recognition because they don't have the PR machines like big firms do.

Off my soapbox.

Robert Thurston

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I am trying to figure out how this is different from what I do every day. I already have a steady diet of low income consumers, except that these days it's not-so-steady.

Michelle Kainen, Vermont

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Well put everyone. I think we all have as much pro bono work as we'd ever want.

Matthew Callis

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Mmmn - so I see this through a bit of a different lens, maybe because I am involved in the incubator movement. I don't think access to justice automatically equals pro bono - I think there's a huge unmet need for modest means legal services, and there's a business model for providing those services in a way where one can still make a decent living.

The Colorado Bar actually has a fairly decent book out there, with a nice spreadsheet that allows one to model such a business:

<http://www.cobar.org/index.cfm/ID/22688/DPWAJ/Representing-the-Moderate-Income-Client/>

And I agree, it's not really a new model, just a potential expansion of that model to serve more clients.

My two cents -

Jamie Baker Roskie

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Carolyn,

Perhaps, rather than take insult at this question, we need to turn it on its head - this is not a question about being asked to do more, it is a question about how we can create new profitable opportunities; for if we are to serve those who do not have access to legal services (at whatever the fee may be) we need to be profitable first and foremost. BTW - serving rural communities does not necessarily mean serving the poor and the lack of access to legal services can be due to more than just the ability to pay.

We can also turn the "why pick on us" question around - this is not about

relegating solos to a low income diet or asking solos to do more than our fair share this should be about recognizing that as solos and small firms we are far more agile than big law; we can adopt new technology faster, we can adapt new ways to practice law more readily - our practices can evolve far more quickly.

So, we should start directing the conversation rather than reacting to the question - lets start talking about what it takes to have a sustainable practice in an "access to legal services desert". We need to direct the conversation towards things like:

- business models that can produce a profitable practice while still serving these communities. Which means we need to address things like: billing models (sliding fee scales, flat fees, value billing), alternate business entities - is there a reason why a lawyer or lawyers couldn't practice as a not-for-profit entity or a co-op, and how much can a group of lawyers coordinate before they are considered a law firm (can they group buy supplies, rent office space together, share staff costs, etc);
- lawyer recruitment and what will it take to get lawyers into these communities;
- modifications to ethics rules to permit virtual practices;
- outlining best practices for things like data security, cloud-based services, and mobile law practices;
- and the possibility of community partnerships.

As much as I hate being this much of an optimist this early in the morning (I blame that 6:30 AM blood donation), but I see more opportunity than insult here.

Bruce Cameron, Minnesota

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Most law schools have legal clinics associated with them, where they do offer pro bono work which the law students do.

But it is very limited. Why? Because the rules in each state what a law student can do under bar rules (in Missouri it was a rule 13) are usually very limited.

So they generally are doing either administrative type work (administrative child support cases, some Social Security work) or things like land lord tenant and sometimes orders of protection. You will also see some places that have criminal ones that may do municipal cases, warrants, traffic tickets and such

Erin M. Schmidt, Ohio

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Some of this is that the ABA doesn't entirely "Get" solo and small firm practice; they do some things very well, they've provided Solosez for close to two decades, they do have SSF section but in years past we've had inquiries from the ABA about why solo practitioners don't necessarily join the ABA; and as I've tried to explain, it comes down to value; their dues are relatively high, and the benefits are, while not nonexistent, not necessarily worth what the dues are (CLE is good, but I can get CLE from my state bar that is, for me, usually more relevant and at a lower cost; the 'discount' programs are largely mirrored by state bar; ABA Journal's a nice publication but isn't worth several hundred dollars a year, etc). with

the result that relatively fewer SSF practitioners join the ABA. If we're underrepresented then we're not being heard.

I do think some of this is 'bad reporting' by solo practitioners; I know I'm supposed to report my annual pro bono work to Florida bar, and I usually "guesstimate" it at a couple of dozen hours a year; while this may, barely, cover, my "Formal" pro bono, where I'm representing a litigant in a formal court case, it WAY understates my 'informal' pro bono; spending 20 minutes on the phone with someone who's facing eviction, dealing with someone who's spouse has died and explaining what they need to do to clear title outside of probate, meeting with someone that I know is very unlikely to hire me. Some of this comes from marketing, and some of it shades into marketing; but good luck for most of these people to try to even talk to a lawyer at a 'big' law firm; they're not even going to make it past the gatekeeper. Just yesterday I spent about 20 minutes with someone on the phone explaining what she could do to handle a matter; she didn't need to hire me, and it was apparent that she didn't need to hire me but could do this stuff on her own (take husbands DC to bank, DMV, etc.) I do that all the time, but it doesn't necessarily make it on my "pro bono" report to the bar.

Some of this is our own failure to blow our horns as it were. Big firms don't necessarily get the solo model; frequently we answer our own phones, meet directly with potential clients, do a lot of "informal" stuff and of course we don't get credit for it. At least in my experience, small firm and solo practitioners are more likely to interact with the general public than large firm attorneys.

I also think that the ABA is trying to solve a problem that isn't necessarily of their making; I understand the public relations push to show that lawyers care, but face it, poor people have limited options in food, housing, transportation, clothing, education, medical care, and just about every other aspect of life; and even if they have 'better' options, they don't necessarily take advantage of them, see for instance:

<http://readingeagle.com/ap/article/babies-diets-reflect-parents-class-study-nds>

Poorer people feed their babies more junk food, basically.

And some of it is behavioral; when there's a conflict, many middle class people will call a lawyer; many lower class people will call the cops.

I understand, and I do support attempts to provide legal services to the underserved but realistically, this is tough problem and I don't think the ABA is going to make significant inroads on it.

Ronald Jones, Florida

This is one of the greatest values of this list, in my opinion -- reasoned discussion of important topics from a wide variety of perspectives. I appreciate each of you for being willing to engage in the conversation.

If we're talking about pro bono work, large firms have no excuse for not participating at the same or higher level than solos and small firms. In Florida, several large firms have implemented firm-wide pro bono plans that are designed and coordinated by the firm and ensure wide participation in delivering pro bono services. If the ABA is somehow letting large firms off the hook on pro bono legal services, then that is just wrong; if they aren't providing the services, then they should be funding them.

As far as serving the underserved, I'm with Bruce in looking for opportunity. I hear and share the concern that solo and small firms are already burdened by shrinking revenues from the changes in the market for legal services. Adding more non-paying work to that mix doesn't help solos (who are after all a big part of the ABA's constituency) and isn't fair if big law isn't sharing the burden. At the same time, if there is an opportunity to design a better mousetrap that gives solos and small firms a leg up in a new and innovative delivery system for legal services, we should seize that opportunity by actively shaping the delivery system. The assumption in the earlier comments seems to be that the work won't be profitable, but Bruce makes a great point -- figure out how to make it profitable and it's a win for us all.

Here in Florida (where you're "young" if you're under 60), I am constantly reminded of the number of retired lawyers who have a wealth of knowledge that new graduates are desperate for and struggling to gain. (We also have

an active mentoring program coordinated by the Bar's YLD that pairs practicing lawyers with law students.) If we can use technology to create mentoring alliances between our elder statesmen and those just starting out, we could improve the lives of many lawyers transitioning out of daily practice while building the next generation of lawyers.

Patricia C. Meringer, Florida

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To Bruce's point, this is a recent study from the ABA that shows that access to justice is a complex issue, and the largest factor is whether potential clients understand their problem to be legal, rather than ability to pay:

[http://www.americanbarfoundation.org/uploads/cms/documents/rl\\_fall\\_2014\\_web.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/rl_fall_2014_web.pdf)

Jamie Baker Roskie

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Just came across this PLI presentation on limited scope representation, which is part of what we're talking about (giving people access to legal services on a basis that they are able and willing to pay for), for those interested:

[http://www.pli.edu/Content/OnDemand/Expanding\\_Your\\_Practice\\_Using\\_Limited\\_Scope/\\_/N-4nZ1z12uzg?ID=153434&t=](http://www.pli.edu/Content/OnDemand/Expanding_Your_Practice_Using_Limited_Scope/_/N-4nZ1z12uzg?ID=153434&t=)

Patricia C. Meringer,

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Then you have to figure in the DIY attitude.

We have to convince people that paying for legal help is valuable to them.

There is a difference between people who know they need a lawyer and do not have the funds to pay and people who have the funds to pay and choose not to get a lawyer.

The latter is much larger than people suspect, because it is assumed that people don't get a lawyer because they can't afford it (or won't be able to afford all of it and so forth)

But the results are, with both groups, that you can charge \$50/hour and they still aren't going to pay for the attorney. One because they lack the extra funds to do so and the other because they don't see the value in paying it.

Spend a week and count up how many times a client, potential client, or just someone you know says something to you along the lines of well so and so told me the law should work like this, or my case should go like that. Or that they read something on the internet that said...

And while that advice may be good, bad, ugly, or just downright wrong, it has something in common that you don't. It's free and it makes that client feel knowledgeable. It makes them feel powerful, and it generally supports

the outcome that THEY want to happen. Thus it is self reinforcing. Then your going to ask them to pay you thousands of dollars to tell them they are wrong...

Erin M. Schmidt

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Interesting comments here. I find it fascinating all these negative judgments about big firms. How many of you have worked at a large firm (providing that we can agree on what constitutes large)? How many of you have worked at a large financial institution such as a bank? Do you have any idea how much they devote in time and resources to pro bono work generally, assisting courts, community associations, community activism and local bar associations in meeting the needs of the community? I do because I have worked at several of each and the work dwarfs any contribution a solo could ever hope to do and still be able to eat. The services do not always get publicity but the social organizations, judiciary and bar associations are certainly aware and grateful. There is always more to be done but the knee jerk responses here that big firms are just sitting around counting their lucre is simply wrong.

Good day.

Anthony M Vassallo

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Since the Big Law attorneys have more money than time, maybe the ABA should create a Big Law funded fund that compensates SFFs for their work in this area.

Mike Phillips, North Carolina

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I guessed I missed the lawyer exception in the 13th Amendment.

The problem with serving the underserved is they really can't afford a lawyer in the first place. Many end up as unintended pro bono cases.

Unfortunately even if fees could be lowered they are. Why because being a lawyer is like being a tobacco farmer. Everything you need is premium priced. Doesn't matter if you representing Richie Rich or a homeless veteran you pay all the same costs.

Now if you want more pro bono work out of attorneys it's time to make it worth the attorney's while. Credits on student loans. Low cost CLEs. Discounts on bar membership; that sort of thing.

John Davidson, Pennsylvania

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I was going to say something about the Biglaw bashing, but Anthony said it better than I could. I have worked at a larger law firm, and my current firm straddles the solo/midsize firm line (because we all practice in the cloud and sometimes I feel like a solo even though I have over 30 partners). There are plenty of lawyers in both big and small law firms that can't be bothered with pro bono. There are also lawyers at firms of all sizes who devote substantial amounts of time to pro bono work, and some larger firms allow associates to count pro bono hours as billable hours. Just like you can't generalize about solos, it's a mistake to think that big firms (or even individual lawyers in big firms) all take the same approach to pro bono.

One issue I (and, I'm sure, other specialists) run into is that my expertise doesn't translate well to pro bono work. I used to volunteer at a legal clinic, but the kind of issues that I was asked to deal with were so far outside my experience that I felt very uncomfortable giving legal

advice there. For the most part I have forgone pro bono efforts in favor of nonlegal community service for that reason.

Kevin W. Grierson, Virginia

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The problem with limited scope rep is that the lawyer's liability is not now and not likely in the future to be limited on the case.

Lawyers are going to get sued for not warning the client about things outside the limited scope, not foreseeing the client would do something, and so forth.

And even if the suits are eventually NOT successful, it doesn't matter because the damage is already done

You can write the perfect petition for the client and tell them how to file it, based on the information you have at the time of writing.

That does not good when 2.5 years down the road and all that litigation and the petition needs to be amended and there is no lawyer there to a) amend the petition b) tell the person they can't get or do what they want without amending the petition and then the person loses on an issue because it's not an issue as it wasn't in the pleading.

Both state bars and legislatures are going to have to be on board to provide this. The bar in changing ethical rules and legislatures in passing laws limiting liability to the lawyer doing it.

Erin M. Schmidt

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This is an interesting and important subject. But, truthfully, lawyers are never going to solve the problem until they understand it. And, from everything I've heard from the bar associations and from lawyers, it is evident that very few lawyers even understand what's going on.

To begin with, the ABA is asking the wrong question. "How can we SUSTAINABLY serve the poor?" is a stupid and offensive question. The implication is that we ought to serve the poor in a way that, thanks be to God, doesn't cause us all to go out of business. As if it's an act of mere survival.

Really? Are they stupid? NO model has any chance of working unless they figure out how to PROFITABLY serve the needs of the poor. Sustainability is the wrong measure. We need to focus on profitability.

The responses here are proof. Some pointy headed committee at the ABA starts chirping about serving the poor, and the folks here start acting like they're being asked to participate in an act of self-immolation. "I'll DIE!" "I'll go BROKE!!"

Yes. Yes, you will, IF you do it the way the Bar would suggest.

Asking new lawyers to carry the load is absurd. A new lawyer is the least time-efficient unit of labor in the entire profession. If time is money,

and it is, then the time cost of new lawyers serving the poor is the highest for anyone in the industry. A more efficient way of doing it would be to have an experienced lawyer - one who's done it a thousand times - hook up with a new lawyer in an arrangement where the senior lawyer donates his processes, forms and experience, while the junior lawyer donates his time.

But, even that's not the most efficient way to do things. Most poor people have simple problems. It's not as if Poverty Peggy walks the kids to school for the government-sponsored free breakfast and then walks home to sort through a disclosure statement for her upcoming merger with a multinational conglomerate. More likely, she's struggling to pay a bill or is getting harassed by a landlord.

In a world where online video and information can be shared and accessed for free, it's stupid that our industry hasn't done a better job of making information available to people who need it.

So, to me, our industry needs to figure out how to EFFICIENTLY serve the needs of the poor (and everyone else.) When we do that, the access to justice problem can very nearly solve itself.

Cheers,

David Allen Hiersekorn, California

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I read the document and found it offensive that the ABA implicitly believes that the "underserved" need to be served by lawyers other than those in large urban firms. In other words, the "big boys" can't be bothered with distractions from their corporate work. The document does not state that it is expecting attorney to do pro bono work. In fact, it sort of naively states that it does not know why the underserved don't use legal services more often. I can see the point that there may be an opportunity for some attorneys given the current job situation. However, the implication that solos and rural attorneys should be the ones who are encouraged to enter into what has historically been a poor market shows a profound lack of respect.

Bert Krages, Oregon

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Bert,

I didn't read the document, so I might be wrong. But, it might actually just relate to the notion, popular among certain political sets, that the poor are best served in cities where resources can be concentrated.

That would, necessarily, make serving poor people in urban areas a separate problem. That is, how do we serve the folks who aren't near the free clinics?

Cheers,

David Allen Hiersekorn

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This is a HUGE issue.

I worked on the outskirts of St. Louis. Legal aid worked in the city of

St. Louis courts, St. Louis County, and every once in awhile they would wander out to St. Charles county.

There was nothing in Lincoln, Warren and Montgomery Counties. And they didn't have the resources to spend the time screening these cases for need and then refer them back out to attorneys in that area who would do the cases pro bono.

Also big firms do not tend to exist in rural areas. And rural areas are, generally, already under served by the legal community.

Of course that could be addressed the same way they do for doctors, where areas or states subsidize the education and guarantee a salary for x years of service to the area (the whole Northern Exposure concept)

Erin M. Schmidt

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Here is the relevant passage:

4. Underserved communities.

a. Facilitating access. How can we better facilitate access to civil and criminal legal services for underserved communities?

i. What services are most needed by those who are underserved?

ii. What barriers prevent them from accessing such services?

iii. What existing models or innovations have had the greatest impact on expanding access to legal services?

iv. What further innovations might help to expand access to legal services?

v. How can the profession help to educate the underserved about their legal

needs and ways to address those needs?

- b. Facilitating delivery by small law practices. How can small law practices (e.g., solo practitioners, lawyers in rural communities, small firm lawyers, etc.) sustainably represent those who do not have access to legal services?
- i. What specific tools or innovations can lawyers leverage to reach this goal?
  - ii. What kind of new training might lawyers need to meet this goal?

It doesn't actually say "poor" nor does it say "pro bono." It does use the cryptic term "access." However, it does imply that it is the "little people" who need to take the initiative, leverage themselves, and be trained to access those who do not have access.

Bert Krages

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That is part of a solution but not a neat complete solving of the solution. I've been on the board of the Hawaii Legal Aid Society of Hawaii for more than 20 years now. We grapple a lot with how to provide access to legal services. The "gap group" who are not totally impoverished but who may not be able to afford a private lawyer may have access to online information. But we have clients who have no computer access, no internet access, some who can't afford money for a pay phone much less a regular telephone or cell phone, some who don't know how to use a computer, some who do not have the knowledge or ability to fill out the forms on their own.

Working with the Access to Justice Hui, Hawaii's Legal Aid just launched this online self-help website <http://hawaii.sdp.sirsi.net/client/default/> that tries to assist people in answering their basic legal questions and

filling out court forms. We built into it a way for people to save their information and documents in an account in case they can't complete their forms in one go and a way to tell us where they stopped if they start but do not complete the forms (in an effort to try to find out where people are having trouble making it through the system). We've partnered with the Hawaii State Library because the public library is just about the only place that homeless people could get internet and computer access. We hope it will make a dent in the numbers of cases where people need legal help but cannot afford it. But this is by no means a "neat" solution to the problem of access to justice.

Naomi C. Fujimoto, Hawaii

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Big firms do impact litigation. They don't do the small potatoes matters. I did pro bono work for the homeless in DC for 5 years. The big firm lawyers were on the Board and occasionally brought impact litigation (with reimbursable fee statutes). I was the only person showing up weekly at the shelter doing intake and actually following up.

Carolyn Elefant

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I'm not bashing big firms. But with their vast resources, they do far more by making contributions. The Skadden-funded fellowships are a great example - Skadden funds a dozen lawyers to work for a year or two at public interest organizations. But I am tired of big firms getting a pass. No way

the client of a solo or small firm lawyer handling a death penalty case would have gotten the treatment at the USSC that Sullivan & Cromwell did when it botched its case -

<http://usatoday30.usatoday.com/news/washington/judicial/story/2012-01-18/supreme-court-death-row/52636904/1>

Carolyn Elefant

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I represent landowners in complex regulatory proceedings. Even when they pony up their dollars into a collective hat, and even with all of the efficiencies of technology and my clients' DIY contributions, I'm still working for 30 percent less than my average fee. But I like the work a lot and I can offset or subsidize the less profitable cases with the occasional rich landowners and my other energy regulatory work.

The ABA doesn't understand that lawyers can't survive on a steady diet of unbundled work. For that, you need volume that solos don't have. If you generate the volume and consign solos to taking cases through aggregated hubs, they're working for discounts on discounts.

I agree with David that the low end cases have to be profitable. But I'm not sure that they can ever, under any circumstances be profitable enough unless lawyers have other high end cases as an offset. Getting the low end work is easy (though figuring out the biz model is not) Getting the high end, regular work (or developing a biz model for that) is what many solos struggle with and that's what the focus of this should be.

Carolyn Elefant

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See, I guess I'm just not so skeptical. I saw it not as singling out solos/small firms as the only ones to provide this, but rather as recognizing that it is more difficult for us to do so (than for a large firm or agency) and still stay afloat. I thought a lot of big firms had programs that encouraged their peons to do pro bono work (perhaps not really accessible to the folks who need it, but that's another issue, which perhaps should have been included in the outline), at firm expense.

Seems the list's outrage is only proving that point - that this is an added burden that few of us can afford to take on (unlike bigger firms, that have the resources to spare).

Cynthia Hannah-White, Hawaii

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In the ned, to make this work, you start talking state EAJA fees

Erin M. Schmidt

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In MN at least such restrictions on student practice are much looser. I argued a case at the MN Court of Appeals as a 3L.

Larry Frost, Minnesota

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The concept that lawyers will make less serving the poor is based on several misconceptions. To illustrate why, look at the Corvette and the Camaro. Chevy designed the Corvette to be the best sports car they could make. They figured out the cost of labor and materials, and set the price accordingly.

They used a different approach for the Camaro. They started with a price that they thought people would pay, and they designed a car to fit the price. And, while it's no Corvette, the Camaro is a perfectly good sports car.

The problem with these access to justice conversations is that people keep applying Corvette thinking to Camaro problems.

For example, if you had to build a system to resolve a basic contract dispute for \$150, what would you do? Forget malpractice laws. Be creative. How would you do it?

That was a rhetorical question. Nobody needs to answer it. But, THAT is the type of question we need to ask.

And, for what it's worth, one of the biggest obstacles to this approach is attorneys trying to protect their intellectual property. Imagine we constructed a wiki of the most common consumer problems and the appropriate resolutions. We could chop the work time dramatically.

Lastly, I don't buy this notion that poor people, or lay people, can't understand the law. They seem to understand when they come in the office and pay you. Why can't you say the same thing over the Internet to someone who hasn't paid you?

The problem is with the messenger, not the recipient.

Cheers,

David Allen Hiersekorn

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I am on the County Bar's Pro Bono Committee. The Chair is with a larger firm, the rest of the committee is solos. Guess what the biggest problem we face is? Getting the big firms to take pro bono cases. They won't do it. Almost all of the pro bono done is by solos. But we can only do so much. That means people go unrepresented or have a long time to wait.

I would love to do more pro bono. But unfortunately, my rent is not pro bono. My car payment is not pro bono. The silly grocery store demands money in exchange for good. Solos have bills to pay too. They can't work free forever.

I do low bono work. That is pretty much all I do. But it requires sacrifices that most people are just not willing to make. I rent a room, not an apartment. I don't have a family to support. Again, most people can't afford to live like this. So doing it cheaper is not always possible. Sure you can say design a contract dispute that can be resolved for \$150. But once you get to litigation all bets are off. You don't have to depose every witness under the sun, but you do have to do some basic discovery or that is malpractice. You have to spend time on a case and that costs money. Our time is attorneys stock in trade just like the milk and eggs is the grocery store's. To ask us to provide more of our stock in trade for free or less money per hour is no more possible than asking a grocery store to charge less for its items and expecting them to stay in business.

Yes Maryland has online forms. That is great. But it only gets you so

far. They still have to represent themselves in the case. Most people don't know how child support is calculated. I get pro se litigants showing up with sheaves of letters from friends as "evidence" and they are surprised that I object to their introduction at trial. They certainly don't answer discovery then complain they can't introduce documents or have witnesses testify.

The only way this works is if BigLaw puts some effort into it. They have the resources and volume that solos just don't. They can offset the free bases with their higher paying cases. Solos don't have that number of cases to offset. Basically, they are asking the "poorer" attorney to bear the burdern of providing the services to the lower income folks because the "rich" lawyers are too busy providing services to the rich folks.

Elizabeth Pugliese, Maryland

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I agree completely. I have been a solo since passing the bar in 2001. I answer questions daily for folks who can't afford an attorney. I can't report any of this time as pro bono. I just look upon it as my obligation as an attorney.

Mary Ellen Leslie, Ohio

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What I would comment here to this most excellent post is that every statute, rule and regulation of the US and the states are of course readily

available at the library or online, etc. As you know it's the application of those rule to a particular fact pattern is where the rubber meets the road. Yes in estate planning many people have situations where I can use my library of previously produced documents for the next client. As you do. Is there ever a situation where the client needs no explanation or hand holding and the documents need to be customized? Not really. People rarely accept 'trust me, this works for your needs.' No way; they want and deserve an explanation of why their IRA with a beneficiary is not covered by their will. etc etc etc. And this takes time. Face to face look into my eyes and watch my lips and let me see your understanding kind of time. There needs to be profitability there.

So to circle back to your comment, my hearing of your point is not so much that the information is not being made available, because it sure is, but the application of the laws to the client's facts is what's missing. And how can that be done on a wholesale level? Yes sometimes it can, but by and large I just don't see it.

Thanks again for the insightful commentary, as always.

Rick Bryan, New York

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First, why pro bono? Time was when Physicians and Lawyers--or some of them--charged according to need. Presumably, because they were "professionals," but I have never hear that Engineers or other professionals saw the same responsibility.

The mere fact that we attempt to enforce "pro bono" is an admission that some do not see the responsibility. Why not admit it is merely

aspirational. Then encourage it.

I have never been a member of the ABA because of cost and because I never saw any unique service I needed. Also, I did not have desire to participate as member. I was damn old and had done more than my share of community service in many organizations.

Other hand, for quite a while I was a member of the NACDL because it gave me access to the best attorneys and because the guy I worked for was a frequent CLE presenter. I wrote handouts for him. Was recognized as collaborator and got free admissions to CLEs worth thousands of dollars a year. Plus, five times where I was ill paid part member of "dream team" defenses that included biggest name attorneys. Point is, I got my moneys worth.

I felt guilty about not joining ABA because I had some direct benefits. In addition to the immense value of Ssez, in law school I received a couple thousand stipend to serve as summer clerk in State courts. Money was welcome but the chance to rotate as clerk through 4 judges was true benefit. In last two years of law, I managed to do the same with federal judges through Inns of Court. With that, its sure that I would have joined ABA in some way if solicited, if I saw value, and at reasonable cost.

I don't even know ABA membership options. I know there is some kind of hardship discount, but don't think my decision is based on hardship--just value. The disparity between BIG and little is a real problem. Might be great if dues were based on income as lawyer, but probably impossible. For starters, why not a 2 level membership--voting and non voting. Nonvoting would get all membership benefits--could serve on committees but not as

chair--AND no voice in affairs. Could be big discount that would be compelling to folks like me, and I think it is certain that big law would pay the price for voting memberships not only to control the organization to provide their attorneys opportunities to shine a leaders.

Of course, it would mean complete surrender of organization to BIG, but I wonder if the result would be much different. Voting members would still have to give consideration to the rank and file. I could make an argument there would be more consideration if it were clear that some signed on only for value of available services.

As to encouragement of pro bono I think the secret is to provide venues. I have give a LOT of time to Legal Aid in several cities. Always very frustrating because of the limits on who could be served and how. Result was that I OFTEN took home the stray cats who I was forced to refuse services through Legal Aid. The restrictions come from the perceive fear of offending by competing with paid counsel. Most often, I could only refer them to public services that might give limited aid. As an extreme example, an applicant for legal aid was unemployed because his job had been managing the office of his doctor wife, who charged him with child abuse, decamped, cleaned out their bank and all bu a few investment accounts, and disappeared, leaving him with two small children and no job because his divorce counsel who had depended on recovery from wife had advised him to go slow on seeking employment because his recovery would be greater.

Remarkably, she left a huge retainer with her divorce attorney who resisted every attempt to access to remaining funds even to support kids. In addition to the anguish of supporting his kids, he was left with zero assets, no income, home and one investment property facing foreclosure, car

at risk of repro AND divorce counsel withdrew when the golden goose left town.

I could have helped with abuse charges, divorce, maybe the foreclosures, but had to deny legal aid services because he owned a home! I took him home, not pro bono, but with scant expectation of being paid. Ended up to be thousand hours or more with many further complications, but we did recover the kids when she was found and arrested. Never got paid because she fled to Australia.

Point is: a solo can't risk taking on black hole cases, but a properly functioning aid system could. ABA could foster such systems. I think many would work if they knew there was backup.

I don't deny Big Law's pro bono efforts, but many big corps make similar community commitments because it is in their best interests. Many of the little guys would do the same if reasonable opportunities were available.

SO.....I DON'T GET A VOTE, BUT I CAN BE HEARD.

John Page, Florida

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Rick,

You have accurately described many of the problems with the OLD WAY of practicing law, and I agree that we will continue to have those problems if we keep doing things the way we do. I'm actually suggesting that we explore

an entirely different understanding of legal services and how they are delivered.

The current model is designed for inefficiency.

First, the law itself is inefficient. There are some laws that are clear-cut, with bright lines defined by bright borders. Then, there are laws that are more complicated and subject to interpretation. As an industry, we don't do nearly enough to guide clients and consumers into the bright areas. I've even heard lawyers cynically comment that they allow clients to choose complex solutions because it ensures job security down the road.

Next, our industry is built for inefficiency. Suppose Attorney X meets with a client who has a problem with a cell phone contract. Attorney X works 10 hours researching the law and finding an exploitable flaw in the agreement. Attorney X obtains a favorable resolution. Shortly afterwards, Attorney Y meets with a different client in a different city. And, Attorney Y duplicates the work and results of Attorney X.

Short of a class action lawsuit, our industry doesn't have an effective mechanism to distribute this kind of work. And, there is no excuse for that. There should be a public wiki maintained by volunteer attorneys sharing the various problems and solutions with every major company that serves consumers. Indeed, our industry's failure to share information this way is probably the most significant factor behind companies continuing to engage in bad practices.

Then, individual attorneys are inefficient. I recently reviewed a file from

a divorce case where the attorney had billed \$20,000 on what could best be described as an aimless wander through the Family Code. It wasn't malicious or negligent. It was just unbelievably inefficient - failing to identify the issues on which the case would turn and just letting the case litigate itself.

Lastly, when it comes to educating clients about the law, we could be way more efficient. Every one of us has 100 things we tell clients the same way, every single time. There are a dozen ways we can streamline that education process - online video, public workshops, adult enrichment classes.

We don't need to create videos teaching clients about every nuance of the law. But, dangit, we ought to do a better job of informing them about what they should do or not do. And, we can give them a decent understanding of the possible outcomes and what is involved - from THEIR perspective - in achieving those results.

In other words, we need to teach them to be CLIENTS, not how to be lawyers. And, honestly, our industry sucks at that.

There is PLENTY of room for improvement. More than plenty.

Cheers,

David Allen Hiersekorn

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I don't disagree at all with what you've written. Except to point out you're talking about an effort worthy of Sisyphus. How old is the common law, and how long has it taken to evolve into where we're at now? You know better than I do. Changing the system is just not going to happen my friend, noble intentions notwithstanding. We can have the same conversation about the US education system, and dozens of other nationalized quasi-institutional functions of the US and around the world. Is the Internal Revenue Code going to be replaced with one of the simple ("10 pages") statute which are continuously being floated about? No. You and I and others with goals of efficiency and visions of a future which works for us all are absolutely achievable on the local level. Absolutely. But wholesale institutional changes are just not going to happen. Perhaps after the Taliban take over, or we start again once the Walking Dead virus has run its course, but otherwise the status quo is going to keep things the way they are.

It's a beautiful crisp windy Autumn day here in New York; I'm going to stroll about and pick up some printer ink and head over to the Farmer's Market. My leg has healed up pretty darn well, although still some tenderness right where the calf muscle tore.

Rick Bryan

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Hey Carolyn,

Access to justice is a huge issue where I work in Cook County, IL. The

courts are dragged down by people attempting to represent themselves. So I think it is a good thing that the ABA, IL Supreme Court and other jurisdictions are putting some thought into this. I often get calls from PCs who don't qualify for the pd or legal aid but can't afford my fees. I feel so sorry for them I am working on offering limited scope services but so far I have not had a lot of success with it. I started out offering at such a low rate that I would have to do high volume to make it worth my while. There was simply not enough interest. I have since gone back to my regular rate and offer it as an alternative to people upfront.

I think there is a common perception by big law/ABA types that solo's are all just new attorneys starting out and that when they get more experience they will either join or create a big firm. They don't perceive that there are really great, experienced attorneys who are ahem, solo by choice. They figure new attorneys will take these cases for experience. On the other hand, there is a problem if only the newest young attorneys are taking these cases. How sad that you can't get an experienced attorney because you can't afford it.

I have discovered a bias too when I have offered to work pro bono. I had to talk NIJC into letting me participate in their DACA program. They did not want me because I am a solo and they had bad experience with solos; poor follow through and limited support, I was insulted! I went to a silk stocking law firm for the training and I laughed at the awkwardness I observed when these big law associates were interviewing their clients. Maybe solos are better suited for an access to justice type of practice, they have a better handle on dealing directly with regular people.

Audrey Cosgrove, Illinois

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Great response! The problem is not one that can be answered by the elite of the Bar. It finds its answer in people who understand how the systems works. and how to represent those folk who overload the system.

Joseph Melino, California

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If you're interested in this topic, I recommend Sue Tallia's's CLE program, which is three hours and free through PLI. She approaches it from the standpoint of wanting lawyers to have good, profitable work and has worked to structure limited scope engagements so that clients can effectively represent themselves as to certain matters with the assistance of counsel. The end result is that the client does not clog the court system and is able to afford the level of legal services that he receives. she has worked closely with the judges in California, and they are relieved to have a limited scope lawyers rather than to have a large percentage of pro se litigants who are simply unable to effectively represent themselves and who waste the time and resources of the court system in attempting to do so. (In California in 2012, over 70% of the divorce cases involved pro se litigants.) Her CLE program includes checklists and sample engagement letters, and there is a very thorough discussion of the ethical and procedural rules that apply. If you have a family law or civil litigation practice and are not excepting limited scope clients, you might find the program interesting and potentially helpful in building your practice.

Patricia C. Meringer

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I took it very differently, but I think the ABA and most all bar associations from big cities or states have a HUGE tone-deafness problem and that may be part of the problem..

But what I read this to be referring to is how can someone who WANTS to set up a small lawfirm in a small town/rural area do it and survive? How can the ABA assist those who have that as a dream? Because that is an awesome goal and yet law schools tend to focus on big law or government first, and then bar associations -- say the AAJ -- they focus on specialty areas.

My ideas when going to law school were to either (a) work in hospital administration (boss around doctors, haha) or (b) do landlord-tenant and consumer law and somehow get paid to represent what I saw as "normal" people or (c) have a small firm in a small community where I represented anyone who needed it, including small businesses and individuals. In my head, I wanted to do "everyday" law, and I was sad there was already a firm called "The neighborhood legal center" because that is exactly what I wanted to do, but in a small town. If my path had led me to doing (c), I would have been really happy to hear that the ABA wanted to focus on small firms in lower populations.

Of course a big firm won't be in a rural area -- they need a population base.

But anyways, I wouldn't see it as pro bono at all.

Actually, I can do a GOOD rant on how so many attorneys see the problems I solve as a pro bono issue. Only they do crappy work, pro bono, while I would actually do qualified work on the problem and everyone would get paid. So it's frustrating to me when people see representing individuals with every day issues as "pro bono" just because there is no \$300/hour pay.

If I didn't know y'all, I'd say it's actually kind of demeaning that you

think representing lower income people is beneath you, or something to do pro bono on the side. Or that you assume that people and small businesses in areas with no legal representation (i.e. most rural areas) are poor, because that isn't true either.

Amy Clark Kleinpeter, Texas

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