

MEETING MINUTES

May 29, 2019

Members Present:

Hon. Paul Bastine, ret., Chair, Michele Carney (by phone), Prof. George Critchlow, Brooks Goode, Gary Swearingen, Sarah Sumadi, and Doug Walsh.

Members Excused:

Trena Berton, Andre Lang, Amber Rush, Jennifer Unger, and Joseph Williams.

Also Attending:

Julie Shankland (General Counsel/ Staff Liaison), Michelle Lucas (ATJ Liaison), Ellen Reed (ATJ Tech Liaison), and Sherry Lindner (WSBA Paralegal).

MINUTES

The Board approved the April 18, 2019 minutes by consensus.

Legal Health Check-Up Update

Chad Burton demonstrated to the Board a preliminary version of the Legal Health Check-Up app. The Board will be involved with content of the app and will provide Mr. Burton with the geographic information before inputting the content. The Board may look at the content at the July meeting and do user testing by the October meeting

Meeting with the Court

The Board reviewed and discussed its draft annual report before its meeting with the Court on June 6.

GR 24 Update

The Board discussed its draft rule proposal and is looking forward to the stakeholders meeting later in the afternoon. The Board is interested to receive input from stakeholders.

The Board's meeting ended at 11:30 a.m. and the POLB, ATJ and Microsoft Stakeholders Meeting started at 12:00 p.m.

POLB, ATJ Board and Microsoft Stakeholders Meeting

Proposed GR 24 Modifications to Regulate Online Legal Services

Paul, Doug and George provided a brief introduction to the PLB's proposed GR 24 modification.

Identified Issues

The following issues were identified by stakeholders:

- Current language of GR 24 will inhibit innovation. "Selection and completion" of legal documents is overly broad and will interfere with or prohibit many innovative consumer services.



- Idea appears to be to create a safe harbor, but the current rule does not accomplish this goal.
- Need a better balance of concerns and regulation.
- Companies should not be required to accept liability when a client uses a form.
- Companies should not be required to state that these are not the services of an attorney because this is what they are.
- Requiring companies to tell consumers to hire a lawyer before they use these services will discourage users and may be anticompetitive.
- Companies should be able to accept compensation for the services from anyone.
- Registered agent in Washington is a high burden, especially without evidence of harm.
- Several anti-competitive aspects to the rule, including multiple disclosures (taken altogether these disclosures lead to the impression that the service is a bad idea), dispute resolutions and other barriers that law firms are not required to have.
- Using the word “judgment” in GR 24 was intended to apply only to humans. So, GR 24 does not apply to AI.
- Use of language “whether or not it is the practice of law” was intended to imply that the court did not intend to regulate these exceptions.
- This regulation should be in legislation not in a court rule. The legislative hearing process is better than the court rule process for this regulation.
- Bar Associations should not be regulating this post-Janus.
- Lawyers who create forms are already regulated.
- Keeping track of all of the names of the lawyers who reviewed the forms, paying a registration fee in every state and not disclaiming warranties would be an impossible burden for nonprofit and other nationwide organizations.
- Need evidence of harm and more narrowly tailored regulations to address that harm.
- Rule is too prescriptive and paternalistic.
- Consider issuing best practices instead of regulations.
- Most companies have cyber insurance
- When the software reaches its limits and referral to a lawyer is necessary, how will this be accomplished? How to refer? Paid for referral?
- Will this apply to court who provide forms? Does it apply to Wikipedia?
- Will this apply to law firms and other businesses that post free forms online?
- Is providing legal advice a First Amendment issue?
- Is there any empirical evidence of a need to regulate this area at all?
- Are existing consumer protections enough?
- Is the current definition of the practice of law (GR 24) too broad? Is the better approach to “fix” the definition?
- Are there ways to provide a safe harbor, such as certifications?
- Proposed rule will encourage “duck and cover”.
- Need to look at GR 24 and RPC 5.4 at the same time.
- How to overcome the lack of funding to gather data on self-represented litigants and harm? Need a foundational study to show that regulations are needed.
- Need to determine whether the “protections” in the proposed rule are actually consumer protections or practice of law protections.

The attendees held small group discussions and then reported their suggestions and thoughts about how to move forward.

Small Group Comments

1. Need to focus on how to create a safe space for this innovation rather than simply creating more regulation.
2. The rule assumes a business model in an area that is constantly changing. No rule can keep up with the pace of change.
3. Giving advice should be allowed.
4. Nothing more than the CPA is needed in this area.
5. Fix the definition of the practice of law.
6. Would this rule capture Google?
7. Neither Bar nor Court should regulate in this area.
8. What are the intended remedies?
9. Need to figure out the actual harm. The Board is operating from an old business model and old assumptions.
10. Should the AG regulate this area? Do they already regulate this area?
11. AI will transform the way these tasks are performed. What does consumer protection mean going forward?
12. Currently proposed rule might be anticompetitive.

The meeting was adjourned.