

Moving Forward

Taking a fresh look at law and the profession

In my column last month, I outlined many of the trends influencing our profession that are leading to rapid change on many fronts (“Let’s Seize the Moment”). The column briefly discussed five major influences, including a shifting lawyer demographic; the changing nature of the world and our clients; how we deliver our services; and the delivery of legal education. My message overall in that column was that we should seize this opportunity to make changes to how we do our work and bring the profession into the 21st century.

The 21st-Century Judicial System

So how do we seize the moment and move forward? Foremost, I think we must allow ourselves to let go of past practices and notions and innovate in three areas. First, with respect to the court system and judicial system funding, we need to ask ourselves what the judiciary of the 21st century should look like. We are working with a judicial system that was created hundreds of years ago and it may be time to rethink how the judiciary delivers its services. In this day and age, it seems unimaginable that someone has to go to the courthouse sometimes upwards of eight times to get a divorce. The public accesses information and services in a different manner now and our profession needs to keep up with these trends (e.g., think of how technology has impacted the newspaper, music, and book industries).

While I don’t disagree that court funding is at a real crisis in our country, I wonder if we approached the Legislature with a new model for delivery of judicial services, whether we might have more success in securing additional funding. That is, rather than asking the Legislature to keep nursing along a horse that may have come to the end of its ride, perhaps we could develop a restructured, progressive

system and ask the Legislature to fund it. We are lucky to live in a state where judicial officers all around the state are developing progressive models for the delivery of services at every level of court; we are also fortunate to have a chief justice who is leading the branch toward thinking in new and exciting ways to serve the public and its needs of today. But judges cannot redevelop the system alone, and the profession, that is, judges and lawyers, need to come together to produce the best system possible for the clients and public we serve.

An Overcomplicated System?

Second, I think we as a profession need to own that we have made the system too complicated. While no one set out to reach this result deliberately, we must acknowledge that fact and work to simplify things. When I was giving my “Futures” presen-

tation a few months ago, a former legislator in the audience remarked that one of her frustrations during her time in the Legislature was the proliferation of statutes and the lack of review in a systematic way to ensure there was not duplication, or even contradiction, of policies in the statutes. I often remark that I am a lawyer and there are numerous things that I could not figure out on my own if I needed to. I don’t mean to discount the importance of the nuances that have developed over the decades with respect to numerous areas of law, but it seems coordination and simplification of the system in many areas might be a good starting point.

Navigating the System

Third, and this recommendation flows from the two outlined above, we need to acknowledge that some people can navigate the system on their own and we need to give them the tools to do so. While the recession has led to a significant increase in pro se representation, if given the proper information and roadmap, many people could do it on their own. The reality is we will never have enough lawyers to serve every person facing a legal problem, so how do we slice the system in a way that allows for some people to navigate it

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on their own successfully? It is precisely this dynamic that has led to the rise in online services such as LegalZoom. How do we harness this ability of the consuming public as a way to enhance the services we provide rather than view it as an encroachment on our profession? As I discussed in my column last month, clients are resorting to a “Home Depot” mentality of doing it themselves anyway, so it seems there is greater strength for the profession in understanding that fact and working to determine what portions of our

work can be commoditized through technology and other means while retaining the pieces that are essential to having representation by a lawyer.

There Is More Control in Letting Go

The reality is this: technology and other drivers will continue to move legal work out the side door in response to a public that demands more affordable legal services and a system that is more easily accessed. To me, there is more control in letting go. Letting go, for example, of the pieces that don’t require the training that



we received in law school.

To (admittedly) oversimplify legal services, think of a grid with four boxes (see illustration above). The top two boxes represent what I believe to be the special training that I received in law school; the bottom two boxes capture the work that can be, and already is being, commoditized. Does it make sense to let go and think of ways to allow the consuming public to access those bottom two boxes more easily and affordably?

What’s at Stake?

The cornerstone of our system is based on the rule of law. As I wrote about in my column in March 2012 (“Lawyer Volunteers: Preserving our Democracy and Enhancing our Profession”), the foundation of our system requires that the judiciary be fair and impartial and free from undue influence by the other branches of government; a fair and impartial judiciary relies on an independent legal profession free of similar pressures from outside influences in order to preserve its independence. That is why lawyers have been given self-regulation independent of the legislative and executive branches. That is why we must preserve the system we have by meeting the needs of the public.

It is imperative that we seize the moment and innovate. While many of these trends and implications are overwhelming, I think this time for our profession presents exciting opportunity. And what excites and motivates lawyers more than a challenging problem? I say, let’s get to solving! **NWL**

Paula Littlewood is the WSBA executive director and can be reached at paula@wsba.org or 206-239-2120.

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