

DELIVERY OF LEGAL SERVICES
SECTION COUNCIL
MINUTES

November 17, 2003

Members In Attendance:

Tracy Brown
Kathleen Chapman
John Eidelman
Lauren Kallins
Amelia Lazarus
John Price
Victoria Robinson
Debra Weiner
Sally Stansfield
Bobbie Steyer
Jill Wrigley

Guest: Mike Millemann

The meeting was held at the Maryland Bar Center. The meeting was called to order at 6:10 pm. The minutes of the September 15, 2003 meeting were approved by voice vote.

A. Loan Forgiveness – Debra Weimer

Deb reported on the state's general loan forgiveness program. Last year the program received 321 applications and awarded 112 grants—24 of which went to lawyers. The terms of the grants are from year to year which creates a disincentive to someone seeking continuity in a position. The program also requires that an applicant have a full time position by July of the year for which funds are sought—a potential hurdle for law students taking the bar in July. Priority is given to last year's recipients so it is difficult to "break in." Deb agreed to draft a letter from the Section Council recommending changes to make the program more accessible.

B. Unbundled Legal Services Overview – Mike Millemann

Professor Michael Millemann recently drafted a handbook on Limited Scope Legal Assistance on behalf of the ABA's litigation section. He noted that "unbundled legal services" encompasses a variety of service delivery models (Richard Granat's full service website is one such model); that unbundled is currently happening in MD-- and can continue to be done ethically in certain types of cases—and should be part of the continuum of legal services. The ABA model rule supports unbundled services as long as is reasonable under the circumstances. MD has adopted

the rule change and the position of MD malpractice carriers is that unbundled services are already covered and have lower incidents of claims. However, there is a perception amongst many members of the private bar that unbundled services are unethical and/or not profitable. Mike believes that a rule change is needed to raise the comfort level of the private bar in conjunction with a comprehensive training/outreach program. In some states (FL and WA), the judiciary led the fight for rule changes. However, Mike has spoken to Judge Rodowsky who believes that the Rules of Professional Conduct will need to be changed and that the effort must come from the bar. Mike believes that the Section Council is the natural MSBA committee to take on this issue.

He offered to help us in any way including contacting Judge Rodowsky and Chief Judge Bell.

Mike identified several issues that must be considered by attorneys considering offering unbundled services:

- 1) There must be a comprehensive and thorough diagnostic interview in which attorneys identify which issues they will handle and which issues they will not.
- 2) Lawyers who deliver unbundled services create an attorney-client relationship that requires an express, *written* retainer agreement about the lawyer's limited scope of representation. (Mike has developed a number of limited scope retainers and pointed out that Ayn Crawley and MLAN are national leaders in this area.)
- 3) The limited scope of representation must be made clear to the court and to opposing counsel. The current MD Rules envision a full service model and although Mike believes the current wording would support unbundled, many attorneys believe a rule change is necessary.
- 4) Can you enter a "limited partial" appearance and have the courts respect it? Carroll County's court rules permit such an appearance and the state of Maine has created a "limited partial" appearance form.
- 5) Can you get out of a limited appearance? Mike believes you can with proper notice to the client and court. He pointed out that courts have a vested interest in having litigants represented by attorneys who frame the issues, attach documentary evidence and prepare pleadings.
- 6) The most volatile issue associated with unbundled legal services is "ghost writing"—pleadings that have been prepared by an attorney that is not otherwise involved in the case. Must these pleadings identify the author? Mike explained that the states have widely differing approaches

to this issue. His recommendation is that the rule either not require attorneys to disclose or permit anonymous disclosure.

C. Next Steps

The Committee discussed the appropriate role of the Section Council. It was agreed that the Council's role would be two-fold: to investigate the possibility of a proposed rule change regarding conflicts of interest, and to educate the public, bar, and judiciary on the topic. It was agreed as follows:

1. Mike Millemann would call the Rodowsky Committee for an update and Judge Bell for his perspective on the Judiciary's role and which of his colleagues might be interested.
2. Lauren Kallins would contact Sharon Goldsmith about a presentation by the Section Council on unbundled legal services at MSBA's Annual Meeting. Committee members suggested a panel of 3 speakers: Mike, an attorney currently providing unbundled services, a member of the judiciary.
3. Bobbie Steyer agreed to chair a Rules Change committee and Victoria Robinson agreed to chair a subcommittee on changes to the Rules of Professional Conduct. The committee will review Mike's suggestion that MD rule changes track the ABA's recommended changes and that of other states. The committee will then discuss strategy for proposing changes to the MD Court of Appeals' Standing Committee on Rules of Practice & Procedure which is chaired by Judge Joseph Murphy, Chief Judge of the Maryland Court of Special Appeals.
4. Kathleen Chapman will contact Karen Jo Pope Onwukwe about co-sponsoring the MSBA training on unbundled legal services with the Solo/Small Firm Section.
5. Jill Wrigley agreed to contact the ABA about the cost of reproducing Mike's handbook.

D. Treasurer's Report – Amelia Lazarus

Amelia Lazarus reported that the next year's budget was due by December 19th 2003. The Committee discussed last year's budget, recommended an increase in the "Other" category from \$1100 to \$5000 to finance three additional items, including the LAMP training for the military (\$1200), a MICPEL training on unbundled legal services (\$1300),

and funds for marketing outreach by the new Rule Change Committee (\$2500). The other budget amounts remained unchanged with the exception of the food budget which was automatically increased from \$2160 to \$3024. Amelia Lazarus agreed to submit the recommended budget. The Committee also discussed the need to submit a supplemental budget in the amount of \$8000 to finance the travel expenses for the Annual Legal Conference guest speaker and to fund the purchase of the video and books published by the proposed guest speaker.

E. Next Meeting

The next meeting was set for January 27th at the Maryland Bar Center.