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Date: 7/3/2014 5:18 PM
Subject: Comments on Bar report

I write to comment on the recent report concerning the unified Bar. I will keep it brief as I am sure you will receive an avalanche of comment.

1. While I did not agree that there was an issue in the first place with regard to the existing advocacy by the Bar and the Keller limitations, if this scrutiny and vetting process will preserve the Bar structure and avoid the Bar being pulled apart in these hyper-partisan times, I find the proposed procedures acceptable.
2. I am baffled, however, by the very broad ban on expression by the bar as to Judicial Selection. I gather this would a priori forbid any advocacy by the Bar for different methods of Judicial selection such as appointment and retention, open party affiliation, etc. This seems seriously in error, as integrity and quality of the Judiciary is a core issue for the litigation bar, of which I am a long practicing member. If I am reading this wrong and the intent is to forbid endorsement of particular candidates, then that should be made explicit.
3. As a former chairman of the Lawyers and Judges Assistance Committee, I see merit in bringing the discipline functions into the bar, as it would foster an organizational structure which might permit greater coordination of functions related to the impaired lawyer. I pushed for coordination of LJAP functions and AGC diversion programs and I think considerable progress has been made in that regard over the years so the two institutions are not working at cross purposes. I argued for years that the bar has a responsibility to help its impaired members but that is concomitant with a responsibility to protect the public from the consequences of lawyer impairment and that the two goals are almost completely consistent.
4. I also hold out the hope that if Keller limitations are more strictly imposed, it might lead to an increase in the vigor of advocacy by sections and committees as to their issues. I think this should be encouraged if these proposals are adopted, and that advocacy, even of controversial positions should be celebrated as long as these limitations are observed and confusion regarding "official endorsement" is avoided. Lawyers should be leading discussion of controversial issues, not following, and to some extent the current structure may water down the power of advocacy by members. I have observed, for example that the LJAP committee, which should have a 12 step mandate and mission has been content to be a fairly passive board of trustees to the professionals in LJAP since the staff has established itself over the years. I would prefer to see them advocate for the recovering attorney, which they could do if the roles were more clearly separated.

5. I express no opinion as to the governance structure issues in the report, nor on the inactive member issue or pro had vice issue.

6. One additional thought on integration of discipline entities. One thing we have notably lacked, in comparison to other states I observed in COLAP was a good working receivership type process for the practices of disabled or deceased attorneys. If there is a good procedure no one seems to know about it, and I could relate a number of horror stories in this regard. This possibility of establishing or improving a facility or capability for this purpose should be reviewed if these recommendations go forward.

I hope this is of some help