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Encouraging Experiments

Last month in this space, I put to you the case that, today in Tennessee and almost everywhere else in our country, there's a large and growing gap between the existing legal needs of ordinary Americans — not just the poor — and the ability of the legal profession to meet that need.

As I pointed out, there's very little doubt that this gap is growing.

That's especially true among ordinary Tennesseans with good jobs who can't afford a lawyer when they have a legal problem or need to go to court. And it's true despite what looks like the declining income of some lawyers and the inability of some in our profession to keep an economically viable practice alive.

A Failed Market

Whatever may be the causes, this is a market failure — a failure of the existing market for legal services to deliver the services needed by consumers at prices they're willing to pay.

As a self-regulated profession, we lawyers and judges have a professional responsibility to struggle with this fundamental problem.

Now that I (might) have your attention, here's The Big Question: What then is to be done?

Let me propose a place to start.

An Opportune Moment for Repair

We live in a time of great change in the business of legal services. Change is coming. Existing lawyers and law firms, new law firms and market entrants other than lawyers have all realized that what we may call an access-to-justice gap is, for them, a golden market opportunity. Some are poised and ready, backed by significant amounts of venture capital, to try to reach these underserved markets with new techniques, technology and business models. The land rush isn't publicly visible yet, but it soon will be.

Two examples. Consumer-facing law offices, with real live lawyers in them, are now in Walmarts around Missouri and Toronto. National, virtual law firms, many with no brick-and-mortar offices at all, are also springing up.

Of course, lawyer disciplinary authorities and other lawyer regulators are working diligently on fitting our ethics and practice rules around these new models. That's their job and it's important. We could just sit back and let the free market work under the current regulatory structure. Some problems with markets do get fixed the old-fashioned way, with market forces and creative destruction, and without regulatory changes. But, remember, creative destruction can be unpleasant for those businesses destroyed.

I make no judgment here about whether these new market entrants, and the great changes underway, are a good thing for our profession or for consumers. In one sense, my and your opinions don't matter: the forces driving these events are not waiting for you, me, or the legal profession to carefully evaluate their worth.

But the confluence of this growing access-to-justice gap and new efforts to reach this underserved market might just mean that, as a self-regulated profession, we have a unique opportunity. We lawyers and judges might well be able to *help* shape the future of regulation in a way that could help build a more effective legal services market. So

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how can we do that, both personally and collectively?

Better, Faster, Cheaper

First, we need to have a goal in mind. What's the goal? A legal services market that delivers legal services to more of those underserved today — services that are better, faster and cheaper — and does so in a way that fundamentally protects clients and the public.

Better, faster, cheaper. If your lawyer's heart recoils at applying that measuring stick to *our* very special work, try to separate yourself from that reaction for a moment.

An aside: A couple of years ago, a representative of a venture capital outfit backing the dispute resolution company Modria provocatively told a lawyer audience, "You're not special." He went on to explain that, whether we like it or not, we lawyers are subject to the very same economic pressures as every other business in the marketplace. Special as we are in so many other ways, lawyers have no immunity from market forces.

Where Do We Start?

With all this in mind, if we care about access to justice and the justice gap, don't we also have to care about how we can *encourage* lawyers and others to actually try new models to reach underserved markets?

So here's my suggestion for two places to start. Let's seriously consider how lawyers and judges, both personally and as self-regulators, can give the greatest possible encouragement and incentives to these experiments. Let's start with ourselves.

Change is hard. Pretty much none of us like it. It doesn't help that we lawyers are risk-averse, precedent-bound creatures. Still, now more than ever, we need to help each other react better to change in our lives in the law, and we need to personally try to embrace change that moves us toward better, faster and

cheaper legal services.

We can start by talking with other lawyers in our offices — and with secretaries, paralegals and others — about this question: What can we do this month to deliver our services to our client better, faster and cheaper?

Measuring

We might think about how we measure how we're doing. Has our price for a will gone up over time? How much? Have the time and resources we put into them gone up? How much? How long does it take us to get one done, from first phone call to execution? Can we shorten it?

And how might we work better *and* faster *and* cheaper? More forms, perhaps? Maybe more efficient workflow for tasks we do all the time? Maybe checklists for common tasks to assure better outcomes (like pilots and doctors have done for years)?

We need to enlist those who work with us from billing clerks to secretaries to partners and give them incentives to reduce costs and increase quality and efficiency. Cash prizes, anyone? I'm no fan of management-by-in-flight-magazine, but maybe we all need to actually check out that latest new software or cloud service that promises great efficiency gains.

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WRITE TO THE JOURNAL! Letters to the editor are welcomed and considered for publication on the basis of timeliness, taste, clarity and space. They should be typed and include the author's name, address and phone number (for verification purposes). Please send your comments to 221 Fourth Ave. N., Suite 400, Nashville, TN 37219-2198; FAX (615) 297-8058; EMAIL: srobertson@tnbar.org.

JEST IS FOR ALL BY ARNIE GLICK



"My estate plan is simple. I want to leave everything, in equal shares, to all the good girls and boys in the world."

to appear in court and her client's case was dismissed. In a third case, Preston accepted a fee to represent a client in a child support matter but never completed any work in the case. In the final complaint, Preston became the sole trustee of her family's trust and made payments to herself and other beneficiaries, which were disputed by one of the beneficiaries. Preston must serve two years of active suspension and make restitution to one client. Preston entered into a conditional guilty plea, admitting that she violated Rules of Professional Conduct 1.1, competence; 1.3, diligence; 1.4, communication; 1.5, fees; 1.15, safekeeping property; 1.16, terminating representation; 3.2, expediting litigation; and

8.4 (a) and (d), misconduct.

Disbarred

The Supreme Court on Oct. 13 entered an order disbaring Putnam County lawyer **John Philip Parsons**, retroactive to Jan. 21, 2016. He is required to pay the cost of the disciplinary proceeding and restitution. Parsons misappropriated client funds from his trust account, created and filed fraudulent documents with the Appellate Court Clerk, misled his clients regarding the status of their case on appeal, failed to file a notice of appeal and failed to file pleadings and timely respond to discovery. Parsons' conduct violated the Rules of Professional Conduct 1.1 competence; 1.2, scope of representation; 1.5, fees; 1.15, safekeep-

ing of property and funds; 1.16, declining or terminating representation; 3.2, expediting litigation; 3.3, candor toward tribunal; 5.5, unauthorized practice of law; 8.1, bar admissions and disciplinary matters; and 8.4, misconduct.

Benton County attorney **Alan G. Ward** was disbarred from the practice of law by order of the Tennessee Supreme Court on Nov. 3. Ward failed to handle an urgent child custody petition expeditiously, caused signatures on a pleading to be falsely dated and failed to communicate with the child's guardian ad litem. When terminated by his clients, he failed to promptly return their file. He did not refund the unearned portion of his fee. In a separate matter, Ward

was appointed to represent two indigent defendants in the Court of Criminal Appeals in two different cases. He failed to file a brief on behalf of his clients, failed to respond to orders from the Court of Criminal Appeals and abandoned his representation of the clients. ⚖️

Compiled by **Katharine Heriges** from information provided by the Board of Professional Responsibility of the Tennessee Supreme Court. Licensure and disciplinary notices are included in this publication as a member service. The official record of an attorney's status is maintained by the board. Current information about a particular attorney may be found on the board's website at www.tbpr.org/consumers/attorneysearch.

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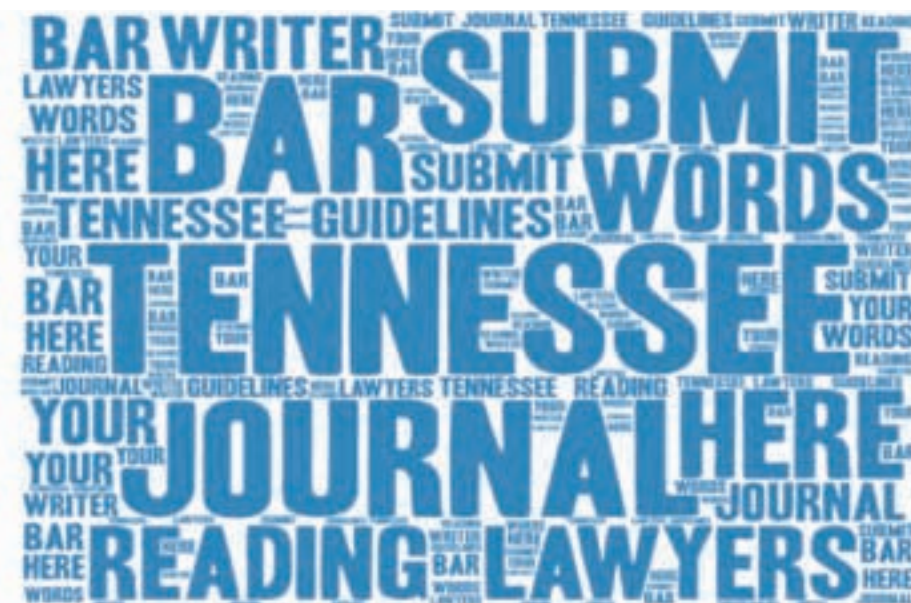
The TBA's Role

What can the Tennessee Bar Association do? Several things. We continue to try to educate lawyers about the new tools and opportunities that will permit us to serve clients better, faster and cheaper. Our Evolving Legal Markets Committee, chaired by former President Gail Vaughn Ashworth of Nashville, continues to lead that charge.

As the TBA, we also need to be vigilant for ways in which lawyer regulation needs to and can adapt to the new environment *and encourage experimentation* in delivery of legal services. Our great Ethics and Professional Responsibility Committee, chaired by Brian Faughnan of Memphis, remains at work in this arena.

Anyway, that's my shot at provoking your thinking on this question. Call me a heretic, but I submit that we may today have a unique opportunity to encourage and channel the coming wave of change, to improve access to justice and to reexamine and strengthen our core values in a way that will allow them to thrive in the new world of legal services to come. If we'll grab that opportunity, both personally and as a profession. ⚖️

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