

## Comments on: Issues Paper Concerning Legal Checkups

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Responsive Law thanks the Commission for the opportunity to present these comments. Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers.

Responsive Law strongly supports the idea of legal checkups and is pleased that the Commission has made such a thoughtful analysis of the benefits of checkups. The Commission's guidelines for legal checkups provide a framework that protects consumers of legal checkups while avoiding excessive regulatory burdens on checkup providers that would limit the availability and increase the cost of checkups.

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### **The Proposed Guidelines Could Foster Investment in the Provision and Promotion of Legal Checkups**

We believe that the private sector has an important role to play in promoting legal checkups to the public. As noted in the Commission's issue paper, past bar association promotional efforts have failed to raise public awareness of the need for legal checkups. On the other hand, the private sector has a great incentive to raise public awareness through marketing legal checkups, if it sees the potential to profit from doing so. For example, Avvo.com will spend \$20 million on its television ad campaign this year, which includes the tagline, "Nearly half of us will need a lawyer this year."<sup>1</sup> This

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<sup>1</sup> "Legal startup Avvo hopes to get tongues wagging with humorous new ad campaign," January 13, 2016, <http://www.geekwire.com/2016/avvo-will-get-tongues-wagging-with-humorous-new-ad-campaign/> (retrieved April 13, 2016); "Have you seen our new TV ad campaign," January 28, 2016, <http://lawyernomics.avvo.com/avvo-news/have-you-seen-our-new-tv-ad-campaign.html> (retrieved April 13, 2016)

campaign, which is not even geared toward legal checkups, has likely done more to raise the public awareness of legal needs than every bar association promotional effort combined.

If law firms and companies are allowed to provide legal checkups without the fear of running afoul of regulations designed for a bygone era of individualized long-term (and expensive) lawyer representation, then they will be sure to educate the public about the benefits of legal checkups through their marketing efforts. If the guidelines proposed by the Commission were enacted by state regulators as a standard of conduct, they could foster wider awareness and availability of legal checkups by providing greater regulatory certainty to entities hoping to provide such services.

### **Legal Checkups Performed Pursuant to the Commission's Guidelines Should Not Be Considered the Unauthorized Practice of Law**

The status of one area of innovation remains unclear under the guidelines. We propose that the guidelines clarify that non-lawyers may provide legal checkups. This appears to be the intent of the guidelines, or at least consistent with them. Guideline 5 notes that a legal checkup “is not a substitute for the advice of a lawyer,” implying that a legal checkup may be performed by someone who may not be permitted to provide legal advice. Also, Guideline 6 states that users with unresolved legal needs should be referred to “appropriate resources, such as lawyer referral services, social services, government entities, or individual practitioners.” Not including the checkup provider in the list of appropriate resources implies that this person may not be qualified to provide additional legal assistance. Finally, Guideline 10, which provides checkup users privacy protection for their personal information, would be redundant if applied to lawyers, who are bound by attorney-client privilege.

The guidelines as a whole ensure that legal checkups will rely on expert design, which will foster their competency. They also provide numerous protections for consumers, including required disclaimers about the type of service provided, requirements that legal checkups be promoted honestly, and requirements that they be performed

with respect for consumer privacy and with referral to appropriate service providers when legal advice is needed.

Given the consumer protection measures above, consumers could benefit greatly from the wider availability of legal checkups that would result from allowing non-lawyers to perform them. We therefore ask the Commission to recommend that states amend their definition of unauthorized practice of law to clarify that non-lawyers who provide legal checkups following the Commission's guidelines are not engaged in the unauthorized practice of law.

### **A New Guideline Should Be Added to Ensure Price Transparency**

Transparency in pricing and billing is an important factor in allowing consumers to make educated decisions among service providers and in protecting both consumers and service providers in the case of disputes over billing and payment. Therefore, we suggest an addition to the proposed guidelines to provide consumers that transparency from both lawyer and non-lawyer providers of checkups. A new Guideline 7(e) could state, "Any amount charged for a legal checkup shall be clearly disclosed before services are rendered."

### **Conclusion**

Responsive Law supports the Commission's guidelines for legal checkups. We urge the Commission to take the additional steps of (1) recommending that state regulators use the guidelines as the basis for creating standards of conduct for legal checkup providers, (2) clarifying that non-lawyers may provide legal checkups, and (3) adding an new guideline to ensure price transparency.