International Legal Ethics Conference V

Building A Global “Umbrella” Organization for Lawyer Regulators

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Overview

1. An Introduction to the Problem
2. A Possible Solution
3. Models to Consider
4. Questions to Ask When Creating a Global Umbrella Organization
5. Possible answers and progress
6. How you can help......
Lawyer Regulators Face Similar Developments

1. Global trade agreements (GATS, etc.)
2. Global money laundering & anti-terrorism laws (FATF)
3. Global antitrust (competition) initiatives (EU, OECD, etc.)
4. Alternative Business Structure (ABS) Developments
5. Global lawyer movement and recognition issues
6. Global legal education initiatives (Bologna, etc.)
7. Regulatory Reform Initiatives (OECD, etc.)
8. Global lawyer accountability initiatives
9. Market forces: (e.g. outsourcing, ALF, & virtual practice)

These Developments Create Common Issues

– **Who** regulates lawyer?
– **What** and whom is regulated?
– **Where** are lawyers regulated?
– **When** are lawyers regulated?
– **How** are lawyers regulated?
– **Why** are lawyers regulated?

Lawyer Regulators Have Similar Tasks

- **Most jurisdictions could agree on some common regulatory objectives:**
  - Protecting clients
  - Protecting the public
  - Increasing access to justice
  - Promoting public understanding of the legal system and the rule of law
  - Promoting lawyers’ compliance with professional principles including competence
  - Acting in accordance with good regulatory principles


The Problem: No Global L. Regulator Organization

- International Association of Prosecutors
- International Institute of Law Association Chief Executives
- (Includes many “representational” rather than “regulatory” bar associations)
- Conference of Chief Justices
- National Organization of Bar Counsel
- European Law Faculties Association
- International Association of Law Schools

US, Canadian, & Australian prosecutors in lawyer discipline cases
My Thesis:

It would be helpful to have a global “umbrella” organization so that national and subnational lawyer regulators could get together (virtually if not in person):

– to discuss these and other policy issues
– to brainstorm about the differing solutions they are considering or have adopted
– to cooperate with respect to lawyer licensing and discipline

Other Fields Have Models to Consider
My Forthcoming Article Posed Questions

1. What are the goals of the organization?

2. Shall the new organization be attached to an existing, already successfully organization or should it be grown from scratch?
   - Who are the candidates for existing organizations?

3. Who should be invited to be a member of the new umbrella organization?

Questions #2: Logistics

4. Should the organization have a Secretariat?

5. Should the organization have a legal identity? If so, where?

6. How will virtual communications operate?

7. How will the organization try to accomplish its goals? e.g. What work product is desired?

8. How will the organization’s policies, if any, be adopted? e.g. by consensus?
Questions #3: Sustainability

9. What funds will the organization require and who will provide those funds?

10. Should members have face-to-face meetings as well as virtual communications?

11. What can be done to help ensure that the organization is self-sustaining?


An Important Development

- **September 27-28, 2012**: The UK SRA will host a conference for international regulators
- **Invitees include:**
  - Lawyer regulators from Australia, Canada, the EU, Hong Kong, Ireland, New Zealand, South Africa, the UK, & the US
  - Other types of regulators (financial & medical)
  - Clients, commentators & others
- **The Agenda includes a session entitled “Where Do We Go From Here”**
- **This conference will explore willingness & interest in creating a more structured collaborative network**
My proposed answers to my questions

**Re Q#1- Goals:** I’d start slow
- Information sharing & brainstorming, not policy. *Cf.* APEC

**Re Q#2 - Start fresh or use an existing group?**
- Opinions vary; I see benefits to both approaches
- Regulators rather than academics should decide this

**Re Q#3 - Membership:**
- The Sept. 2012 London conference provides a chance to start with a “coalition of the willing”
- **Query:** should one invite all 3 stages of lawyer regulators?
How Academics Could Be Useful

- Identify lawyer regulators throughout the world

- This list might be useful when the global organization expands, if not at the outset
  - For each country (WTO Member?), determine the professional title of regulated lawyers
  - Identify the regulator or regulators for that type of lawyer
  - Collect contact information for these regulators

Regulating the Lawyer’s Life Cycle

- **The Beginning Stage**
  - Admission/entry issues. Admission often involves:
    - 1) full admission (with or without recognition);
    - 2) a limited license such as a foreign legal consultant;
    - 3) temporary admission

- **The Middle Stage**
  - Conduct and ethics rules

- **The End Stage**
  - Lawyer discipline issues
Depending on the jurisdiction:

– There might be one regulator for all 3 regulatory stages of a lawyer’s life or multiple regulators
– There might be multiple regulators because one regulator adopts rules and another implements them
– There might be existing sources of information
– For example, in the U.S.:
  • Admissions: See the Nat’l Conf. of Bar Examiners
  • Conduct Rules: the Conference of Chief Justices (or ABA)
  • Discipline: See the Nat’l Organization of Bar Counsel

Existing Sources of Information

• For Banff ILEC V, I aggregated information from these sources:
  – Canada: Federation of Law Societies of Canada Membership
  – Europe:
    • EU Directive 98/5
    • CCBE Membership Directory
    • CCBE Discipline Committee Point of Contact List
  – Australia and New Zealand:
    • 2011 CORO Conference Attendee list
    • CORO & Law Council of Australia Membership pages
Information Aggregated From:

Asia:
- APEC Legal Services Inventory

Global Coverage:
- UK SRA List of Foreign Lawyers Allowed to Partner with Solicitors
- UK SRA List of Regulators That Allow UK Solicitors to Partner with Their Lawyers
- SRA List of Recognized Foreign Jurisdictions (for QLTS)
- IBA Member Bars
- University of Ottawa’s Juriglobe
- Liz Rieser-WuDan’s LawWithoutWalls Project of Worth
- Forthcoming ABA-Dombrow book

My Next Steps & How You Can Help

- Identify additional sources of info
- Determine the optimal use of this data
  - Creating a wiki?
  - How to keep this data current?
- Leveraging ILEC V & the IALE
  - Send me the professional title of regulated lawyers in your country (LTerry@psu.edu)
  - Send me contact info for those who regulate all 3 stages of your lawyers’ regulatory life
Examples of Requested Title Information

(a) 'lawyer' means any person who is a national of a Member State and who is authorised to pursue his professional activities under one of the following professional titles:

- Belgium: Avocat/Advocaat/Rechtsanwalt
- Denmark: Advokat
- Germany: Rechtsanwalt
- Greece: Δικηγόρος
- Spain: Abogado/Advocate/Avogado/Abogatu
- France: Avocat
- Ireland: Barrister/Solicitor

Source: EU Directive 98/5, the Lawyers' Establishment Directive, 1998 O.J. (L.77) 36, available on the CCBE webpage:

Sample Webpage from the April 2011 Project of Worth presentation by Wu Dan and Liz Rieser-Murphy:
One Example of Regulator Information: LawWithoutWall POW

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal System</th>
<th>Legal Service Provider</th>
<th>Regulator</th>
<th>Certification Information</th>
<th>Online source (URL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>Civil Law</td>
<td>Advogado</td>
<td>Orden dos Advogados de Angola</td>
<td>Online Certification System</td>
<td><a href="http://www.oida.org">http://www.oida.org</a></td>
</tr>
<tr>
<td>Belgium</td>
<td>Civil Law</td>
<td>Avocat(French-speaking part), Advocaat (Dutch-speaking part), Rechtsanwalt(German-speaking part)</td>
<td>Two federal bars in Belgium: the Orde des barreaux francophones et germanophones (D.F.G.-French and German speaking Federal Bar) and the Orde van Vlaamse Rechtsanwalt</td>
<td>Online certification system</td>
<td></td>
</tr>
<tr>
<td>Belize</td>
<td>Common law</td>
<td>Attorney-at-law or attorney</td>
<td>General Legal Counsel</td>
<td>The Registrar has a list (&quot;Wall&quot;) of &quot;Practicing Attorneys.&quot;</td>
<td></td>
</tr>
</tbody>
</table>

Another Method of Presentation

Select: "About Lawyer Regulation"
Then Select: General Info
See: Basic information for multiple countries, with links

International Association of Lawyer Regulators

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Legal System</th>
<th>Professional Title Used</th>
<th>Primary Regulator Governing Admission as a Lawyer</th>
<th>Ethics Code</th>
<th>Primary Regulator for Lawyer Discipline</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.: Pennsylvania</td>
<td>Common Law</td>
<td>Lawyer or Attorney-at-Law</td>
<td>Pennsylvania Board of Bar Examiners</td>
<td>Pennsylvania Rules of Professional Conduct</td>
<td>Disciplinary Board of the Supreme Court of Pennsylvania</td>
</tr>
</tbody>
</table>

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Conclusion

• The time has come to create a global lawyer regulator umbrella organization
• The Sept. 2012 London conference might provide the seeds for this group
• Academics could help lawyer regulators gather the necessary information
• Academics could help brainstorm the best structure for the new organization

APPENDIX

The slides that follow contain screen shots that show some of the source material I used when aggregating lawyer regulator information:
The UK SRA’s list of “lawyers” that may be managers of registered entities

http://www.sra.org.uk/sra/regulatory-framework/professions-approved-by-SRA-for-RFL-status.page
To Read More About Global Developments...

My Presentations Webpage:

- **Global Developments in general** (See 1:11-9:00 and 11:00) (See also 2008 Service Provider article, “The Legal World Is Flat,” and other “Global Legal Practice”

...To read my law review articles (or testimonials) on the topics listed below, please visit my “Publications By Topic” section of my webpage

- **Alternative Business Structures (ABS)** developments (including the UK’s Legal Services Act 2007, Australia’s publicly traded law firms, EU, and OECD developments
- **Competition** initiatives directed towards the legal profession, including the EU’s Professional Services Competition Initiative (See 1:00, 4:00)
- **the APEC Legal Services Initiative** (See 10:00)
- **Australian Legal Profession Developments** (See 5:00, 4:00)
- **the Bolzano Process** (See 3:00, 1:00; see also 1:11)
- **Classification System for Counting Legal Services** (See 10:00, 4:00)

http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm

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Publications by Laurel Terry

Global Legal Practice Resources Webpage:  
http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm

Links to Publications by Topic:  
http://www.personal.psu.edu/faculty/l/s/lst3/

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SSRN page:  
http://ssrn.com/author=340745