

## Legal View

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### *ABA scrapped bulk of report backing regulatory reform*

Proposals that merely mentioned opening the door to outside investment in law firms, fee splitting with non-lawyers, and new categories of legal service providers turned out to be casualties in the political give-and-take surrounding the ABA's passage of a resolution aimed at encouraging regulatory innovation.

On Feb. 17, the ABA's House of Delegates voted to approve a resolution that makes it the policy of the bar association to encourage "U.S. jurisdictions to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services."

The action taken by the ABA House adopted an amended version of Resolution 115, which had been proposed by the ABA's Center for Innovation.

The center's original report in support of Resolution 115 discussed the fact that certain states as well as other countries have already begun experimenting with the liberalization of professional rules in the hopes of discovering regulatory innovations that improve access to civil legal services.

That report identified three

broad areas of regulatory reform currently being tried in certain jurisdictions: (1) authorizing and regulating new categories of legal services providers; (2) experimenting with relaxation of Rule of Professional Conduct 5.4's barriers to fee-splitting and outside investment; and (3) exploring "new" approaches to the unauthorized practice of law.

The center made clear that it was not taking a position on any particular approaches, only advocating that states be encouraged to experiment so that data could be collected and analyzed for the purpose of identifying innovations that may have merit in addressing the access-to-justice problem.

To eliminate any doubt, the final resolution approved by the ABA House included a clause with an emphatic declaration of neutrality: "[N]othing in this Resolution should be construed as recommending any changes to any of the ABA Model Rules of Professional Conduct, including Rule 5.4, as they relate to nonlawyer ownership of law firms, the unauthorized practice of law, or any other subject."

And behind the scenes at last week's ABA Midyear Meeting in

Austin, Texas, the center quietly replaced its original 14-page report with a revised three-page document stripped of any mention of "alternative business structures," amendments to Rule 5.4, or recognition of new kinds of legal service providers that do not run afoul of prohibitions against the unauthorized practice of law.

Suffolk University Law School Dean Andrew M. Perlman, a member of the ABA Center for Innovation, said the wholesale revision of the report was in response to concerns of some delegates that portions of the document could be read as endorsing specific regulatory changes.

"These issues are so sensitive for many of the constituencies [in the ABA] that even mentioning them as areas that states are looking at was considered controversial and generating opposition," Perlman said.

He added that the changes to the report did not alter the intent of the approved resolution, which is to encourage states to engage in regulatory innovation to discover what works and what does not work, thereby enabling the ABA to determine whether there is a need for amending the Model Rules of Professional Conduct.

"Because removing those descriptions [from the report] didn't change the thrust of the resolution, we thought it was a fair compromise to simply remove those references because it didn't change what we were trying to achieve," Perlman said.

