

May 4, 2016

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Dear Ms. Roe and Advocates of Honest Judiciaries,

I received your request for comments on the NAPRA writings and submit some of general interest.

**A. Mistaken references to courts, agencies, and jurisdiction; and consequences**

1. The letter dated April 29, 2016, that asks NAPRA members to endorse its accompanying “2016 Investigative Agenda for Congress” states the following:

Our 2016 Investigative Agenda for Congress covers the entire field:

Colorado, New Jersey, California, Massachusetts, Connecticut, Florida, New Mexico, Wyoming, and every respective state in America [sic] Article III Agency Courts known as Probate Courts attempts [read ‘attempt’, plural] and successes [read ‘succeed’] to divert your inheritance and by pass [read ‘bypass’] Congress

2. To start so late in the year to draft, and ask for comments, on the year’s agenda, gives the impression of procrastination. Compare it with the impression of a methodical, ahead-planning organization in the process of developing “NAPRA’s 2017 Agenda”.
3. For an outside entity to set the “Agenda for Congress” sounds presumptuous. Would the President himself dare do that? An entity with both a sense of realism about its position relative to that of Congress and sensitivity to the impact of words, can ‘respectfully request that Congress do X’, just as tactful lawyers in their Request for relief section ‘respectfully request that the court grant Y’. NAPRA can present to Congress “Our Program for Probate Reform and Advocacy”.
4. It is not stated what “field” is referred to. If the field is probate, qualifying it with the adjective “entire” is perplexing, for the NAPRA letter and the Agenda mention ‘inheritance’, but not what some state laws include in the term ‘probate’, namely, guardians and wards.
5. The “field” cannot be ‘the whole nation’ because the explaining paragraph that follows the colon perplexingly singles out some states and makes a reference to “every respective state”, itself of unclear meaning, restrictively, which means that not all the other states are referred to.
6. The phrasal noun “every respective state” can be modified and joined by the restrictive phrase in either of these grammatically correct and semantically meaningful ways:

...and every other state in America that has Article III Agency Courts known as Probate Courts...[where the reader is expected to read “America Article III “ as “U.S. Constitution, Article III”];

or

...and every other state with a state court corresponding to the federal Article III Agency Courts known as Probate Courts...

7. Substantively, however, both ways are unacceptable. The following are the provisions in the U.S. Constitution that deal with courts:

## **Article I**

Section 1. All legislative Powers...

Section 8. The Congress shall have Power To... establish...uniform Laws on the subject of Bankruptcies throughout the United States;...constitute Tribunals inferior to the supreme Court;....

## **Article II**

Section 1. The executive Power...

Section 2. ...the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

## **Article III**

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,...;—to Controversies...;—between Citizens of different States [this is the basis for diversity jurisdiction];....

8. There are no “Article III Probate Courts”. Probate is a subject matter left to the states. Hypothetically, if “Probate Courts” were established, they would in all likelihood be established by an act of Congress under Article I to hear cases under state probate law since there is no federal probate law. They would join the other courts established by Congress under Article I.
9. Such courts are known as legislative courts, e.g., the U.S. bankruptcy courts, which are sub-units of the district courts, and whose judges are not judges protected under Article III by lifetime tenure and the prohibition against diminution in salary. Rather, Congress entrusted their appointment for a renewable term of 14 years to the respective circuit judges under 28 U.S.C. §151; so they are Article II-appointed judges that serve in an Article I legislative court.
10. Other Article I courts are the U.S. Court of Appeals for Veterans Claims, which reviews decisions of the agency-like Board of Veterans Appeals, 38 U.S.C. §§7251 et seq.; and the U.S. Court of Federal Claims, which adjudicates claims against the U.S., 28 U.S.C. §171.
11. Within federal departments and offices, there are also administrative tribunals and agencies that are quasi-judicial bodies. Among them are:
  - a. the Board of Veterans’ Appeals, the agency in the U.S. Department of Veterans Affairs that hears appeals from decisions on entitlements to veterans’ benefits;
  - b. the Merit System Protection Board, an agency that hears appeals from decisions taken against federal employees by their respective employing federal entities;
  - c. the Board of Immigration Appeals, which hears appeals from decisions of the Immigration and Naturalization Service;
  - d. the Board of Patent Appeals and Interferences, which hears appeals from decisions of the U.S. Patent and Trademark Office.
12. The mistaken NAPRA term “Article III Agency Courts” conflates Article III courts, such as the district, circuit, and supreme courts, with administrative tribunals, agencies, and courts set up

under Article I, whose decisions are appealed to Article III courts.

13. What is “known” is ‘the domestic relations and probate exception to diversity jurisdiction’ in the federal courts. It originates in the tradition – in neither the Constitution nor statute– of leaving these matters to state courts. Consequently, federal courts:

- a. may not hear cases involving divorce, alimony, or child custody (as stated in, and reaffirmed since, *In re Burrus*, 136 U.S. 586, 593-594 (1890)); and
- b. may not probate wills or administer estates (*In re Broaderick’s Will*, 88 U.S. (21 Wall.) 503 (1875); *Markham, Allen Property Custodian v. Allen*, 326 U.S. 490 (1945). In *Marshall v. Marshall*, 126 S. Ct. 1735 (2006), the case involving Former Playboy Centerfold Model Anna Nicole Smith, Justice Ginsburg, writing for the Court, stated at 1748:

Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court.

14. When an organization shows that it has a mistaken understanding of the terms in its name, it renders suspect everything that it states or does thereunder. NAPRA’s confusion about courts, agencies, and jurisdiction detracts from its credibility, image of competence, and basic knowledge of its field. Its above-mentioned letter and agenda contain many other similar, grave mistakes of substance and grammar. They should be withdrawn from its members; they should not be submitted either to Congress or the U.S. Department of Justice (DoJ). They will not attract their attention or command their respect. They can only inflict a reputational harm on NAPRA.
15. What follows illustrates what I can do for you, the NAPRA “grassroots coalition of non-profit and other volunteer organizations dedicated to helping families...who have been victimized...in probate courts”, and other advocates of honest judiciaries and their respective organizations and initiatives. You and they may obtain my consulting, drafting, and advocacy services on retainer.

## **B. Why letters sent by the thousands to AGs and Speakers end up shredded**

16. A letter devoid of facts, illustrative cases, and analysis has no informative value. A conclusory one consisting of sweeping generalizations accusing of corruption every probate court, judge, lawyer, and estate administrator in the country can hardly be convincing. Where it ignores that a search warrant must be applied for by an officer showing probable cause for a reasonable impartial observer to believe on objective, factual grounds that there is criminal activity; and disregards the risk of suits for abuse of power and defamation, but demands an unfocused investigation starting anywhere and covering the 50 states, it can scarcely be persuasive.
17. Letters of such tenor are only a cry of pain from disappointed expectations in dealings with others. Thousands of them are sent to the Attorney General (AG) and the Speaker of the House of Representatives by those with, as you put it, “hundreds of thousands of stories not only in Colorado, but across America”. Neither the AG nor the Speaker has time to read all of them. Nor can they be reasonably expected simply to read one and order a full blown investigation of the alleged problem decried therein or even refer each to the competent officer for review by his office. That requires a letter to reach a minimum level of credibility, harm, and potential benefit. Thus, the AG and the Speaker silence most hurt criers by simply shredding their letters.

## **C. An application composed of a pithy cover letter, a statement of the problem, and some key supporting materials**

18. A one-page cover letter can be drafted that pithily *argues your case* for action on a problem affecting a large constituency(cf. [\\*>ol:362](#)). To increase the chance of anybody reading that cover letter, it should be contained on one single side of a page, with your signature appearing there ([Lsch:1](#)). This lets the reader know at a glance that the writer is not a rambler, but rather a realistic person aware of the reader's limited time so that if she reads what is in front of her eyes she will get a good enough idea to decide what action to take: **Less** text **is more** likely to be read.

\* All ([blue text references](#)) herein are keyed to my study of judges and their judiciaries, titled and downloadable as follows. There such references are active internal hyperlinks. By clicking on them, you can effortlessly bring up to your screen the referred-to supporting and additional information, thus facilitating substantially your checking it:

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19. The letter should be accompanied by a 6 to 9-page statement of facts, analysis, and proposal for concrete, realistic, and feasible action([ol:255](#)). It should have 2-4 key supporting materials attached to it and others referred to in footnotes to show the depth of your knowledge, the breadth of the problem beyond your personal experience of it, and your research of the literature on it.
20. This three-part set will constitute an application, highly professional in substance, grammar, and appearance. It will result from strategic thinking([Lsch:14§3](#); [ol:52§C](#); [ol:8§E](#)). This requires a keen understanding of the circumstances enabling the problem and the harmonious and conflicting interests competing for maintaining things as they are or changing them. So, it should emphasize the benefits that the addressee of the letter or his or her boss, e.g., the AG, the President, or a party, will derive from taking the requested action. To that end, a strategy should be outlined for exposing the problem and bringing about reform through the pinpoint, cost-efficient investigation of one or two test cases([ol:191§§A,B](#)). If the applicant is a group, such as the NAPRA "grassroots coalition", its member entities should be identified to show that a sizable constituency can have an appreciable political impact if the requested action is or is not taken.
21. It follows that the application must present an informative, convincing, and persuasive argument for the requested action; otherwise, it will be shredded. It must make you, the applicant, stand out of the pack of hurt criers and portray you as a professional knowledgeable about the problem's causes; the parties and their interests against and for action based on subjective and objective considerations, such as their values and prejudices and their education and wealth; obstacles to and opportunities for action; with a realistic cost-benefit analysis and sense of magnitudes (any talk about \$100 trillion casts doubt on the talker's grasp of what \$1 trillion is and everything else).

#### **D. The addressee: the officer likely to read and act on the letter**

22. No AG or Speaker opens the correspondence addressed to her. No top officer ever does. All correspondence is opened by low level officers who visually scan it, get some idea of its subject matter, and send it on to the office that they think will be able to handle it. In that office, nobody will feel bound to take ownership of the letter because it was not addressed to anybody there. Nor does the top officer take the call of everybody who writes her. When a sender calls to inquire about his letter, he will reach only an operator or assistant, who will try to guess who would handle a similar one. Even so, he will be transferred to a lower office and likely on and on. Writing to the AG or the Speaker is ineffective: protocol that loses sight of procedure in practice.
23. Strategic thinking makes it much more advisable to identify the chief of the specific office within the addressee entity who will actually decide whether to consider your application further or

shred it. You have to give that officer a motive to use your application to advance his or her noble or pet interests...for nobody works as hard as when they work for themselves. Thus, the application should be addressed to the chief of the DoJ-FBI bureau or office, and the chairperson and the ranking member(jur:70fn132f) of the congressional committee with jurisdiction over the problem's subject matter, and to the committee members, particularly those who introduced or are sponsoring a bill somehow related to your problem(jur:77fn158b). Those are the officers likely to read the application and decide what to do with it (hereinafter the office or officers).

24. Identifying those officers requires research: of the addressee entity; its hierarchical 'tree' of offices and assigned subject matters; and what the officers have written or stated in speeches about their mission or policy in harmony with those of the AG, the President, or their party. The opening paragraph of the cover letter and the introduction of the statement can quote a pertinent sentence or term of that 'inside information' as a bridge between the officer and a brief mention of the applicant's proposal; their last paragraph can circle back to it for supportive association with the action asked of the officer to start implementing the proposal(jur:81fn167b; ol:215).
25. Indeed, the officer must be persuaded to commit some of his limited manpower and investigative resources to problem expositive and reformative action. He must be convinced that by so doing, he can advance his own project or career rather than put them at risk, and bring a public relations benefit to his boss or party because a large constituency of voters will gain from his action(cf. ol:311¶1). In government, every decision is political. After all, elected and appointed officials are there to serve those who may reelect them, rather than comfort every crier with a personal story. Whether the officer proceeds opportunistically or on principle, if he does what you requested him to do or something in that vein, you obtain a positive result from your application to him.

## **E. Taking the initiative to prosecute and argue the application live**

26. On the first Monday at least ten days after mailing the application, at 9:00 a.m. (as opposed to Friday at 4:59 p.m.), the applicant will know the name and office of the officer who probably has read at least the cover letter and who can reasonably be asked to take the call. If an assistant answers it, she may have read it or know the colleague who is likely to have been assigned the type of letter described by the applicant in a well-rehearsed one sentence pithily stating the problem and his request for action(cf. ¶27 *infra*). No rambling! The applicant's first goal is to talk then or at an appointed time with the officer who has actually read his application and has ownership of it, and get her feedback. But he must also endeavor to talk with the officer with the authority to shred it or order further review by her office and even recommend it to her boss for adoption as an institutional project or to the committee for holding hearings on it. All along, the applicant should offer to *argue his case* live via video conference or in person because a face to face presentation will allow him to talk to several people simultaneously, address their concerns, detect who is a potential ally and foe, and adjust his strategy and argument accordingly.
27. Thus, I would like to ask you, Ms. Roe, whether you have contacted the member of your legislature who you told me might be willing, and have the necessary connections, to network me to any and all presidential candidates and their top officers so that I may make a presentation on how it is in their campaign interest(ol:311, 362) to draw support from the huge(ol:311¶1) untapped voting bloc of people dissatisfied with the judicial and legal systems, such as probate victims.
28. I am willing to discuss your, the NAPRA coalition's, and other advocates' retaining my services. You and they may share and post this letter widely. So I look forward to hearing from you all.

*Dare trigger history!*(jur:7§5)...and you may enter it.

Sincerely, s/Dr.Richard Cordero, Esq.