



UKRAINIAN AMERICAN BAR ASSOCIATION

Асоціація Українських Правників Америки

March 2, 2016

Ms. Lidiya Izovitova
President, Ukrainian National Bar Association
6 Yaroslawska Street
Kyiv, Ukraine 04071
Via Email: l.izovitova@unba.org.ua

Re: Contacts Between the UABA and the UNBA

Dear Ms. Izovitova,

First of all, thank you for contacting the Ukrainian American Bar Association prior to our 38th Annual Convention in New York City. Please also extend our thanks to Mr. Valentyn Gvozdiy, the Deputy Head of the Bar Council of Ukraine, for reaching out to the UABA and speaking at our New York convention.

The Ukrainian American Bar Association (UABA) is a national bar association founded in 1977 whose members are primarily United States judges, attorneys and law students of Ukrainian descent, as well as those attorneys who have an interest in Ukrainian matters, who share a dedication to the rule of law and ethical, representative government. The UABA mission includes promoting the administration of justice, upholding the honor and integrity of the judicial system, and assisting the legal profession in achieving these same goals in Ukraine.

In that spirit, and continuing in this great tradition, we always welcome an open and constructive dialogue with other legal organizations sharing our mission, especially those based in Ukraine. This forges solutions, best professional practices, and mutual understanding between our respective organizations.

We appreciate your consideration of a potential Memorandum of Understanding between our organizations. Any such memorandum must be based on common goals, including those identified above as being within the UABA mission. Our objective is to act as an independent organization promoting unbiased justice without any political aim or gain. Therefore, it is crucial that the UABA not be an extension of any political agenda, private or governmental.

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We realize that Ukraine is a young democracy, and the country and its Bar have many important issues in institutionalizing the rule of law and upholding the Ukrainian Constitution. We are available to assist the people of Ukraine in achieving the aspirations they defended throughout Ukraine's history, most recently during the Revolution of Dignity and the ongoing War in Eastern Ukraine. In doing so, we would like to provide an equal forum for various Ukrainian legal organizations, including the UNBA.

Given that we know little about the UNBA's structure, role, policies, and actual practices, we believe that it would be prudent to learn more about the UNBA. Once we have a more complete understanding, we will be in a better position to evaluate potential joint projects that meet our goals and mission. This is the same position we expressed at our New York City Convention.

Following that convention, we were very surprised by the UNBA statement claiming that our organization lacks objective facts regarding the status of the Ukrainian legal system and its role in modern Ukraine. (<http://unba.org.ua/news/793-news.html>). Any such claim is completely unfounded. We can assure you that our membership and leadership closely follow, and are actually involved in, various developments in the Ukrainian legal system.

Based on this clearly apparent lack of understanding between our organizations, we respectfully request that the UNBA address several concerns raised by our members. Those concerns include the following:

1. **Viktor Smalyy**: Ukrainian attorney Viktor Smalyy was apparently unlawfully detained on December 9, 2013, and then beaten and tortured. Mr. Smalyy was an attorney for journalist Andriy Dzyndzha, who had been investigating corruption of the Ukrainian police and their subsequent crackdown on public demonstrations. Subsequent to Mr. Smalyy's arrest and torture, we understand that you personally apologized, not for his unlawful detainer and torture, but for his "behavior" in defending himself from charges that have been characterized as "absurd". The UABA submitted a formal letter dated February 3, 2014 to the UNBA outlining our concerns in this matter, but never received any reply. Our members have worked diligently with other American Bar organizations to monitor Mr. Smalyy's trial. Obviously, our members are very concerned about the

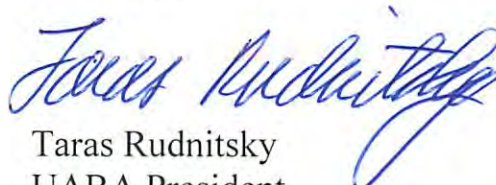
independence of the legal profession in Ukraine, as well as the role of the UNBA in Mr. Smalyy's matter.

2. **Andriy Vyshnevsky**: Disciplinary proceedings were initiated against Ukrainian attorney Andriy Vyshnevsky, which led to his subsequent disbarment. We understand that those proceedings were based on two separate complaints: one submitted by the UNBA itself on June 24, 2015, and one submitted by a member of the Ukrainian Parliament, Rybalka S.V. on June 22, 2015. It is also our understanding that the UNBA called on other attorneys to distance themselves from Mr. Vyshnevsky's statements. It is our further understanding that the basis of the disciplinary proceedings was that he had criticized aspects of Ukraine's legal system (including the Bar, low ethical standards in practice and tolerance for corruption) at a conference held at Ukraine's Supreme Court on June 15, 2015, and recommended reforms. Any proceedings against Mr. Vyshnevsky on that basis would be unjustified and inappropriate, due to his free speech rights. This is particularly true, given that the theme of the conference was judicial reform. In fact, such self-criticism can often lead to significant improvements in the legal profession. If the UNBA believes our understanding of the facts is not accurate, we respectfully request that you provide us additional information, including any documentation of the complaints made against Mr. Vyshnevsky. More generally, does the UNBA believe it should file complaints against attorneys who criticize it and/or the Ukrainian legal system? Or does the UNBA believe that attorneys – and other citizens – should be free to criticize the legal system without fearing that they will be deprived of liberty or their livelihood?
3. **Role of Government in Protecting Human Rights** We were surprised by your public statement indicating that “the State should stay away from defending human rights” (Video published at <https://www.youtube.com/watch?t=77&v=DqXuaqdpOUs> at 1:58.) We strongly believe that the State is – and must be – a guarantor of human rights. The Ukrainian Constitution expressly stipulates this duty to protect human rights. Specifically, Article 3 of the Ukrainian Constitution expressly provides that: “Rights and freedoms of man and their guarantees determine maintenance and orientation of activity of the state. The state is responsible to the man for the activity. Assertion and providing of rights and freedoms of man is the main duty of the state.” Do your comments represent the official UNBA position?

4. **Lustration:** We are aware that lustration that could potentially prohibit those who were in positions of influence and power in the former, corrupt governments, including the government of Viktor Yanukovich, from retaining those positions. Has the UNBA taken any position on lustration and/or its implementation to date, particularly in relation to the judicial system, law enforcement system, legal profession, or Bar associations?

Based on the above, we respectfully request the UNBA's response regarding the above issues. Once we receive your response, we will be in a position to evaluate how any potential collaboration meshes with the UABA's goals of upholding the rule of law and promoting the integrity of the Ukrainian legal system. Of course, if you have any questions in the interim, please do not hesitate to contact me.

Sincerely,



Taras Rudnitsky
UABA President

Taras@CarSafetyLawyer.com

cc: UABA Board of Directors
Mr. Valentyn Gvozdiy, Deputy Head of the Bar Council of Ukraine
(via email: v.gvozdiy@unba.org.ua)
Mr. Ivan Grechkivsky, Deputy Chair of International Relations Committee
of the UNBA (via email: i.grechkevsky@unba.org.ua)