ISSUES COMMITTEE
SUBCOMMITTEE TO STUDY REGULATORY CHANGE
North Carolina State Bar
Zoom Conference Call
January 26, 2021
3:00pm to 5:00pm

Ethics Act Statement

It is the duty of Committee members to avoid conflicts of interest and appearances of conflicts of interest in performing the duties as a member of the Committee to Study Regulatory Change and the North Carolina State Bar. Any member of the Committee who is aware of any personal conflicts or appearances thereof with respect to the matters before this Committee should disclose those at the meeting.

Agenda

I. Welcome

II. Approval of November 19, 2020 Minutes

III. Update on Regulatory Change in Other Jurisdictions
   a. Illinois
   b. Utah
   c. New York

IV. Discussion with Dave Byers, Administrative Director of the Courts in Arizona

V. Presentation – Overview of the North Carolina State Bar’s Certified Paralegal Program

VI. Goals for Next Quarter

VII. Adjourn
The Issues Committee’s Subcommittee to Study Regulatory Change met by Zoom videoconference on November 19, 2020. Mark Henriques, the chair of the subcommittee, presided. The following members of the subcommittee were present: Heidi Bloom; A. Todd Brown; State Bar President Barbara R. Christy; Warren Hodges; Jeff Kelly; Joshua Malcolm; Dewitt F. “Mac” McCarley; Stephen Robertson; Camille Stell; and Jeff Summerlin-Long. Also present were State Bar Past President C. Colon Willoughby and State Bar President-Elect Darrin Jordan. The following guest was also present: Lucy Ricca, Executive Director of Utah’s Office of Legal Services Innovation. The following members of the staff were in attendance: Alice Neece Mine, executive director; Brian Oten, ethics counsel and director of special programs; and Mary Irvine, IOLTA director.

At approximately 2:04pm, Mr. Henriques called the meeting to order and presided. He advised the members of the subcommittee of their responsibilities under the State Government Ethics Act. No conflicts or potential conflicts of interest were noted.

The first order of business was the review and approval of the minutes from the subcommittee’s prior meeting on September 29, 2020. Upon motion duly made and seconded, those minutes were approved.

Mr. Henriques then introduced our guest for the meeting, Lucy Ricca, Executive Director of Utah’s Office of Legal Services Innovation. Specifically, Mr. Henriques noted that Ms. Ricca was in charge of Utah’s recently enacted “regulatory sandbox”, a regulatory initiative of the Utah Supreme Court that allows alternative business structures seeking to provide legal services to operate in Utah despite the historic prohibitions on such structures pursuant to state law and/or the state’s Rules of Professional Conduct. Ms. Ricca began by explaining the history behind Utah’s regulatory sandbox, including the nationwide conversation and research demonstrating that the current legal market has not adequately serving a significant portion of our country’s population. Ms. Ricca explained that the Utah Supreme Court was very concerned with addressing the access to justice issue in its state, and the court was very supportive of taking proactive steps to explore potential innovative solutions and not simply maintain the dysfunctional status quo. To that end, Ms. Ricca stated that her office was borne of this proactive approach as a “new regulator” in the state and had been operating since August 2020. The office runs Utah’s “regulatory sandbox,” temporarily allows alternative business structures providing legal services that would previously have been prohibited from operating in the state.

Ms. Ricca noted that the office’s objective was to ensure consumers have access to legal services that are well-developed, high quality, innovative, and affordable in a competitive marketplace. The goal is to see consumers avoid buying unnecessary services, avoid getting the wrong or bad help, and avoid failing to exercise a legal right. The office focuses on risk-based regulation; the office attempts to anticipate, become aware of, and avoid risks posed to consumers by these new legal service providers through empirical data reporting and analysis. The office strives to measure actual risk, rather than theoretical risk, and review whether such risk is proportional to risks currently posed to the public through the traditional legal profession. Ms. Ricca observed that the
focus was not to create a regulatory scheme that produced perfect/the best legal services, but to simply provide good/better legal services (i.e. not letting perfect be the enemy of the good). In carrying out this mission, the office reviews petitions from businesses who want to provide legal services and recommends their approval to the Utah Supreme Court. If the court approves their application, the business is allowed to operate in Utah for a period of up to two years. During this time, the business is required to provide periodic reports to Ms. Ricca’s office on a variety of data points, including types of services requested by consumers and the resulting services provided, length of time in providing the service, effectiveness of the solution offered, and complaints about the services. At any time, Ms. Ricca’s office may seek to revoke the business’s authorization based upon a demonstrated threat to consumers.

Ms. Ricca noted that the sandbox operates alongside traditional lawyer regulation in Utah – the Utah Rules of Professional Conduct remain in place for lawyers, but Rule 5.4 has been amended to allow nonlawyer ownership and fee sharing. The prohibition on the unauthorized practice of law in Utah remains in place as well, but enforcement of that prohibition is waived as to a particular legal service provider if approved by the Utah Supreme Court via the sandbox.

Ms. Ricca explained that her office regulates the entity providing legal services, not the individual lawyer(s) or nonlawyer(s) associated with the service. To that end, lawyers are permitted to work with sandbox-admitted entities, so long as the lawyer stays in compliance with their own ethical requirements via the Rules of Professional Conduct. Ms. Ricca noted that her office was a step in re-regulation of legal services, in that the office’s efforts increased the state’s regulatory efforts and abilities to ensure the currently unregulated services consumers were availing themselves to were now offered in a manner that measures/detects public protection.

Ms. Ricca stated that, at this time, her office was only looking at harm to the consumer. The office is not looking at whether the sandbox-admitted entities are actually improving access to justice.

During and after Ms. Ricca’s presentation, Ms. Ricca and subcommittee members engaged in in-depth discussion on the theories and logistics concerning the office’s ongoing efforts. In response to a question on resources required to support the sandbox, Ms. Ricca noted that the office was not currently charging any fees to applicants. Instead, her office was entirely supported by grants, which was not sustainable. In response to a question about Utah lawyers’ reactions to the sandbox, Ms. Ricca explained that, as expected, lawyer reaction was mixed. Ms. Ricca noted that the court’s leadership in Utah was a critical factor in enacting these reform efforts. Ms. Ricca also observed that the legal aid community in Utah had remained largely silent regarding the sandbox, which was very different from the experience in California where the legal aid community in that state has been very vocal in opposition to California’s exploration of a sandbox model. In response to a question on malpractice, Ms. Ricca stated that the Utah sandbox did not have any malpractice insurance requirements, but that lawyers in Utah did not have such requirements, either.

Ms. Ricca stated that the sandbox did have two restrictions for operation: First, that disbarred or suspended lawyers could not make up more than 10% of the business entity, and second, that out of state lawyers cannot access the Utah legal market via the sandbox. Generally, the sandbox has few restrictions so as not to prohibit/dissuade entities from applying for access. Ms. Ricca offered some examples of entities that had applied to the sandbox, including some larger, nationwide
companies (e.g. Rocket Lawyer) and one solo practitioner who simply wanted to provide an equity interest in his practice to his long-time legal assistant. Ms. Ricca noted that there have been relatively few applications to this point, and that none had been rejected. Ms. Ricca also noted two other regulatory reform initiatives recently implemented in Utah: First, Utah’s Licensed Paraprofessional Program (LPP) had recently started, whereby nonlawyers could obtain a license to engage in offering limited legal services as authorized by the Utah Supreme Court; and second, Utah now requires all small claims cases to go through online dispute resolution (a party has to opt-out to put the case on a traditional civil litigation track).

With the discussion drawing to a close, Mr. Henriques and the subcommittee members thanked Ms. Ricca for her presentation, her efforts, and the information she shared with the subcommittee. Mr. Henriques forecasted that the next meeting may take place in the new year, and would likely focus on another specific regulatory reform idea such as limited license paraprofessionals.

There being no further business to come before the subcommittee, the meeting was adjourned at approximately 3:30pm.

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Brian Oten, Subcommittee Staff Counsel
COMMISSION TO REIMAGINE THE FUTURE OF NEW YORK’S COURTS

REPORT AND RECOMMENDATIONS OF THE WORKING GROUP ON REGULATORY INNOVATION

December 3, 2020
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**Summary of Recommendations**

The charge given to the Working Group on Regulatory Innovation was to “explore regulatory and structural innovations to more effectively adjudicate cases and improve the accessibility, affordability and quality of services for all New Yorkers.” After study and interviews with many experts in the area of regulatory innovation, the Working Group makes the following recommendations that it believes have the potential to increase access to justice and improve the delivery of legal services in New York State:

1. The provision of certain “legal” services and advocacy by trained and certified social workers should be permitted;

2. The Court Navigators program should be expanded both in scope and substance;¹ and

3. Alternate Business Structures (“ABS”) for law firms should not be permitted in New York at the present time, but current experiments under way in Arizona, Utah, and California should be followed carefully and, if they are successful, the creation of an ABS model or models in New York State with the use of a “sandbox” should be reconsidered.

We explain each of these recommendations further below.

**Background**


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¹ We also considered, but ultimately decided not to pursue for a variety of reasons, trying to resurrect and reimagine the Court Advocates proposal. Our recommendation with respect to social workers, if accepted, may serve as a potential forerunner of other possibilities for using non-lawyers to close the access-to-justice and delivery-of-legal-services gaps.
the United States found that “despite sustained efforts to expand the public’s access to legal services, significant unmet needs persist,” that “funding of legal aid providers remains insufficient and will continue to be inadequate in the future,” and that “pro bono alone cannot provide the poor with adequate legal services to address their unmet legal needs.”

There are at least two aspects of the problem that the ABA identified: inadequate legal services and inadequate access to justice. In a 2014 report, the ABA found that only sixteen percent of individuals who have a legal need even considered consulting a lawyer and in New York State, then Chief Judge Jonathan Lippman was told in 2010 that “each year, more than 2.3 million New Yorkers try to navigate the State’s complex civil justice system without a lawyer . . . 99 percent of tenants are unrepresented in eviction cases in New York City . . . 99 percent of borrowers are unrepresented in hundreds of thousands of consumer credit cases . . . 97 percent of parents are unrepresented in child support matters in New York City and 95 percent are unrepresented in the rest of the State . . . ”.2

The ABA Commission’s primary suggested solution was innovation: “Courts should consider regulatory innovations in the area of legal services delivery” and “the legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services.” Unfortunately, that is easy to state but hard to implement.

For decades, legal scholars such as Professors Deborah Rhode, William Henderson and Gillian Hadfield have argued that the legal profession has failed “to put aside self-interest and live up to its obligation to promote access to the justice system and the interests of consumers of legal

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services, particularly personal (as opposed to business) legal services.”³ In its Resolution 115, passed on February 17, 2020, the ABA’s House of Delegates “encourages U.S. jurisdictions to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services . . .”.⁴

The situation in New York is serious. In its Annual Report for 2019, the New York State Permanent Commission on Access to Justice concluded that notwithstanding a number of significant reforms, including phased-in state funding for civil legal services of $100 million annually and Legal Hand’s five neighborhood storefront centers that serve about 25,000 individuals annually by having trained community non-lawyer volunteers provide free legal information, assistance and referrals, “the gap between the number of people who need legal services and the resources available to meet that need (the justice gap) remains significant.”⁵ The purpose of our Working Group was to explore ways to bridge that gap through innovation.

Methodology

In addition to reviewing a selection from the literature available on this general subject, members of the Working Group interviewed a number of experts, who we would like to thank for their very helpful contributions to our work:


⁴ There was an important caveat to that Resolution, however: “[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.”

- Hon. Scott Bales, former Chief Justice of the Arizona Supreme Court;
- Professor Alan Morrison, Associate Dean for Public Interest and Public Service Law, founder of the Public Citizen Litigation Group and an expert on unauthorized practice of law;\footnote{See, e.g., A. Morrison, \textit{Defining the Unauthorized Practice of Law: Some New Ways of Looking at an Old Question}, 4 Nova L.J. 363 (1980).}
- Professor John Sexton, former President of New York University and former Dean, New York University School of Law;\footnote{See, e.g., J. Sexton, “Out of the Box” Thinking about the Training of Lawyers in the Next Millennium, Address delivered at the Churchill Auditorium, Queen Elizabeth II Conference Center, London, July 18, 2000.}
- Zach DeMeola, Director of Legal Education and the Legal Profession, Institute for the Advancement of the American Legal System (“IAALS”) and Director of the IAALS Virtual Convening on Regulatory Innovation;
- Brittany Kaufmann, Director of the IAALS Unmet Legal Needs (“Justice Needs”) Survey;
• Rochelle Klempner, Counsel, NYS Judicial Institute on Professionalism in the Law and Counsel, NYS Permanent Commission on Access to Justice and an expert on unbundled legal services;

• David Byers, Administrative Director, Arizona Court System and Member of the 2019 Arizona Task Force on the Delivery of Legal Services, who is now leading the effort to implement the Arizona Alternate Business Structure and Legal Paraprofessionals program;

• Judge Constandinos “Deno” Himonas of the Utah Supreme Court, who led the efforts in Utah to create the Licensed Paralegal Professionals program;

• Andrew Arruda, Member and Co-Chair, State Bar of California Access Through Innovation of Legal Services Task Force;

• Debra McPhee, PhD, Dean, Fordham University Graduate School of Social Service;

• Nancy Wackstein MSW, Director of Community Engagement and Partnerships, Fordham University School of Social Work;

• Judge Anthony Cannataro, Administrative Judge, Civil Court of the City of New York, Justice of the New York Supreme Court and a member of this Commission;

• Jennifer Vallone, Associate Executive Director, Adults, Arts and Advocacy, University Settlement; and

• Melissa Aase, Executive Director, University Settlement.
RECOMMENDATION ONE

Trained and Certified Social Workers Should be Permitted to Provide Limited Legal Services and Advocacy.

The provision of certain legal services and advocacy by non-lawyers\textsuperscript{10} is an idea whose time has come. For many years, law students working in clinics and elsewhere have been permitted to give legal advice and to make arguments in court under the supervision of law professors or other lawyers. In fact, there is a fairly long history of non-lawyers providing legal services in the United States.\textsuperscript{11} For example:

- New York’s Housing Court Answers staffs desks within Housing Court with non-lawyers who provide information about the Court’s proceedings;
- Under the Resolution Assistance Program (“RAP”), discussed further below, law students and undergraduates assisted tenants in non-payment proceedings;

\textsuperscript{10} The use of the phrase “non-lawyer” to describe anyone who has not been admitted to a bar has come under significant criticism. Professor Alan Morrison has noted that with respect to no other profession is such a description used. A. Morrison, Defining the Unauthorized Practice of Law: Some New Ways of Looking at an Old Question, 4. Nova L. J. 363 (1980). For example, we do not refer to nurses as “non-doctors” or electricians as “non-plumbers.” Ralph Baxter has written that the use of the phrase “impedes the ability of our profession to make the changes we need to make” and he proposes that the better phrase would be “legal service professionals.” R. Baxter, Stop Calling Legal Service Professionals “Non-Lawyers”, Legal Executive Institute May 19, 2015. https://www.legalexecutiveinstitute.com/stop-calling-legal-service-professionals-non-lawyers/ Out of custom we will continue to use the phrase “non-lawyers” in this Report with a full understanding of the difficulties that the phrase creates.

\textsuperscript{11} As early as 1786, Benjamin J. Austin, a Massachusetts citizen who disguised himself as “Honestus,” attacked the legal profession as an “elite legal order” and recommended replacing it with a system that permitted lay advocates. Recalling that the Massachusetts Constitution recognized the right of self-representation in court, Austin went further and proposed that “every man has the privilege of being represented by his own counsel.” The “counsel” did not have to be a skilled orator, own legal treatises or possess certain educational qualifications. It was sufficient that the “counsel” would swear that he would not be “biassed [sic] to mislead the Court or Jury.” See K. Jeon, “This ‘order’ must be ANNihilated”: How Benjamin Austin’s Call to Abolish Lawyers Shaped Early Understandings of Access to Justice, 1786-1819, Senior Thesis, Yale History Department, August 6, 2020. Of relevance here, Ms. Jeon was a participant in the Court Navigator program in the New York State Office for Justice Initiatives program in the summer of 2018 and was supervised by our colleague, Judge Edwina G. Mendelson.
• Non-lawyers can become Guardians Ad Litem for mentally or physically impaired litigants facing eviction;

• Debtors in New York have received free legal information and limited legal assistance from law students through the Civil Legal Advice and Resource Office (“CLARO”);

• Non-lawyers have served as special advocates in Family Court for abused, neglected or at-risk children through the Court Appointed Special Advocates program (“CASA”);

• In certain tribal courts, non-lawyer lay counselors may represent clients in both civil and criminal proceedings;¹²

• The U.S. Social Security Administration allows non-lawyers to represent claimants seeking disability insurance benefits;

• In immigration cases, non-lawyers who are “accredited representatives” of a “recognized” nonprofit organization may participate in Immigration Court proceedings to the same extent as lawyers;

• New York State’s Unemployment Appeals Board allows non-lawyers to serve as “registered representatives” of claimants seeking unemployment benefits; and

• New York State’s Workers’ Compensation Board authorizes non-lawyers to practice before the Board, subject to a licensing requirement.¹³

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In addition, Washington State, Utah, Arizona and Minnesota have created Limited License Legal Technicians (“LLLTs”), Legal Paraprofessionals (“LPs”) and Licensed Paralegal Professionals (“LPPs”) positions that, when fully implemented, will permit trained and certified non-lawyers to offer legal services and to make appearances in certain courts. While the details are still being worked out for three of those programs (the Washington program is in the process of closing), they will be implemented within the next two years. These programs are described further in Appendix B. We understand that several other states are also considering similar programs.

Arguments for such programs have been robust and are driven in part by uncertainty as to what is or is not the unauthorized practice of law. State legislative or administrative definitions leave much to be desired. The most that can be said of most definitions is that the practice of law is what lawyers typically do and the unauthorized practice of law is what non-lawyers should not do. Former ABA President Chesterfield Smith once said that “the practice of law is anything my client will pay me to do.”

In an address to the United Kingdom-United States Legal Exchange sponsored by the American College of Trial Lawyers in September 2015, Justice (then Judge) Neil Gorsuch said “it seems well past time to consider our sweeping UPL [“unauthorized practice of law”] prohibitions. The fact is non-lawyers already perform—and have long performed—many kinds of work.

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14 For example, the Minnesota Supreme Court issued an order on September 29, 2020, approving a pilot project that will allow LPs to provide legal service in landlord-tenant disputes and family law. The rule becomes effective on March 1, 2021, and will continue until March 31, 2023. There was considerable adverse public comment but the Court responded that “we conclude that the point of a pilot project is to test the assumptions that underlie our decision . . .”. L. Moran, Minnesota will launch legal paraprofessional pilot project, ABA Journal, Oct. 1, 2020.

15 A. Morrison, supra note 7, p. 365.
traditionally and simultaneously [performed] by lawyers.” He added that “exactly what constitutes the practice of law . . . turns out to be a pretty vexing question.”

The ABA’s 2016 *Report on the Future of Legal Services in the United States* recommended that courts should examine the possibility of permitting “judicially authorized and regulated legal service providers” who were not lawyers such as Courthouse Navigators in New York (who do not actually provide legal services), LLLTs in Washington State and Document Preparers in Arizona. Similarly, in 2014, Professors Rhode and Lucy Ricca argued that the practice of law should be opened to qualified and licensed providers who were not lawyers. “[T]hat would surely be preferable to the current system, where, in contexts such as domestic relations or family law, the majority of cases involve at least one party who lacks representation by a trained professional.” When Professor Rhode spoke to our full Commission, she told us that she believed that there was no real likelihood of harm from the unauthorized practice of law and she said that studies in the UK had confirmed that non-lawyers trained in specific legal areas often out-performed lawyers when giving legal advice.

On August 27, 2020, the Arizona Supreme Court issued an order that, among other things, created the Licensed Paraprofessional (“LP”), a position that would be occupied by non-lawyers who would be permitted to offer certain types of legal services, to make appearances in court and to represent in court defendants who are charged with misdemeanors that do not carry the possibility of incarceration. The LPs would be qualified by education, training and examination

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16 His address was reprinted in *Judicature*, Vol. 100, No. 3, Autumn 2016, p. 47.


18 For many years, Arizona has certified non-lawyers to become Legal Document Preparers.
to provide legal services within a limited scope of practice that is yet to be fully defined, but would include legal services offered by social workers to their clients. Arizona is in the process of developing ethical rules and regulation for the LPs. It is contemplated that the work of the LPs will typically “involve routine, relatively straight-forward, high volume but low paying work that lawyers rarely perform, if ever.”

In 2015, a Task Force created by the Utah Supreme Court recommended the creation of licensed paralegal professionals who would be officers of the court and would be permitted to practice law. The program would be administered by the Utah State Bar. The Utah task force has written that “subject to proper regulatory oversight, [LPPs] will bring innovation to the legal services industry in ways that are not even imaginable today. Critically, we believe that allowing for that innovation will be the solution to the access-to-justice problem that plagues our country.” The Utah LPPs may practice law with respect to specific family law matters, forcible entry and detainer, and debt collection matters in which the dollar amount at issue does not exceed the statutory limit for small claims cases. They may represent natural persons, interview clients, advocate for a client in a mediated negotiation, complete a settlement agreement and explain a court order to a client. However, they may not appear in court and may not charge contingency fees.

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20 Applicants must have either a law degree from an accredited law school, an associate’s degree in paralegal studies, a bachelor’s degree in paralegal studies, or a bachelor’s degree in any subject plus a paralegal certificate or 15 hours of paralegal studies. In addition, they must have 1500 hours of substantive law-related experience, take course in ethics and the substantive areas in which they will practice, must pass a professional ethics exam, pass a LPP examination and have at least one relevant paralegal or legal assistant certification.
In May 2020, the California State Bar Board of Trustees voted to keep alive the possibility of access to justice reforms, despite substantial opposition, by creating a regulatory “sandbox” that will test proposals to allow lawyers to partner with non-lawyers in offering legal services through innovative structures, such as online legal platforms offering services to the public and allowing big box retailers to offer flat fee legal services for consumers through a technology platform in their stores.\textsuperscript{21}

After having thoroughly studied these programs, our recommendation for bridging the access-to-justice and delivery-of-legal-services gaps is more limited. We propose that the New York legislature or, if possible, the Office of Court Administration (“OCA”), create a program in which social workers would be trained and certified (or licensed) by the State to provide limited legal services to their social work clients including, in limited circumstances, appearing in court on their behalf. Some—perhaps all—of those services might not constitute the unauthorized practice of law under current definitions, in which case no authorization would be required. Even in that case, however, an acknowledgement of that fact from OCA might be in order.\textsuperscript{22} There has long been a close relationship between social workers and lawyers in New York State and elsewhere. Often their clients are the same and the problems those clients present often reflect a variety of related legal and social issues. For example, Paula Galowitz, a Clinical Professor of Law at NYU Law School, has written about an experience she had in a clinic when a client was referred to the clinic because he had a housing problem. However, it turned out that the client’s issues were

\textsuperscript{21} Memorandum from J. Mendoza to California ATILS Task Force, Regulatory Sandbox Recommendation, January 31, 2020.

\textsuperscript{22} The New York State Education Department (“NYSED”) currently oversees social work licensing. If certification is required for social workers who would be authorized to render “true” legal advice, certification could come either from the OCA, the NYSED or perhaps both.
not limited to the housing problem. The client was about to lose his telephone service because of unpaid bills and his food stamps because of his immigration status. The client also needed mental health services. She wrote:

The clinic’s experience in that case forced me to rethink the role of lawyers and their need to collaborate with mental health professionals in some cases. As a social worker and a lawyer, I have given a great deal of thought to the relative similarities and differences between the two professions and the ways in which they intersect.23

She urged recognition of “the value of and a need for collaboration for lawyers and social workers, particularly in the legal services context.” Of course, in the case she described, the students in the clinic were law students, not social workers, but the point remains the same.

Similarly, Thea Zajac, a social worker, has written that

as resources for underserved populations become scarcer and the populations’ needs become greater, it is important that providers continually re-evaluate how they serve their neediest clients. Legal services clients often have more than just legal issues. Clients seeking legal services often have complex problems with health, housing, and social environments along with a multitude of other challenges. Several organizations have found innovative solutions to provide more comprehensive and holistic services to their clients by coordinating with other disciplines. One such partnership that has become more common—and even necessary—is the collaboration of social workers with legal services providers.24

A 1979 study of the relationship of lawyers and social workers in the UK and its relationship to unmet legal needs concluded that “if social workers do not spot the potentially legal problems in their clients’ histories, often those problems will remain unsolved. The client relies on the social worker to use all means available to help; if law is not recognized as a legitimate tool of the social worker it is the client who will suffer.”25  Our recommendation would, we hope, help


to remedy such a situation. In 2005, the National Association of Social Workers (“NASW”) created an institute, the Social Work Ethics and Law Institute, to “enhance social workers’ understanding and knowledge of legal and ethical issues affecting the social work profession.” The Institute conducts educational activities and education programs related to legal, ethical and professional issues to assist NASW members, the social work profession and the public to understand the importance of ethical social work issues.

Fordham University’s School of Social Work, among others in New York State, teaches “forensic social work” and in July 2017 held a Forensic Social Work Conference titled “Social Justice in Tandem with Legal System.” Fordham’s Professor Tina Maschi told the conferees that “there are many definitions of forensic social work, but it’s often described as social workers working in legal settings or in justice centers, such as in the courts, in prisons, or in jails.”

From 2015-2018, the Fordham University School of Social Work offered an elective course on “Social Work and the Law” taught by Denise Colon Greenaway, an attorney and social worker with the NYS Unified Court System’s Office for Justice Initiatives (“OJI”), which is led by Deputy Chief Administrative Judge and Commission member Edwina G. Mendelson.

Brigit Coleman, a lawyer and a social worker, has written that in our complex world, legal problems are often intertwined with problems in other areas, including social problems, medical problems, and economic problems. [For that reason], it is critical that social workers have some familiarity with the law in order to understand and explain their clients’ legal rights. Since the two fields complement each other so well, both lawyers and social workers are increasingly called upon to consult with each other and work in multidisciplinary teams to provide better services to their clients.26

There are, to be sure, challenges that would have to be overcome if social workers were empowered to give traditional legal advice to their clients. One of the most obvious challenges is

the fact that the legal profession and the social work profession are governed by ethical rules that are not entirely the same. For example, Rule 1.6 of the New York Rules of Professional Conduct for lawyers severely limits the circumstances in which a lawyer may reveal or use confidential information coming from the client. The Code of Ethics of the NASW is more liberal, permitting or even requiring disclosure if there are “compelling professional reasons.”

If they are both representing the same client there is very little guidance as to which set of rules must be followed. The New York Rules do not address the lawyer’s obligations when dealing with professionals in other disciplines, but the NASW Code of Ethics calls on social workers to “cooperate with colleagues of other professions when such cooperation serves the well-being of clients” and expressly encourages social workers to participate in interdisciplinary teams.

One solution to this challenge may be to provide clients with a disclosure, at the onset of services, that clearly delineates what the client can expect from the social worker in terms of confidentiality and other potentially competing principles, and how this may be different from working with a lawyer. The up-front disclosure may also serve to engender trust and to promote public acceptance.

Assuming that the social workers would be rendering traditional legal services, another challenge would be insurance coverage for malpractice. If social workers who are certified to participate in this program are already employed by legal services agencies or legal aid agencies, this may not be a problem but if not, that issue would have to be addressed unless, of course, what the social workers were offering did not come within the definition of the practice of law, a subject that we discuss further below.

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27 Section 1.07.

28 Section 2.03.
Social workers are the natural object of experimentation in the offering of legal services because their training already requires skills in interviewing, empathetic listening, identification of clients’ goals, evaluation, crisis intervention and referral. Brigid Coleman put it like this:

Attorneys and social workers each have a central commitment to serve their clients. They both act as advocates for their clients, help their clients determine what their needs are, and then, help them to meet those needs. Both fields use a problem-solving approach to address their clients’ needs and resolve issues. The two professions also require extensive training and have licensing requirements. The similarities are even more obvious when comparing a social worker with a public interest or legal services attorney because both focus on enhancing the lives of poor people through direct services to individuals as well as social reform of societal systems.

Implementation of our proposal will require collaboration with schools of social work and law schools to develop an academic curriculum—probably in a school of social work—that will allow social workers to learn about the law and how to provide legal as well as social work services. The breadth of that curriculum will depend on the type of “legal” services that the social workers will be permitted to render. It will also require public acceptance. Arizona’s experience with the latter will be instructive. When the Arizona Task Force’s work was relatively far along, the Task Force commissioned a survey company to conduct a public opinion survey that later confirmed public support for Arizona’s Legal Paraprofessional program. The same could be done with respect to our recommendation. The sample might include social workers, lawyers and potential clients of both.

Many of the “legal-type” services and advice that we believe could be rendered by social workers may not constitute the practice of law. If we are correct in that opinion, no future certification or authorization would be required. In the event that the legal services to be offered by the social workers were deemed to constitute the practice of law, our proposal may require

29 B. Coleman, supra note 30, p. 139.
authorizing legislation. It may also require formulating an oversight and ethical enforcement plan that will be able to regulate the social worker/legal-service provider and decide the extent to which the social worker/legal-service provider will be bound by New York’s Rules of Professional [legal] Conduct or some variation of them. In such an event, the entity chosen to provide oversight and ethical enforcement should be well-versed in the role of a social worker as well as that of a lawyer and how they are distinguishable. Particular attention should be given to defining the social worker’s role within a legal context. Social workers are trained to view people within a broad context of interrelating systems (e.g. family, community, work, health system, justice system and the like). Their approach to empowering clients to solve problems is governed by this broader thinking. Therefore, it is imperative that social workers in this program be trained to understand their expected role and scope of service delivery when rendering legal services to clients. We have already conferred with one Dean and one Director of a New York school of social work, both of whom were supportive of our proposal, and we expect to confer with others in the days ahead.

Our Working Group is unanimous in its support of allowing social workers who are trained, certified and properly regulated to offer limited legal and “adjunct” legal services to and to make limited court advocacy on behalf of their clients.31 While not a complete answer to the access-to-justice and delivery-of-legal-services gaps, we believe that doing so will significantly improve access to justice and the delivery of legal services.

31 “Adjunct legal services” is our term for services that have legal components but that do not meet the State’s definition of “the practice of law.”
RECOMMENDATION TWO

New York’s Court Navigators Program Should be Expanded in Scope and Substance.

The New York Court Navigators program had its genesis in 2007 when the New York courts became concerned about a serious access-to-justice gap in New York City’s Housing Court. Whereas about 90 percent of the landlords were represented by lawyers, only five percent or fewer of the tenants who were being evicted were represented by counsel. As a result, the Resolution Assistance Project (“RAP”) was created using law students as “assistants” who would stand with the tenants either in court or in hallways during negotiations to make sure that the tenant’s voice was heard. The RAP assistants were not permitted to participate in the negotiations or conferences but were allowed to remind the tenants of what they wanted to say.32

In 2010, Chief Judge Jonathan Lippman created the Task Force to Expand Access to Civil Legal Services in New York and in June 2013, the New York City Bar published a report by its Professional Responsibility Committee and its Subcommittee on Access to Justice chaired by David Udell, with whom several members of the Working Group have consulted, titled Narrowing the “Justice Gap”: Roles for Nonlawyer Practitioners. The City Bar committees recommended the creation of “courtroom aides,” non-lawyers who could assist litigants in proceedings before certain courts and administrative agencies: “Nonlawyers serving this function are not expected to match the skill level of a lawyer, but can facilitate communication between the litigant and the tribunal, offer legitimate arguments that might otherwise be overlooked, and provide emotional support to litigants who may be thoroughly bewildered by judicial or administrative procedures.”

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32 See generally, F. Fisher, Navigating the New York Courts with the Assistance of a Non-Lawyer, 122 Dickinson L. Rev. 825 (2018). Until she retired, Judge Fisher was Deputy Chief Administrative Judge for New York City Courts and was Director of the New York State Courts’ Access to Justice Program.
Also in 2013, the New York Courts’ Permanent Commission on Access to Justice recommended the use of non-lawyers to close the access-to-justice gap and Chief Judge Lippman created a Committee on Non-Lawyers and the Justice Gap, co-chaired by Roger Juan Maldonado, who is a member of the Commission to Reimagine the Future of New York’s Courts and this Working Group. Among other things, that Committee considered the RAP program, a British program using non-lawyers called McKenzie Friends\(^{33}\) and the use of health care navigators.\(^{34}\) The Committee ultimately recommended the creation of a Court Navigator Program and Chief Judge Lippman called for such a program in his 2015 State of the Judiciary Address. He urged the creation of “a series of court-sponsored incubator projects to expand the role of non-lawyers in assisting unrepresented litigants.” The purpose was to make use of trained and supervised persons with no prior formal law school training to provide one-on-one assistance to unrepresented litigants in court. Days later, the Chief Administrative Judge Gail Prudenti created the Court Navigator Program as a pilot by order dated February 10, 2014.\(^{35}\)

The next year, New York’s Task Force to Expand Access to Civil Legal Services in New York became the Permanent Commission on Access to Justice and in 2017, the Permanent


\(^{34}\) The health sciences professions have used trained paraprofessionals such as “Patient Navigators” and “Nurse Navigators” who, among other things, can “facilitate improved health care access and quality for underserved populations through advocacy and care coordination . . .”. A. Pereira et al, The Role of Patient Navigators in Eliminating Health Disparities, Cancer, p. 117, August 2011. Patient Navigators were first created by Dr. Harold Freeman at Harlem Hospital in 1990.

Commission recommended the “expansion of existing nonlawyer assistance programs such as Legal Hand and Court Navigators.”

The New York Navigators Program was not the first to use non-lawyers to facilitate access to justice. Beginning as early as 1981, many states have begun to use trained non-lawyers to offer services that reduce the access-to-justice gap. A July 2019 Report by Mary McClymont, of the Justice Lab at Georgetown University Law Center, noted that there were at least 23 legal navigator programs in more than 80 locations in 15 states and the District of Columbia. Most of those programs did not have formal authorization to deploy navigators in the court but “rather, they have been initiated (and are often currently managed) by the actions and impetus of multiple champions and supporters, including the judiciary, official bodies like state access to justice commissions or specially appointed task forces, discerning nonprofit and legal aid lawyer leaders, bar foundations, and creative court staff.”

Annexed hereto as Appendix C is a Memorandum prepared by Shante Thomas for Hon. Edwina G. Mendelson, a member of the Commission to Reimagine the Future of New York’s Courts and this Working Group, that provides further information on national and international non-lawyer navigator programs, including some of the 23 programs mentioned in Ms. McClymont’s research paper.

The February 10, 2014, Administrative Order authorizing Court Navigators, created a pilot program in the Consumer Debt Part in the Bronx and in Kings County Housing Court. It also established Navigators programs that collaborated with or were part of three nonprofit providers, the New York State Access to Justice Program (“A2J Navigator”), Housing Court Answers and University Settlement.

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The Navigators provide general information, written materials and one-on-one assistance to eligible unrepresented litigants and assist them in completing necessary forms. They attend settlement negotiations, accompany unrepresented litigants in the courtroom, facilitate access to interpreters, explain what to expect and what the role is of each person in the courtroom. They also provide moral support and help the litigants keep their paperwork in order. They are not permitted to provide legal advice and may speak in court only if a judge addresses direct factual questions to them.37

In February 2014, three distinct Navigator pilot projects began in New York City under the supervision of Deputy Chief Administrative Judge Fern Fisher. In the beginning, most Court Navigators, except those in the University Settlement pilot, were unpaid law students but after New York’s 50-hour pro bono rule for law students was instituted in 2018, it became difficult to recruit law students to become Navigators because that service did not qualify for the pro bono requirement. As a result, thereafter, most of the Navigators were college students who used the opportunity to fulfill an internship requirement, a community service requirement or to receive academic credit.38

The first pilot project in New York City was the Access to Justice Navigators Project, which absorbed the RAP Assistants program and provided in-court assistance through the services of an unpaid “Navigator for the Day.” The Navigators in this pilot accompanied unrepresented litigants when they met with judges, court attorneys and the other side’s lawyers. They worked in courthouses that provided kiosk access to Do-It-Yourself (“DIY”) document assembly computer

38 F. Fisher, note 32 supra, p. 830.
programs to create fileable papers for litigants. All Navigator volunteers received three hours of training, including videos containing role-playing scenarios, a manual and copies of informational materials. Each Navigator committed to serving at least 30 hours in a three-month period. Ultimately, the Access to Justice Navigators worked in housing courts in Brooklyn, the Bronx, Manhattan and Queens and some also worked in civil consumer debt cases.

The second pilot project was the Housing Court Answers Navigators Project. Its volunteers were also “Navigators for the Day” who worked only in the Brooklyn Housing Court. This pilot project was under the supervision of Housing Court Answers, a nonprofit organization that provides information about Housing Court and local housing laws and regulations. The Navigators would approach unrepresented litigants as they lined up in court, asking them why they were there and offering to assist them in preparing answers to the nonpayment papers they may have received. They used Court-approved DIY forms in assisting the tenants to complete their answers to the petitions for eviction. Because the answer forms were standard, the Navigators were able to walk the litigants through them easily and then to accompany them to the clerk’s window where the forms were filed. The Navigators in this pilot did not participate in any courtroom activities or in settlements.

The third pilot project was the University Settlement Navigators Project, also in the Brooklyn Housing Court. The Navigators in this pilot were all paid case managers employed by University Settlement, a nonprofit organization providing social and human services and they worked in the same courts as the Housing Court Answers Navigators, coordinating their activities with each other. The University Settlement Navigators concentrated on litigants with little English proficiency who were about to be evicted. They conducted intake interviews to determine social
services needs and they were able to offer social services such as mediation, mental health treatment and access to various state and federal benefits.

All three Navigators pilot projects were evaluated by Professor Rebecca Sandefur for the American Bar Foundation and the National Center for State Courts in December 2016. Professor Sandefur, with whom some members of the Working Group have spoken, found that

- those who received help from the Access to Justice Navigators Pilot Project were “56 percent more likely than unassisted litigants to say they were able to tell their side of the story”;
- those assisted by the Housing Court Answers Navigators Pilot Project “were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court”; and
- of those assisted by University Settlement Navigators, “zero percent of tenants experienced eviction from their homes by a marshal.”39

Her more general conclusions were as follows:

- People without formal legal training can provide meaningful assistance and services to unrepresented litigants;
- Those services can impact several meaningful outcomes;
- The attitudes and philosophies of the courts and court staff impact the tasks that the Navigators perform and the contributions they are able to make; and

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• The work of the Navigators would be aided by standardized legal forms and the availability and use of plain language.

Professor Sandefur made several recommendations, including making dedicated supervision available in all of the courthouses in which Navigators work, educating judges and court attorneys on the role of the Navigators, making DIY kiosks more generally available, making a triage referral system available and educating the public on the role of the Navigators. In addition, she recommended an increase in the size of the program, moving from limited pilot projects to expanded projects.

In 2018, a Special Commission in New York, the *Special Commission on the Future of the N.Y.C. Housing Court*, recommended the expansion of the Navigator Program and recommended “ensuring that court staff and judges buy into the program through more communication about the program’s goals and operation to litigants, judges, court staff, court users, and other stakeholders to improve the program.”40 Some of that work is already underway. Under the leadership of the OJI, the Navigator program was expanded and retooled. In line with Professor Sandefur’s recommendations, administrative staff and judges were trained on the benefits of the program. Input was also sought from each court to determine where Navigators were most needed. Some courts stationed Navigators as greeters,41 others stationed Navigators in Help Centers and in courtrooms. OJI rebranded existing promotional materials and developed new strategies to

40 F. Fisher, supra note 32, p. 833.

41 The recent *Report from the Special Advisor on Equal Justice in the New York State Courts*, submitted to the Chief Judge by former Secretary of Homeland Security Jeh Charles Johnson on October 1, 2020, proposed that “in line with a more “customer service”-oriented approach, [the] OCA consider establishing a “greeter” position in courthouses on a more widespread basis and that the OCA should “ensure that there is a designated individual within each courthouse whose role is to welcome litigants and answer basic questions about how to navigate the building and adhere to general procedures and practices.” Id. p. 99. Our proposal goes further than Secretary Johnson’s.
enhance recruitment efforts. A robust internship program was developed with local colleges to provide student Navigators with school credit for their service. One program, Apple Corps, also provided a summer stipend for participating students. In 2020, the Navigator program was expanded to Westchester County’s Family Court and to the White Plains City Court Housing Part.

We are very impressed by the principles behind the Navigator program and by the success that it has already had in New York City. Our proposal, therefore, is to expand the Navigator program both in scope and substance. We are mindful of the current budgetary constraints in New York and we understand well that the resources are not available to expand the Navigators program using State financing. However, we believe that a compelling case could be made to private organizations for whom improving access to justice is a passion. This is not a novel observation, to be sure; it has already been made by the OJI. In the United Kingdom, the Ministry of Justice brought together six independent organizations that were dedicated to improving access to justice and the group agreed to fund a Litigant in Person Support Strategy that provided services similar to those offered by the Navigator program in New York.42

The success of an expanded Navigators Program will require the support of the existing legal services providers such as the Legal Aid Society and many of the bar associations in New York. It will also require the continuing participation of the OCA and OJI.

With respect to scope, we recommend that a Navigator program should be expanded to include all “high traffic” courts in New York State. Such an expansion would require both more volunteers43 and more supervisors. How would such volunteers and supervisors be found and...

42 See Appendix C, p. 43.
43 The University Settlement program demonstrated that using paid Navigators who are already part of another organization can work and could represent a template for the future. We recognize that as a practical matter, it is unrealistic to expect a corps of fully-paid Navigators anytime soon.
trained? This will be a challenge and our Working Group is examining several possibilities. For example, there are today fifteen law schools in New York State, each one of which already offers clinical programs for its students. Those law schools could be urged to create “Navigator Clinics” that could be offered to law students for credit and could be supervised by law professors or practicing lawyers. However, we recognize that it would be very expensive for the law schools to do so. The typical student-faculty ratio in a for-credit clinic is 8 to 1. In order for work in a law school’s Navigator clinic to qualify for New York State’s 50-hour pro bono requirement, the current rules require supervision by a law professor or a practicing lawyer. On the other hand, non-credit volunteer pro bono projects for law students with minimal on-site lawyer supervision might be far more efficient but may require additional training for the Navigators. The Working Group will continue to consider how all of this might be accomplished. We will also consider recommending the use of paralegals already employed in law firms as possible resources to expand the Navigator pool, as some other states have done. Some of the obvious issues we will consider include insurance and compensation.

Our proposal for expanding the scope of the Navigator program leads to our second recommendation concerning the substance of the Navigator program. Just as we have recommended with respect to social workers, we also recommend that the Navigators be trained and permitted to offer some “adjunct” legal services and other services that have heretofore been considered the practice of law and that have heretofore been offered only by members of the bar.

The Administrative Order currently in effect in the First and Second Departments prohibits Navigators from either giving legal advice to unrepresented litigants or negotiating on their behalf with counsel for the adverse party. We recommend that the Administrative Order be amended
either to redefine what legal advice is or to permit the Navigators to offer very limited and targeted “adjunct” legal services to unrepresented litigants.

The DIY legal form kiosk is a good example of what we are suggesting. The forms in the DIY kiosks are already simplified but the Navigators are still not permitted to advise the unrepresented litigants who fill out the forms about the legal significance of the information that is being provided. However, if the Navigators were already law students, they could be authorized to give such legal advice to unrepresented litigants just as they do with respect to their “clients” in existing law school clinics. However, we recognize that this would require hands-on supervision by the law schools or other lawyers, which may be prohibitively expensive.

Even if the Navigators are not law students, there is no reason why a category of advice they might offer to the unrepresented litigants relevant to the courtroom experience they are about to have could not be deemed not to constitute “the practice of law” when offered. For example, advising an unrepresented litigant to “tell the truth, the whole truth and nothing but the truth” when testifying should not be considered giving legal advice. Nor should advising an unrepresented litigant not to speak to the landlord’s attorney on her own but to wait until the court attorney is available to speak to everybody together. Nor should advising the unrepresented litigant to be respectful and to answer questions directly and clearly. Other examples of “legal advice” that the Navigators might provide include the following:

- informing a litigant that he or she has the right to speak with the judge or the judge’s court attorney before agreeing to a settlement and speaking to the court directly for the purpose of explaining to the judge the unrepresented litigant’s factual circumstances if necessary;
• informing the litigant that the solution offered in a proposed settlement is just an option, that there may be other options available and what those might be;

• pointing out legal and other fees that are not allowed to be included in a settlement agreement;

• suggesting that the litigant ask (or allowing the Navigator to ask) opposing counsel to adjust the terms of a settlement to enhance compliance (e.g. to modify a rent or arrears due date so that it becomes due after the litigant has received a regularly scheduled social security check); and

• explaining how to serve papers.

The Navigators could be trained and permitted to interview the unrepresented litigants to determine what their needs are, to explain all of the legal options available to them, to assist with Order to Show Cause filings, to fill out simple forms to assist litigants with disabilities, to serve as mediators and play a role in the ADR initiative, and to collect and distribute helpful checklists and other informational documents. In addition, they should be able to coordinate their efforts with the Volunteer Lawyers for the Day (“VLD”) who serve in Housing Court and in the civil court parts that hear consumer debt matters who, among other things, might be able to answer questions that the Navigators might have. The Navigators could provide the VLDs with the information and documents obtained and organized by the Navigators, explain to the VLDs the unrepresented litigants’ needs and goals, and request that the VLD then advise the unrepresented litigant how to proceed. This would provide the Navigators with a certain level of supervision and feedback, as recommended by Professor Sandefur.44 In our view, this work could relatively easily be structured

44 See p. 26, supra.
so that it does not constitute the practice of law, and an administrative order to that effect might be appropriate.

An issue has arisen with respect to the proposed presumptive mediation process in Housing Court and consumer debt proceedings in which the plaintiff/landlord or plaintiff/corporation may be represented by counsel and the respondent/tenant or defendant/consumer may not be. Several legal services providers assert that given the continued phased roll-out of the right to counsel in eviction proceedings in New York City and the screening of proposed settlements role currently being provided by the Court Attorneys who serve Housing Court judges, it would be premature to require mediations in Housing Court matters when the landlord is represented by counsel and the tenant is not. The idea is that all indigent tenants soon will be entitled to representation in eviction proceedings and at that point, presumptive mediation could be reconsidered. The legal services providers also assert, however, that the Court Attorney is likely going to be much more knowledgeable about pertinent settlement considerations in an eviction proceeding than a volunteer mediator, thus making presumptive mediation less attractive in Housing Court matters generally.45 Similarly, the Civil Court judges and their clerks are much more likely to be knowledgeable about pertinent settlement considerations in consumer debt matters than volunteer mediators.46

Unless legislation is passed or an administrative order is signed enabling Navigators to negotiate on behalf of unrepresented litigants, participation by Navigators in mediations on behalf

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45 OCA either has commenced or is about to commence presumptive mediation in Housing Court where both parties are unrepresented. Legal services providers have expressed little opposition to such proceedings but note that absent required interpreters, the mediation may still be fraught.

46 The New York City Civil Court has commenced a presumptive mediation program in small claims matters where both parties are unrepresented. Legal services providers have not opposed this measure.
of unrepresented litigants would not resolve the concerns raised by the legal services providers. Similarly, expanding the role of the Navigators will not do anything to right the imbalance of power in such mediations, which may serve to accelerate an adverse and potentially unfair result for the unrepresented litigant. Our Working Group will continue to monitor this issue. This issue should also be borne in mind by the OCA should it choose to implement the Working Group’s recommendation with respect to the Navigators program.

We see the Navigator program as a good example of what Professor Sandefur referred to as “roles beyond lawyers” that could offer at least a partial solution to the access-to-justice gap and we believe that the existing Navigator framework, if broadened in scope and substance, would do just that.
RECOMMENDATION THREE

Alternate Business Structures for Law Firms Should Not Be Adopted in New York at This Time.47

Following the publication of the ABA’s 2016 report, several states took up the challenge and pro-actively considered (and a few actually adopted) regulatory reforms including ABSs. For example,

- Washington State created Limited License Legal Technicians (“LLLTs”), non-lawyers who could provide legal services in certain subjects, permitted them to have minority interests in law firms and permitted lawyers to share fees with them. Recently, however, that program has been suspended due to excessive costs and lack of interest. There are only about 40 LLLTs remaining in Washington State.

- Washington D.C., the only US jurisdiction to do so, permits non-lawyer partnership in law firms. Most of the non-lawyer partners are lobbyists. Washington D.C. is actively considering other regulatory innovations such as allowing non-lawyers to provide certain legal services.

- Arizona, Utah, and California have already adopted regulations that will permit law firms to consider ABSs that would include fee-sharing with non-lawyers and non-lawyer law firm ownership.48

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47 A brief history of the debate over ABSs is set forth in Appendix A.

48 In March 2020, California tabled its ABS proposal because of “opposition in some quarters” including lawyers who said they were concerned about potential dangers to clients. However, the proposal was adopted in May, 2020 and is expected to be implemented in 2021.
An important question for our Working Group was whether ABS firms would actually increase access to justice or improve the delivery of legal services in addition to improving lawyer productivity. We closely examined the recent proposals that have been adopted in Arizona, Utah, and California to learn whether those proposals would have that effect and the short answer is that we just don’t know. There are no reliable data. We briefly describe the three programs and the stated reasons for their adoption below.

Arizona

The October 4, 2019, Report and Recommendations of Arizona’s Task Force on the Delivery of Legal Services took up Professor William Henderson’s challenge and recommended that Arizona’s equivalent to the ABA Model Code’s Rule 5.4 be eliminated. Citing Professor Henderson’s Legal Market Landscape Report, the Arizona Task Force concluded that its Rule 5.4 “has been identified as a barrier to innovation in the delivery of legal services.” The Task Force consulted with legal ethicists and wrote that “a sentiment that resounded within the workgroup was that lawyers have the ethical obligation to insure legal services are available to the public, and that if the rules of professional conduct stand in the way of making those services available, then the rules should be changed, albeit in a way that continues to protect the public.” The Task Force concluded that “no compelling reason exists for maintaining Ethical Rule 5.4 because its twin goals of protecting a lawyer’s independent professional judgment and protecting the public are reflected in other ethical rules which can be strengthened.” The trade-off was a recommendation that the Arizona Supreme Court explore entity regulation in addition to individual regulation, citing the UK’s experience with entity regulation. What is curious about Arizona’s program is that it was adopted even though there were no data suggesting that it would have any effect on the access-to-justice gap.
Utah

Utah will allow the possibility of proposed ABSs for firms that successfully perform in a “sandbox” under the control of a new regulatory body and in which lawyers and non-lawyers can propose novel business structures for the delivery of legal services and with respect to which applicable laws prohibiting the unauthorized practice of law will be waived. The “sandbox” will “allow new providers and services a controlled environment in which to launch and test products, services and models. . . . In Utah, new legal practice providers and services will have to apply to enter the regulatory sandbox before they will be permitted to offer services in the legal market. If they are admitted, they will be able to offer service under careful oversight until they are able to show no increase in consumer harm.”

Even though Utah’s Work Group envisioned that its proposal would increase access to justice (the title of its report was “Narrowing the Access-to-Justice Gap by Reimagining Regulation”), its report actually proposed a solution that would “still fully protect clients without unduly hampering lawyers from harnessing the power of capital, collaboration, and technology.”

Utah’s Justice Deno Himonas said that “we cannot volunteer ourselves across the access-to-justice gap . . . What is needed is a market-based approach that simultaneously respects and protects consumer needs. This is the power and beauty of the [Utah] Supreme Court’s rule changes and the legal regulatory sandbox.” Notwithstanding its “power and beauty,” we do not believe that

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49 Report and Recommendations from THE UTAH WORK GROUP ON REGULATORY REFORM, August 2019, p. 11.

50 The first Utah “sandbox” proposal to be accepted was an entity named “1Law” in which non-lawyers are partial owners and in which the entity is practicing law through technology platforms offering substantive legal advice through an automated agent (a “chatbot”) or through a “Do It Yourself” (“DIY”) legal assistance platform that enables persons to solve their own legal problems. Task Force Recommendation to the Court, Sandbox Proposal: 1Law Online Legal Platform, June 16, 2020.
such an ABS would *ipso facto* improve access to justice even though it might improve law firm profitability.

**California**

On May 15, 2020, the State Bar of California’s Board of Trustees voted to move forward with a proposal from its Task Force on Access to Justice Through Innovation of Legal Services to allow a “sandbox” for companies and organizations to provide legal services in ways that might not be permissible under the current regulatory scheme.\(^51\) However, the Task Force candidly conceded that “We will not know the extent of improvement to access to legal services until new entities and services are allowed into the market and proper data is kept and measured. . . . What we do know is that the justice gap continues to grow at an alarming rate with the status quo, and that there simply is [sic] not enough lawyers to provide free/low cost legal services to have a meaningful impact on the problem our society faces.”\(^52\) That may be true but the suggestion that “loosening of existing restrictions” on lawyers might increase access to justice is not obvious to us. In fact, this proposal appears, at least to us, not to be a useful means of increasing access to justice.

In fact, there is no empirical evidence that in the U.S. an alliance between lawyers and non-lawyers would *ipso facto* increase either access to justice or the delivery of legal services for the simple reason that it has never been tried in this country. In fact, every time we put that question to those with whom we consulted, we were told that the primary reason for an ABS was to increase profitability and that there is no evidence that it will increase access to justice. Unlike the argument

\(^{51}\) ABA Center for Innovation, May 15, 2020.

with respect to increases in capital and law firm profitability, which have an arguable empirical basis, the evidence with respect to access to justice and improved delivery of legal services is today non-existent.

Jayne Reardon, the Executive Director of the Illinois Supreme Court’s Commission on Professionalism, has written that

there is, of course, no guarantee that ABSs will significantly improve access. But a leading expert on the access to justice problem, Gillian Hadfield, has unequivocally stated that there is no humanly possible amount of legal aid or pro bono services that could satisfy the unmet need for legal services and that only by permitting a change in regulations to allow ABSs do we have a chance of addressing this country’s access to justice problem.53

We are unpersuaded. We do not really know whether an ABS in any form would have any effect in closing the access-to-justice and delivery-of-legal-services gaps and the available evidence is to the contrary.54 For that reason, we do not support the adoption of an ABS in New York State at this time, at least not until we learn whether the Utah, California, and Arizona experiments have been successful and their results can be evaluated. We also do not think that a State-wide law permitting non-lawyers to be partners in or owners of law firms is feasible or practical at this time, nor do we believe that a case been made that such a state-wide program would be embraced by the legal profession.

We are fortunate that other states, such as Arizona, Utah, and California, are proceeding with ABS experiments and as we reimagine the future of New York’s Courts, we foresee a time when one or more of the ABSs being tried elsewhere could be adopted in New York. Our Working


54 In a Virtual Convening of experts on regulatory innovation held on October 26, 2020, and sponsored by IAALS, Professor Stephen Mayson, Honorary Professor of Law in the Faculty of Laws at University College London, who has recently completed a review of the effect of the Legal Services Act of 2007, reported that ABSs in England and Wales have not had any meaningful impact on the access-to-justice gap.
Group will continue to monitor all the ongoing regulatory change experiments, including the experiments in Arizona, Utah and California, and, if any of them demonstrates success—or any other worthy improvements—we stand ready to recommend adoption of similar ABS structural changes to meet our needs in New York.\textsuperscript{55}

\textsuperscript{55} Many proponents of ABS see their benefit as promoting technology-based solutions that will make the providing of legal services to consumers more efficient. According to those advocates, ABS reform is necessary to provide the access to the capital markets that is necessary to fund technology startups. As we note in the text, whether that will work remains to be seen. But if the technology startups succeed in materially expanding access to justice in Arizona, Utah, or California, it would be a relatively simple matter to authorize the use of that technology in New York (e.g. through the expansion of those startups into New York).
SUGGESTIONS WITH RESPECT TO IMPLEMENTATION

The programs in Washington State (now suspended), Arizona and Utah might provide useful templates should New York State consider adopting programs as broad as those three. All three programs have many things in common. First, they require detailed applications, including such things as fingerprints and FBI background checks, driving and military records, credit histories and references. Second, they require extensive pre-licensing training, including many credit hours of courses about legal processes and substance, and post-licensing annual CLE training. Third, they require compliance with Codes of Professional Conduct. Fourth, they severely limit the types of legal services that can be provided, sometimes in bizarre ways. There is one respect in which one of the programs is different: only Arizona allows LPs to appear in court on behalf of clients.

It remains to be seen how successful the Arizona and Utah programs will be. As noted, Utah anticipates that in the first several years of its LPP program, there would in fact be very few LPPs licensed. In addition, the Arizona and Utah programs appear to have some of the same components that ultimately led to the suspension of the Washington State LLLT program: complex machinery resulting in high costs with the expectation of relatively few licensees.

We believe that the prudent course would be to follow the programs in Utah, Arizona and elsewhere and to decide at a later time whether their more robust models, if successful should be reconsidered for use in New York.

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56 A detailed description of each program is set forth in Appendix B.

57 Recall that Washington State permitted its LLLTs to “Draft letters setting forth legal opinions that are intended to be read by persons other than the client.” There is no further explanation as to what this means nor does there appear to be a service limited to legal opinion letters that are to be read only by the client.
New York’s Social Workers

We do not recommend that at this time New York State create programs like those in Washington State, Arizona and Utah for its social workers. Those programs are in the nascent stage and may or may not be successful. Our recommendation is more limited. There are several reasons why. First, New York’s social workers are already certified by the State to practice social work, a profession that contains many elements that are similar to legal practice, including, for example, interviewing clients and determining their needs and goals, reviewing and explaining documents to them, assisting them in obtaining records and obtaining relevant facts and explaining the relevancy of such information to the client. Second, the social workers who would be the subject of our recommended program are already employed and many of them are already working with lawyers. We would not anticipate that they would charge their clients any additional fees for providing legal advice along with their social advice. Third, the social workers who would be the subject of our recommended program already have advanced degrees, Masters of Social Work, from accredited universities.

We envision that with a little extra legal training, New York’s social workers would easily be able to represent clients in certain designated courts such as the array of New York’s “problem solving” courts, for example, in which the goal is not to score legal victories as such but to find ways to help the client to solve his or her problems.58 Similarly, certain of the proceedings in Housing Courts present relatively straightforward issues of rent payment and eviction and the trained social workers with whom we have consulted believed that with minimal training, they

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58 New York’s Problem Solving Courts include Drug Treatment courts, Mental Health courts, Community courts, Sex Offense courts, Human Trafficking courts, Adolescent Diversion parts and Veterans courts. The goal of those courts is to look to the underlying issues that bring people into the court system and to employ innovative approaches to address those issues, often in coordination with outside services.
would easily be able to guide tenants through those issues. Other proceedings in Housing Court such as Housing Part Proceedings on behalf of tenants against the agencies charged with enforcement of the rules and regulations requiring landlords to make certain repairs, would benefit greatly from the expertise and experience of trained social workers. For example, we were told that trained social workers thought that they would be able to prepare tenants in Housing Courts for their court appearances, to explain the relevance of the landlord’s failure to make required repairs and how to document the failure, and to explain the options and difficulties that might occur when a tenant enters into a payment agreement without sufficient funds to make the payments.

Although a significant proportion of the tenant litigants in New York City Housing Courts are able to take advantage of the City’s right-to-counsel program, the vast majority of tenants appearing in Housing Courts outside of New York City today are unrepresented by anybody. Adding a trained, non-lawyer social worker would be a significant improvement in providing true access to justice for the otherwise unrepresented tenants. Even with respect to those tenant-litigants who are already represented by counsel, trained social workers often become valuable members of their team. We also believe that trained social worker-advocates59 should be able to address the courts, including Housing Courts, directly, without waiting for a specific factual question from the judge, as the current Administrative Order requires. Speaking in court on behalf of an

59 We leave it to the OCA to come up with a title for the trained and perhaps certified social workers contemplated by our recommendation. Possibilities might include “legal social workers” and “social advocates.” Utah and Arizona each struggled to come up with proper descriptive titles and admitted somewhat reluctantly that their chosen titles were less than entirely satisfactory. Arizona, for example, considered several titles, including “limited license legal practitioners,” “licensed paralegals,” and others. It finally chose “legal practitioner” because it was similar to the now well-understood “nurse practitioner” and because it would “resonate with the public better.” The Arizona Task Force recognized, however, that the term “legal practitioner” was ambiguous, because lawyers were also “legal practitioners.” The final term was in fact different from all the earlier proposals: “legal paraprofessionals.” Reply and Final Amended Petition of the Arizona Task Force on the Delivery of Legal Services, In the Matter of Petition to Amend Etc., Arizona Supreme Court, June 22, 2020, pp. 18-20.
unrepresented tenant should not, in our opinion, constitute the practice of law, as many other jurisdictions around the world have already recognized. Judges can easily recognize when a non-lawyer social worker has gone beyond the appropriate limits and can deal with the situation promptly. The benefits conferred on the system of justice should far outweigh any concerns about overreaching.

The drafting of documents might traditionally have been considered the practice of law but today, with the Do-It-Yourself Kiosks whose documents have already been pre-approved by the OCA, social workers should be permitted to read the existing instructions about such documents and to explain them to the tenant-litigant without running afoul of prohibitions on the practice of law by non-lawyers.

It should not necessitate the administrative superstructures that we see in Washington State, Arizona and Utah in order to train, certify and authorize social workers to take on those assignments and to assist their clients through the legal process. Indeed, social workers, who are already trained to care for the “whole person,” may be the ideal advocates for their clients. And if the OCA should determine that the limited services that social workers would be authorized to provide did not constitute the practice of law, neither malpractice insurance nor conformance with the NY Rules of Professional Conduct should be required.

In fact, social workers in New York have been members of Housing Court defense teams for many years. For example, New York’s Assigned Counsel Project Internship Program

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established in 2014 recruited and trained law students to conduct intake and assess the legal and social services needs of seniors who were at risk of eviction. When eviction proceedings were brought against seniors who, because of deteriorating health, were unable to manage their responsibilities, the Assigned Counsel Project would provide the senior with both a lawyer and a social worker or a social work intern who would work together to solve the senior’s housing problems.61

With respect to training, we submit that the academic training, such as it would be, for such activities could take place in schools of social work in New York State, in particular those that are part of universities with law schools. Collaboration between professors of social work and law should be easy.62 With respect to certification, if our recommendation that the services being rendered by social workers did not constitute “the practice of law” is accepted, then certification by OCA should not be required but a certification from the OCA that the recipient is certified to provide “adjunct” legal services (or a similar title) might be appreciated by the social workers. If the services do constitute the practice of law under today’s definitions—a result that is far from certain—legislation or at the very least an OCA Administrative Order—would appear to be required.


62 Training could include the understanding the statutes applicable to and the procedures used by the “problem solving courts” and the Housing Courts, the evidentiary rules that are applied in those courts, the fundamentals of the applicable landlord-tenant laws, the burdens of proof borne by the plaintiffs and the defenses available to the defendants. It would also include understanding the alternatives available to the defendants and how to achieve them.
New York Court Navigators

Our recommendation for allowing Court Navigators to offer limited legal advice and services to tenants in Housing Courts and in debt collection cases in Civil Courts contemplates three different types of Navigators: law students who are part of law school clinics that are supervised by law professors or other lawyers, Navigators who are already certified social workers, and other volunteers such as college or law students who are not in a clinic. With respect to the former group, little more need be considered, inasmuch as current rules permit law students in clinics to provide limited legal services and advice. It would be up to the law professors in charge of the applicable clinic to decide what type of services and advice could and should be rendered by the law students. With respect to the second group, our recommendation with respect to social workers would apply equally to Navigators who are also social workers.

With respect to the third category, other volunteers, there would be stricter limitations on what they could do and a limited training program would still be in order. If the volunteers are college or law students, the training could take place in their schools, perhaps with the supervision of trained members of the bar who routinely work in the Housing Courts. These non-clinical-law-student and non-social-worker Navigators would still be permitted to offer “adjunct” legal services that do not violate the unauthorized practice of law prohibitions but that still assist unrepresented litigants in court. The services that they would be permitted to provide would make a court experience by an unrepresented litigant less traumatic, more understandable and more likely to result in a just outcome. For example, they could help unrepresented litigants to use a DIY kiosk and to understand the legal documents that are being made available to them. These kiosks provide information to the unrepresented litigants, and Navigators should be permitted to help the unrepresented litigants understand that information. Advising an unrepresented litigant that
signing an affidavit that was false could be a criminal offense is common knowledge and should not be considered rendering legal advice. Similarly, making an argument in Housing Court on behalf of an unrepresented litigant should not be considered the practice of law if the argument is limited only to explaining the litigant’s factual situation and why, in fairness, a particular resolution should be considered by the court. In such a situation, the Navigator would be more like the common law “next friend” or a non-lawyer “guardian ad litem” rather than a lawyer.

* * *

We submit this Report in the expectation—in fact a firm belief—that the recommendations we make will represent a small but significant step toward ameliorating the access-to-justice and delivery-of-legal services gaps in New York State. The solutions to those serious problems do not lie in increasing the pro bono requirements for members of the bar or in increasing the funding for legal services organizations. Nor do they lie in increasing the number of practicing lawyers in New York State. Rather, they lie in finding creative ways to increase the delivery of what have been considered “legal services” using resources that already exist. Every member of the Working Group on Regulatory Innovation has a profound respect for our shared honorable profession and its requirements of integrity, independence and diligence. There are today aspects of our profession that can and should be performed by non-lawyers, as Justice, then Judge Neil Gorsuch reminded us when he said that “the fact is that non-lawyers already perform—and have long performed—many kinds of work traditionally and simultaneously performed by lawyers. It is entirely unclear why exceptions should exist to help [financially capable populations] but not expanded in ways more consciously aimed at serving larger numbers of lower-and middle-class clients.”

63 N. Gorsuch, supra n. 16, p. 49.
We hope that our Report will represent a small—but important—contribution toward the accomplishment of that lofty call that all should share. Our work on this project will continue.

Respectfully submitted,

The Working Group on Regulatory Innovation

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APPENDIX A

A Brief History of the Debate over Alternate Business Structures for Law Firms.

This issue has filled libraries and has generated a good deal of angst and opposition in the legal profession. As Professor Alan Morrison has reminded us, every Section, Commission or Committee of the ABA of which he is aware that has voted to approve non-lawyer financial interest in law firms was voted down by the House of Delegates. Indeed, the ABA House of Delegates Resolution 115, sponsored by the ABA’s Center for Innovation and others in February 2020, was drastically watered down before it was adopted. In fact, the original background report was so controversial that it no longer appears on the ABA’s website.

For nearly forty years, the ABA and others have discussed the possibilities of changing the allowable structures of law firms. The principal argument in favor of changing those structures was that it would unlock access to capital for law firms, permitting them to expand and increase their profitability. But it was not the law firms that were advocating for a change in the rules, it was the large accounting firms, whose ranks were being diminished and who perceived that an alliance with law firms would increase their access to clients and would enable both the accounting firms and the law firms to expand and increase in profitability. That argument obviously did not carry the day and is no longer being made by most observers. Rather, the argument that is being made today with some force is that allowing law firms to become affiliated with non-lawyers would increase legal productivity and, at least one hopes, increase access to justice and the delivery of legal services.

One of the principal proponents of ABSs is Professor William Henderson of Indiana’s Maurer School of Law. In a watershed report commissioned by the State Bar of California and
issued in July 2018, *Legal Market Landscape Report*, Henderson found that there was a fundamental problem of lagging productivity in the legal market. Professor Henderson concluded that although many believed that the principle problem with today’s legal profession was that “legal services cost too much . . . yet it is much more accurately characterized as a problem of lagging legal productivity.” By that, he meant that the legal profession is a sector, like education and medicine, in which prices tend to go up much faster than worker income. “The reason for this upward spiraling price is that these activities are very human-intensive and involve specialized human capital.” As legal services become more and more expensive, “a growing proportion of U.S. consumers are choosing to forgo legal services rather than pay a higher price.” As a result, “the legal profession is at an inflection point. Solving the problem of lagging legal productivity requires lawyers to work closely with professionals from other disciplines. Unfortunately, the ethical rules hinder this type of collaboration.”

Similar to the “cost disease” that NYU Professor William Baumol wrote about in 1996, the cost disease of the legal profession cannot be solved because legal productivity cannot be increased in the current model. “The time and human effort it takes to perform a 45-minute Schubert quartet has not changed in hundreds of years.”64 Henderson’s solution: modify the ethical rules to permit lawyers “to closely collaborate with allied professionals from other disciplines such as technology, process design, data analytics, accounting, marketing and finance.” Unfortunately, although this solution might improve the delivery of legal services, it has little to do with access to justice.

The ABS model that is most discussed these days is that created by the UK’s Legal Services Act of 2007, applicable to England and Wales. The ostensible purposes of that Act were “to support the rule of law, . . . to improve access to justice, . . . to promote the interests of consumers,

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... [and to encourage] the independent, strong, diverse and effective legal profession.” That was sufficiently and probably deliberately bland so that nobody could seriously oppose it and few did. The program is quite complicated and the legislation is hard-to-read. Basically, the law carved out six “reserved activities” including such things as litigation, the right of audience, reserved instrument activities and probate activities. They are reserved to nine categories of “authorized providers” most of whom are licensed lawyers; all other legal services are open to competition from alternative non-lawyer providers. Not every “authorized provider” is authorized to practice each category; only barristers, solicitors and legal executives can practice all of them. Each category of “authorized providers” is in turn regulated by a different “approved regulator” who can authorize the provider to practice any of the six reserved activities that the provider was otherwise not authorized to practice. The law also provides for the licensing of ABSs, including the entity as well as the individuals. Under the auspices of the Legal Services Board, there are five designated licensing authorities that are empowered to authorize ABSs. They include the Solicitors Regulatory Authority, the Council of Licensed Conveyancers and the Institute for Chartered Accountants, i.e. not all lawyers. Individual members of the ABS and the entity itself must be licensed. Each ABS firm must designate an officer who would be responsible for ensuring that professional obligations were met.

In the England and Wales today, there are many different ABS forms, including several in which US companies such as Ernst & Young, KPMG, PriceWaterhouseCoopers and Legal Zoom are authorized to offer legal services in areas other than the “reserved activities.” The expected benefit of this structure is more competition; there is no expectation that it will make either access to justice or access to legal services more available, although that may turn out to be the case. It
should be noted that unlike the US, the UK has a long tradition of non-lawyer-based legal advice and assistance.

A 2016 UK report on prices paid for legal services concluded that the costs for the legal services of conveyancing, divorce and wills were less when those services were delivered by an ABS and that “67% of consumers who paid for private legal work performed by ABSs said that they received ‘good or very good value for their money.’”\(^{65}\) According to an unpublished study by IAALS, there is evidence that generalist solicitors in the UK, “in spite of their training and professional qualifications, were not apparently performing better than generalist lay advisers.” These surveys were neither robust nor statistically sufficient but they may be directionally correct. Nevertheless, English consumers have more options than American consumers, primarily because of unbundled services and a wide range of advisory services. According to several UK reports, ABSs are more likely than other practice entities to use technology and they show higher productivity and innovation. In addition, “there was no loss of employment for lawyers.”\(^{66}\)

Professor Stephen Mayson of University College London has recently completed a study of the effects of the 2007 Legal Services Act and has concluded that the creation of ABSs in England and Wales has had no appreciable effect on the access-to-justice gap. The new ABSs are still essentially law firms, according to Professor Mayson.\(^{67}\)

\(^{65}\) OMB RESEARCH, PRICES OF INDIVIDUAL CONSUMER LEGAL SERVICES RESEARCH REPORT, 3 (2016).


\(^{67}\) IAALS Virtual Convening on Regulatory Innovation, October 26, 2020.
The Arizona, Utah and California ABS proposals do not address the arguments that have been made against multidisciplinary practice in the past, including the following: 68

1. Independence. Non-lawyers might compromise a lawyer’s professional judgment even though lawyers must be independent from third parties and their clients;

2. Ethical Rules. Non-lawyers might act with impunity because they are not governed by a Code of Professional Responsibility and without training in ethics, might inadvertently violate the ethical rules.

3. Practicing Law. Non-lawyers might inadvertently “practice law” even though they are not licensed to practice.

4. Client Confidentiality. Non-lawyers might gain access to confidential client communications to which they are not entitled.

5. Disclosure of Client Information. Lawyers have ethical obligations to disclose certain client communications in certain circumstances, such as to prevent imminent death, but non-lawyers have no such obligations. The reverse is also true. For example, accountants have affirmative disclosure obligations that lawyers do not have. If accountants and lawyers working in the same firm are advising the same client at the same time, there might be a serious conflict of interest or obligations.

6. Attorney-client privilege. The involvement of non-lawyers in a matter with lawyers might destroy the attorney-client privilege and their presence may make clients reluctant to

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68 B. Johnson, Ready or Not, Here They Come: Why the ABA Should Amend the Model Rules to Accommodate Multidisciplinary Practices, 57 Wash. & Lee L. Rev. 951 (2000). This article provides answers to these arguments.
disclose information to their lawyers. In addition, they may increase the opportunities inadvertently to waive the attorney-client privilege.

7. **A Potential Conflict-of-Interest.** Lawyers have an obligation to promote their clients’ best interests, but if non-lawyers are owners in law firms, the lawyers may also have a fiduciary duty to promote the interests of the non-lawyers in their firms. If the lawyer believes that the non-lawyer has given the client incorrect advice, the lawyer’s advising the client of that fact would create a potential conflict.

8. **Unauthorized Practice of Law.** Because the “practice of law” is not rigorously defined, it is possible that non-lawyers might intentionally or inadvertently engage in the unauthorized practice of law.

9. **Fee-splitting.** One of the reasons for the prohibition against fee-splitting is to prevent the practice of “running and capping” (sometimes called “ambulance chasing”) in which a non-lawyer recruits clients in return for a percentage of the lawyer’s fee, inducing lawyers to be more interested in profit rather than the client’s interest.

10. **Competitive Concerns.** Some have argued that allowing non-lawyers to have financial interests in law firms might lead to “Walmart law” that would allow large retail companies to compete unfairly with small law firms, leading to the ruin of the legal profession by putting smaller law firms out of business. In fact, this is already happening with services such as “Legal Zoom.”

    Perhaps for those reasons, the ABA has steadfastly refused to change its rules to allow ABSs. As early as 1928, the ABA prohibited lawyers sharing fees with non-lawyers and its 1980 Canon 3 provided that “A Lawyer Should Assist in Preventing the Unauthorized Practice of Law.”

    The argument set forth in the ABA’s Ethical Considerations for that Canon was that the “purpose
of the legal profession is to make educated legal representation available to the public” and that Canon 3 would allow the public to be able to rely upon the “integrity and competence of those who undertake to render legal services.” That may not be the case with an ABS.

In 1977, the ABA’s Kutak Commission, which was charged with reviewing and possibly revising the Model Code of Professional Responsibility, considered amending Rule 5.4 to permit non-lawyers to hold financial interests in law firms. In its “proposed final draft” issued in 1981, the Kutak Commission proposed amending Rule 5.4 to allow lawyers to partner in organizations in which a non-lawyer held a management interest or held stock or interests in the organization. But the reason proffered was unsatisfactory to the ABA: “Given the “complex variety of modern legal services,” lawyers could no longer “guarantee that their business structure guaranteed compliance with the existing Rules of Professional Responsibility.” The House of Delegates predictably rejected the proposal for four reasons: (1) the proposed rule interfered with the lawyer’s professional judgment; (2) the proposed rule might lead to corporate ownership and operation of law firms (called by some the “Fear of Sears”); (3) the proposed rule would destroy lawyer professionalism; and (4) the rule might have other negative but unknown effects on the legal profession.

Later, in 1998, the ABA created a Commission on Multidisciplinary Practice. That Commission also recommended that lawyers be permitted to share fees and to practice in concert with non-lawyers but that recommendation too was rejected by the House of Delegates. In fact, the ABA went even further and passed Resolution 10F that, among other things, called upon states that permitted law firms to own non-lawyer businesses to pass rules prohibiting non-lawyers from owning and controlling the practice of law. The Commission on Multidisciplinary Practice was disbanded promptly thereafter and the subject of multidisciplinary practice essentially
disappeared, as did the notion that an accounting firm or an investment bank might own or take a share of ownership in a law firm.

However, the subject did not entirely disappear; in fact, it has recently come back to life in a different form. Nevertheless, today, only one US jurisdiction, the District of Columbia, allows non-lawyers to have an interest in law firms, although at least three other states, Utah, Arizona, and California may soon be added to the list.
APPENDIX B

Lessons Learned from Washington State, Arizona and Utah

We describe below the requirements and implementation mechanisms of the three states that have already established licensing programs permitting non-lawyers to perform certain legal services. As noted above, these three programs are far broader that the limited programs that we recommend in this Report. However, in the event that the programs in Arizona and Utah are successful (Washington State’s program has been suspended) they might provide a useful template for New York to consider in the future and for that reason, we believe that it is important to understand exactly how each of the three programs was designed to work and why one of the three was suspended.

Washington State

The Washington Supreme Court gave control over its LLLT program to the Washington Bar Association, which created the admission requirements for the program. They were extensive and in hindsight most observers believe that was a mistake. Although the Bar Association “supported” the program, the requirements were so onerous that very few actually applied for the license. Today, there are only 39 LLLTs in Washington State.

Applicants for the program had to have an Associate’s degree or higher and were required to take 45 credits of legal studies at an ABA-approved law school or an ABA-approved paralegal program. Those requirements included eight credits of Civil Procedure, three credits of Contracts, three credits of Interviewing and Investigation Techniques, three credits of Law Office Procedures and Techniques, eight credits of Legal Research, Writing and Analysis, and three credits of Professional Responsibility. Waivers were allowed for applicants who had ten years or more of
experience as a paralegal. Applicants had to pass three examinations, a Core Competency Exam, an LLLT Practice Area Exam, and a Professional Responsibility Exam. Applicants were also required, prior to licensing, to obtain 1,500 hours of substantive law-related work experience as a paralegal or legal assistant supervised by a lawyer. Applicants were also required to pass a character and fitness review.

The practice of LLLTs was supervised by an LLLT Board and rules of professional conduct were created that were nearly identical to the rules of professional conduct for lawyers. Under the Supreme Court’s Admission to Practice Rule 28, LLLTs were permitted to render legal assistance only in the area in which the LLLT was licensed and to perform only the following limited legal assistance:

1. Obtain relevant facts and explain the relevancy of such information to the client;
2. Inform the client of applicable procedures and the anticipated course of the legal proceeding;
3. Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;
4. Provide the client with self-help materials prepared by a Washington lawyer or approved by the LLLT Board, which contain information about the relevant legal requirements, case law basis for the client’s claim, and venue and jurisdiction requirements;
5. Review documents or exhibits that the client has received and explain them to the client;
6. Select, complete, file and effect service of forms that have been approved by the State of Washington . . . forms the content of which is specified by statute, federal forms, forms.

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69 For example, the Family Law Practice Area Exam was a 90-minute essay question a 90-minute performance test session and a 90-minute multiple choice session.
prepared by a Washington lawyer or forms approved by the LLLT Board and advise the client of the significance of the forms to the client’s case;

7. Perform legal research;

8. Draft letters setting forth legal opinions that are intended to be read by persons other than the client;

9. Draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;

10. Advise the client as to other documents that may be necessary to the client’s case and explain how such additional documents or pleadings may affect the client’s case;

11. Assist the client in obtaining the necessary records, such as birth, death, or marriage certificates;

12. Communicate and negotiate with the opposing party or the party’s representative regarding procedural matters, such as setting court hearings or other ministerial or civil procedure matters;

13. Negotiate the client’s legal rights and responsibilities, provided that the client has given written consent defining the parameters of the negotiation prior to the onset of the negotiations; and

14. Render other types of legal assistance when specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed.

At the time the LLLT program was suspended, the LLLTs were only permitted to render legal services in certain specified domestic relations matters: divorce and dissolution, parenting and support, parentage or paternity, child support modification, parenting plan modification, domestic violence protection orders, committed intimate relationships only as they pertain to parenting and
support issues, legal separation, nonparental and third party custody, other protection or restraining orders arising from a domestic relations case, and relocation. In addition, the LLLTs were required to complete five credit hours in basic domestic relations subjects and ten credit hours in advanced and Washington specific domestic relations subjects. They were also required to take annual CLE courses and to have professional liability insurance in the amount of at least $100,000 per claim.

The Washington State program was suspended in mid-2020 because it was deemed to be too expensive and because there were very few applicants for the program. At the moment, there are only 39 LLLTs in Washington State.

**Arizona**

Arizona’s LP program was created by an amendment to the Arizona Code of Judicial Administration\(^{70}\) and was limited to certain substantive areas of the law and appearances in certain courts: family law, limited civil cases before a municipal or justice court (including landlord-tenant and debt collection cases), criminal misdemeanor matters where the penalty of incarceration was not at issue, and administrative law before an administrative agency that allows appearance by LPs.

Applicants to the Arizona LP program must have at least an associate’s degree in paralegal studies or an associate’s degree in any subject plus a certificate in paralegal studies approved by the ABA. Such applicants for a license in family law and civil practice had to complete three credit hours in Family Law, six credit hours in Civil Procedure, three credit hours in Evidence, three credit hours of Legal Research and Writing and a minimum of 120 hours of experiential learning under the supervision of a lawyer that includes content on advocacy. There are similar requirements for criminal law and administrative law licenses. For all three licenses, there was

\(^{70}\) Section 7-210 of Chapter 2 of Part 7.
also a three credit hour requirement in Professional Responsibility. The credit hour requirements were similar for applicants with a bachelor’s degree in law, a Master of Legal Studies degree, a JD degree or an LLM from an accredited law school (for foreign lawyers only). Within one year of being licensed, LPs must complete the Arizona state bar course on Professionalism.

If the applicant does not meet the credit requirements described above, the applicant must have completed seven years of full-time substantive law-related experience within the ten years preceding the application and must have had at least two years of such experience in practice area in which the applicant seeks licensure.

All applicants must also successfully pass an examination that includes questions on legal terminology, substantive law, client communications, data gathering, document preparation, the ethical code for LPs and professional and administrative responsibilities pertaining to the provision of legal services. They must also make the same required public disclosure that lawyers are required to make with respect to the availability of malpractice insurance and they must submit fingerprints for a criminal background investigation. They are bound by most of the provisions in the Arizona Rules of Professional Conduct and they are affiliate members of the state bar.

Quarterly each year, the Arizona State Bar is required to supply to a newly created Board of Nonlawyer Legal Service Providers data concerning charges filed and complaints lodged against LPs and recommendations concerning modifications or improvements to the LP program.

Utah

Utah’s LPP program was originally opposed by sixty percent of the bar, according to the Utah Task Force, and perhaps for that reason, Judge Deno Himonas anticipates that when finally implemented, the program will be small. In December 2019, Judge Himonas told Above the Law
that he anticipates that there will be only 20 LPPs in two years and only 200 LPPs in the next decade.71

The program requires applicants to have a law degree from an ABA-approved law school, an associate’s degree in paralegal studies, a bachelor’s degree in paralegal studies or a bachelor’s degree in any subject plus a paralegal certificate from an accredited program or fifteen credit hours of paralegal studies from an accredited school. Waiver requests may be granted to applicants who can show that they have completed seven years of full-time substantive law related experience, 500 hours of substantive law-related experience in temporary separation, divorce parentage, cohabitant abuse, civil stalking, custody and support and name change under a supervising attorney. They must also provide proof that they have passed an ethics exam and the exams for the practice area in which they will be licensed.

In addition, applicants other than those with a law degree must have 1500 hours of substantive law-related experience within the last three years, including 500 hours of experience in the above-mentioned domestic relations matters for licensure in family law or 100 hours of substantive law-related experience in forcible entry and detainer or debt collection, all under the supervision of a licensed Utah attorney or LPP. Applicants without a law degree must also complete an approved course on Ethics and must have a recognized paralegal certificate.

All applicants must pass exams in ethics and in the specific area in which they will be practicing. They must also pass a character and fitness review and they must supply an FBI background check, driving and criminal records, military records, credit history and references from three persons, one of whom must be a lawyer.

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71 L. Moran, Utah’s Licensed Paralegal Practitioner Program Starts Small, Above the Law, December 12, 2019.
Utah’s LPPs will be licensed to practice law in three areas: family law, landlord-tenant law (including forcible entry and detainer) and debt collection matters in which the amount in question does not exceed the limit for small claims courts.

When licensed, the Utah LPPs will be permitted to offer the following legal services:

1. Enter into a contractual relationship with a natural person;
2. Interview a client to determine a client’s needs and goals;
3. Assist a client in completing required forms and obtaining documents to support these forms;
4. Review documents of another party and explain those documents to a client;
5. Inform, counsel, assist and advocate for a client in a mediated negotiation;
6. Complete a settlement agreement, sign the form and serve the written settlement agreement;
7. Communicate with another party or the party’s representative regarding the relevant forms and matters; and
8. Explain to a client the court’s order and how it affects the client’s rights and obligations.

Unlike Arizona’s program, Utah’s LPPs cannot appear in court on behalf of their clients. However, the LPPs are governed by LPP Rules of Professional Conduct and LPP Discipline and Disability Rules and are considered officers of the court. They are subject to a requirement to have trust accounts and to perform pro bono services. The program is administered by the Utah State Bar.
APPENDIX C

Memo

To: Hon. Edwina G. Mendelson,
   Deputy Chief Administrative Judge for Justice Initiatives

From: Shante Thomas, MPA

Date: October 2, 2020

Re: Research on National and International Nonlawyer Programs

Below are general descriptions and information on national and international nonlawyer programs. Please note that this is an ongoing research project and as I uncover additional programs or resources these materials will be updated.

Report: Nonlawyer Navigators in State Courts

In July 2019, the Justice Lab at Georgetown Law Center published a study to survey the landscape of nonlawyer navigator programs in state courts assisting self-represented litigants. The report identified and analyzed 23 programs in 15 states and the District of Columbia. The study presents a new look at the outlines of these programs and suggests recommendations to further incorporate nonlawyer navigators into justice system settings. Information about national programs referenced in this memo were drawn from this study.

Varied Approaches to Nonlawyer Navigator Programs

The Georgetown study found no visible single model for the navigator program; rather, there were considerable variations in staffing, scope, and design. The most common staffing arrangements involved paid staff, AmeriCorps members, and community volunteers (including high school, undergraduate, and graduate students). All of the programs studied required navigators to undergo training prior to assisting litigants, and navigators were supervised in some manner during their time with the programs.

With considerable variation across programs, navigators assisted litigants in several ways, including help filling out paperwork, physically navigating the courthouse, getting information and referrals, and communicating with opposing counsel. Some navigators also reported serving as emotional support to self-represented litigants. While many of those served by these programs were self-represented, some services were offered to both parties in a case.
Program Impacts and Recommendations for Further Expansion

At the time of the study, several of the programs had conducted evaluations to assess impact. The most common themes were the beneficial impact on the completeness and accuracy of self-represented litigants’ forms and filings, as well as feeling prepared. With respect to procedural justice measurements, the impact of giving litigants a space to be heard and share their stories also had positive impacts.

One major takeaway from the study was the need for funding to maintain navigator programs. According to the report, “many programs lack the institutional commitment to garner necessary resources for longer-term program sustainability, let alone expansion.” The report also highlights the opportunities presented by these programs for courts to learn more about the self-represented litigant experience.

Canadian Report on Public Legal Education

I also reviewed a report conducted by Clare Shirtcliff, a solicitor with Law for Life: The Foundation for Public Legal Education, a charity which runs the website AdviceNow. This website provides quality information on rights and legal issues for the general public in England and Wales. Ms. Shirtcliff spent five weeks in four provinces researching Public Legal Education (PLE) projects to find out how Self-Represented Canadian citizens are given the knowledge, skills and confidence to help them resolve everyday legal problems (and see if it could be replicated in the UK).

The report looked at four service providers: Vancouver Access to Justice Centre, Law Information Centres (LinC), Genesis Project and the Legal Services Society (LSS). In terms of service delivery, these programs reminded me of similar programs we have like Help Centers, Law Libraries and Legal Hand. The one program that stood out to me was the Legal Services Society. This organization accepts and processes applications for Legal Aid but also provides some direct legal services to the public. Unlike the other programs, only LSS provided limited legal advice and representation in family law.

Litigant in Person Support Strategy - England, Wales and Scotland

Part of the research done by Clare Shirtcliff in Canada contributed to the development of the Litigant in Person Support Strategy (LIPSS). LIPSS is a national partnership of charities working together to improve the experience of people facing the legal process alone by improving access to information, practical support, advice and representation. It is a collaborative project involving The Access to Justice Foundation, RCJ Advice, LawWorks, Law for Life, and Support Through Court and Advocate. Working in partnership with the Ministry of Justice, these six organizations, while independent, come together to deliver on the aims of LIPSS (“the Partners”). Through these services, people can access help online, in person and over the phone. The journey of a litigant in person is not linear, people access help at different points and require support tailored to their legal matter and wider needs. Whether it be through using an online benefits calculator and letter writing tool, getting one-time pro bono advice and representation, or having someone
provide emotional support during their hearing, the Partners work to ensure that each or all of these services are available for those who need them.

**New York Court Navigator Program**

Angela Redman, Esq., Coordinator of the NYS Court Navigator Program met with colleagues in the Office for Justice Initiatives (OJI) in April 2020 to discuss revamping the program. The consensus was that for the program to be expanded statewide there are a few considerations. The program would need a funding source and partnerships with non-profit organizations, legal service providers and local colleges. The OJI should provide guidance and support to establish the programs, but they would ultimately be supervised by the local court.

Listed below are some of the national programs that have been identified:

1. **Alaska** - Abused Women’s Aid in Crisis (AWAIC) is fortunate to have three legal advocates, covering all open courthouse hours, including evenings and weekends. Their legal advocates provide assistance with protective orders and can make referrals to outside agencies for legal representation in matters of divorce and custody. This service ensures that victims who are in crisis will have access to someone who can help them navigate a sometimes-confusing process.

2. **Maricopa County, AZ** - Providing Access to Court Services (PACS) AmeriCorps Members help self-represented litigants navigate the often-confusing court system. While serving in the PACS program members: learn about the judicial system and court process, gain real-life experience assisting court customers, promote access to justice to court visitors and provide resources to court customers.

3. **California** - JusticeCorps is a unique national service program that has helped over one million Californians find access to justice since it began in 2004. Powered by a partnership among California courts, campuses, community legal assistance providers, and AmeriCorps, JusticeCorps recruits college students and recent graduates who help people coming to court without attorneys. JusticeCorps members assist self-represented litigants by serving in court-based self-help centers in the Bay Area, Los Angeles and San Diego educating litigants on their legal options, mapping out next steps, and helping them tell their story. By providing neutral assistance—not legal advice—JusticeCorps members empower litigants to understand their options, to have their voices heard, and to confidently move forward with their legal matter.

4. **Westchester, NY** - The mission of the Bravehearts, a youth-led non-profit, is to empower young adults touched by the child welfare system to become active and authentic leaders in their own lives as they transition into adulthood. Bravehearts M.O.V.E. New York is the chapter-lead for the state. They work to improve services and systems that support positive growth and development by uniting the voices of individuals who have a “lived”
experience in various systems including mental health, juvenile justice, education and child welfare. *(not currently active)*

5. **New York City**- Housing Court Answers (HCA) was founded in 1981 when a group of concerned advocates working at community-based groups and legal service offices started two task forces to help tenants without lawyers in the Bronx and Brooklyn Housing Courts. HCA educates and empowers NYC tenants and small homeowners through information tables and a hotline. They provide guidance and support on Housing Court and housing law, rent arrears assistance, and homeless prevention. They also assist NYCHA tenants with an information table at 803 Atlantic Avenue in Brooklyn. HCA also conducts trainings for community groups, unions, elected officials and others on Housing Court procedures, eviction prevention programs and housing law. And, last but most important, they fight every day for the rights of unrepresented people in Housing Court.

6. **Queens, NY** - Pro Bono Net partnered with Legal Services for the Elderly in Queens (Part of Jewish Association for Services for the Aged - JASA) to develop a new web app that enables social workers to perform quick legal screenings for homebound and disabled seniors. JASA assists many at risk Queens seniors with their emergency issues, in particular housing, consumer debt, and elder abuse cases. However, many seniors are homebound or face significant obstacles getting legal help and to a courthouse. In many ways they personify the broader justice gap in America.

7. **New York City**- Legal Hand trains local volunteers at storefront centers in some of New York’s most vulnerable neighborhoods. These volunteers provide free legal information and referrals to their neighbors. Assistance can take many forms, including help with navigating the social services system, completing online legal forms, and drafting form letters. A legal services attorney is on-site at each Legal Hand office to train and assist volunteers.

Legal Hand operates in the Brooklyn neighborhoods of Brownsville and Crown Heights, in Jamaica, Queens, and in the Highbridge and Tremont neighborhoods of the Bronx. The program is run by the Center for Court Innovation in collaboration with the New York State court system, the Legal Aid Society, Legal Services NYC, and New York Legal Assistance Group.

8. **New York City**- Guardian Ad Litem Program (GAL). While most GALs are attorneys, it is not necessary to be an attorney to become a GAL in Housing Court. It is necessary for the prospective GAL to have some legal or social service background. Court-appointed GALs are expected to advocate on behalf of their client with the goal of making any necessary interventions to prevent eviction. Although the specific responsibilities of a GAL vary according to the case, common duties often include making court appearances, coordinating with social service agencies to secure needed entitlements or services, and negotiating settlements with other parties involved in the case.
9. **New York City**- Sanctuary for Families Court Advocates Project (CAP) trains and mentors summer associates and new law firm associates not yet admitted to the bar to advocate for pro se domestic violence victims seeking orders of protection. CAP places advocates directly in the courthouse and supervises them while they interview petitioners, draft petitions, and serve as advocates during their initial court appearance. CAP participants receive a five-hour intensive training and a detailed training manual before going to family court.

10. **Nassau County, NY**- Nassau County’s Matrimonial Navigator Program utilizes students from Hofstra Law School who are taking the Family Law and Skills class during the school year, and it utilizes court interns during summer months. The Navigators help unrepresented litigants fill out motion papers, statements of net worth and Judgment of Divorce packets. The Navigators are trained by the Supervising Matrimonial Judge’s staff and personnel from the clerk’s office. Navigators explain the paperwork and identify where information should be listed on the forms, but do not provide legal advice. Due to the pandemic, the program is currently operating virtually.

11. **District of Columbia**- Supportive Advocacy Team (SAT) members are essential personnel at the city’s two Domestic Violence Intake Centers (DVIC), providing comprehensive court-based advocacy services. SAT Advocates are a foundational link to further support survivors navigating the aftermath of a crisis. Some of the services they provide include: guidance through the Civil Protection Order process; referrals to a pro bono attorney; court preparation and accompaniment; social service referrals for mental health services, housing, and more; safety planning; assistance with public benefits; basic needs support; and assistance with any other portion of the court or social services system.

12. **Georgia**- The Southwest Georgia Legal Self-Help Center began the Legal Navigator program in June 2018. They provide legal information while also helping people navigate through the court system. While the courts were closed during the height of the pandemic, navigators went outside to serve people wearing masks and practicing social distancing to help patrons fill out forms. Calls to the center were re-routed to their personal cell phones. Navigators also used Facebook to inform the public and even met with people in local grocery stores to provide legal assistance. They maintained contact with 38+ partners, meeting almost anywhere. Between March 1, 2020 and June 30, 2020, they serviced 1,033 patrons. They have also used technology like Lifesize, Zoom or Facebook for videoconferencing purposes. Looking forward, navigators hope to host virtual town halls and zoom classes for the public.

13. **Illinois**- The Illinois JusticeCorps currently serves 13 courthouses in 11 counties. Three years ago, the Access to Justice (ATJ) Commission launched the Self-Represented Litigant (SRL) Coordinator grant program which is the second program to serve SRLs. This year, to fulfill a major goal of the Illinois Judicial Conference’s strategic agenda, the ATJ Commission expanded these existing networks to encompass representatives in all 24 judicial circuits. This Court Navigator Network of clerks and court staff based in
courthouses throughout the state serves as a bridge, linking their courthouses with others throughout the state to share ideas, develop new resources, and establish programs for assisting SRLs, perhaps through additional and new methods because of COVID-19.

14. **Maryland**- Court navigators are undergraduate, graduate and law students who have been trained about how the court works and can help an unrepresented person navigate the steps of the court process. This program focuses on helping tenants who are suing landlords for failure to repair hazardous housing conditions. The program also assists defendants in debt collection cases, working alongside attorneys from the Maryland Volunteer Lawyers Service and Pro Bono Resource Center.

Court navigators provide tenants with basic information about their legal options, assist them with filling out court forms, go with them into the courtroom hearings and into hallway negotiations, and aid with any follow-up steps afterward. They also help tenants with organizing their paperwork, figuring out budgets, and getting access to resources.

15. **Montana**- Justice for Montanans Americorps project places 23 members directly in local Montana communities to help provide and expand intake and outreach, legal information and referral services for low to moderate income residents seeking civil legal assistance.

16. **Oklahoma**- The courthouse Navigator Project provides guides to assist individuals who don’t have legal representation. Initiated by the Access to Justice Commission, in collaboration with Americorps, Legal Aid Services and the University of Oklahoma College of Law. The project stations volunteer law students within the Office of the Court Clerk to provide basic legal information and serve as guides for self-represented court users.
Sources:

Zorza, Richard; Udell, David, 2016 – New Roles for Nonlawyers to Increase Access to Justice
https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2545&context=ulj

McClymont, Mary E., 2019 – Nonlawyer Navigators in State Courts: An Emerging Consensus

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Report and Recommendations of the Working Group on Regulatory Innovation
Produced by the Regulatory Innovation Working Group of the Commission to Reimagine the Future of New York’s Courts
Allowing lawyers to enter into new and varied business arrangements to increase innovation and efficiency in Utah’s legal market and thereby increase access to justice is a central goal of the Court’s regulatory reform efforts. Permitting lawyers to share fees with nonlawyers is an aspect of these efforts. Thus, the Court, on September 1, 2020, authorized the sharing of reasonable fees with nonlawyers within the oversight of the regulatory reform Sandbox. It has become apparent, however, that the payment of referral fees—compensation paid to nonlawyers for the sole purpose of ensuring the referral of legal work—presents potential ethical challenges for lawyers and needs further informed consideration by the Court.

In light of this need for further study, as of today the Court is halting the consideration and authorization of bare referral fee arrangements paid by lawyers to nonlawyers. Bare referral fee arrangements are those in which payment is made by the lawyer to the nonlawyer solely to compensate the nonlawyer for referring a potential client to the lawyer; there is no other business relationship between the lawyer and nonlawyer.

The Court will ask its advisory committee on the rules of professional responsibility to undertake further study of the issue of referral fees paid to nonlawyers. The committee’s mandate in this regard will be to consider and recommend any further ethical guidance to be given to lawyers entering into referral fee arrangements with nonlawyers and to consider whether and how to oversee those arrangements, including whether the collection of data from lawyers in referral fee arrangements will be necessary. One of the committee’s first items of business will be evaluating whether to amend Rule 1.5(a) to
clarify that the percentage of a fee paid as a referral to a nonlawyer is a factor to be considered in the reasonableness of the fee.

Applications to the Office solely proposing referral fee arrangements without any other non-traditional services or models will be tabled until further notice from the Court. The Court will, however, continue to consider and, as appropriate, authorize, other innovative business arrangements and service models involving lawyers and nonlawyers that incorporate innovations beyond bare referral fee arrangements. Such arrangements and services will be processed through the Sandbox via the Innovation Office’s regulatory framework.
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EXECUTIVE SUMMARY

The CBA/CBF Task Force on the Sustainable Practice of Law officially kicked off its work in October 2019, and more background on the Task Force and a member list can be found here.¹

Dozens of members from diverse backgrounds across the legal community in Illinois and beyond – lawyers and other legal professionals – worked diligently over the past twelve months to develop a series of recommendations for regulatory reform. We believe these changes will make for a better and more sustainable legal profession, a better and more accessible justice system, and improved access to legal help for the consumer and small business markets.

BACKGROUND

The genesis for the Task Force and its ultimate recommendations is the recognition that today’s legal market for consumer and small business services is not working well for most involved. Most legal consumers do not even recognize they have a legal problem, and when they do know that their problem is legal in nature, they don’t know how or where to find affordable legal help. Lawyers trying to serve the consumer and small business market increasingly are struggling at a time when we have more lawyers practicing in Illinois than ever before. And more people than ever are coming to court without lawyers.

A market failure of this magnitude would normally be met with a wave of innovation and new services under classical economic theory. However, our antiquated Rules of Professional Conduct governing the business of law are artificially restraining market forces from fixing the problem to everyone’s detriment.

This failure in the legal market has been long in the making, and the COVID-19 pandemic has just exacerbated and underscored the problem. Not only are there huge implications for our courts and access to justice, but the negative impact on solo and small firm lawyers throughout the state is very real as well. A healthy legal profession and improved access to justice for the public are not opposing concepts; they are inextricably related and represent two sides of the same coin.

Among the key goals for the Task Force were the following:

- Create better opportunities for lawyers to practice law in a sustainable, financially viable manner;
- Reimagine the Rules of Professional Conduct to permit business models that will expand opportunities for Illinois lawyers to attract new clients and improve their bottom line; and
- Prioritize the use of legal technology to improve the ability of our courts and lawyers to provide legal services to a greater number of legal consumers and to make legal services more affordable and accessible.

¹ https://chicagobarfoundation.org/pdf/advocacy/task-force-members.pdf
The Task Force's proposed solutions are framed around the Illinois Supreme Court’s Regulatory Objectives² and Strategic Agenda³, and our Task Force Guiding Principles and Objectives⁴. Recent resolutions from the Conference of Chief Justices⁵ and the American Bar Association⁶ as well as the ongoing work of other states offer further support for the urgency of this work. Finally, we have built off the experience of other professions who recognize a wider range of business models and have markets that function better for both the professionals and the public.

Disruption and change are already happening all around us, and the question is how we are going to respond to them. We can either take a lead role in shaping that change, or we can watch as outside forces shape the future for us. Either way, the status quo is unacceptable.⁷

THE TASK FORCE PROCESS

The Task Force carried out its work through five committees:⁸

- Modernizing Lawyer Referral & Law Firm Models
- Regulating Technology-Based Legal Products and Services
- Optimizing the Use of Other Legal Professionals
- Expanding the Limited Scope Representation Rules
- Plain Language Ethics Rules

Full reports from each of the committees are included in this report. Their collective recommendations are briefly summarized below, organized by the three major issue areas they address.

The Task Force is proud of the broad consensus our members achieved in developing these recommendations. In the handful of instances where there were dissenting views on the committee developing the recommendations, those views are noted in the accompanying report with that recommendation. One Task Force member also took issue with some of the recommendations developed by other committees, and his letter to the Task Force chairs is attached as Appendix I.

Over the summer, the Task Force held a public comment period during which members of the bar and public were invited to share feedback on its recommendations. The Task Force also hosted a virtual town hall hearing⁹ via zoom to collect verbal feedback on the report. All written feedback received is organized by recommendation and included in Appendix J. The Task Force carefully assessed all feedback received, and where we received constructive suggestions for changes, those comments were incorporated into the final recommendations unless they already had been considered in the Task Force process.

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² https://www.iardc.org/Regulatory_Objectives.htm
³ https://courts.illinois.gov/SupremeCourt/Jud_Conf/IJC_Strategic_Agenda.pdf
⁶ https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/
⁷ See the National Center for State Courts's “Goodnight Status Quo” tiny chat https://www.ncsc.org/newsroom/public-health-emergency/tiny-chats
⁸ https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/
⁹ https://www.youtube.com/watch?v=L7PUBNYbWgl&feature=youtu.be
TASK FORCE RECOMMENDATIONS

The overarching issue the Task Force has focused on is the growing disconnect between the legal needs of the public and lawyers who could serve them. Our Task Force proposals directly address this disconnect in three ways:

1. Helping lawyers to connect to more potential clients and offer more affordable and accessible solutions
   - Recognizing a new Intermediary Entity model to help lawyers connect to potential clients and access necessary business and administrative services
   - Modernizing the Rules so that lawyers can offer technology-based services
   - Improving and possibly expanding the Rules for limited scope representation
   - Developing new or amended Rules on alternative fees and fee petitions
   - Recognizing a new Licensed Paralegal model so that lawyers can offer more efficient and affordable services in high volume areas of need

2. Helping people to recognize they have a legal problem and where they can turn for affordable and reliable legal help
   - Streamlining the Rules concerning lawyer advertising
   - Recognizing a new Community Justice Navigator model to replicate the success of the Illinois JusticeCorps program in the courts
   - Developing a new Rule for technology-based legal products
   - Creating an online hub for the public to find Court-approved sources for information and assistance (technology-based products/services, Community Justice Navigators, and Intermediary Entities)

3. Spurring more innovation in the profession and delivery of services
   - Enabling lawyers to collaborate with other professionals integral to business success (new Intermediary Entity, technology-based service rules)
   - Adopting a clearer practice of law definition with a recognized safe harbor
   - Giving lawyers a path to work with entities offering technology-based products in the legal market
   - Proposing a broader plain language review of the Rules to modernize the Rules with the lightest hand of regulation needed to achieve the Court’s regulatory objectives

As the Court and other partners implement these recommendations, accessibility to people with disabilities should be top of mind.

Regulatory reform cannot fix all the ills that afflict the legal market today, but it is absolutely critical to solving the problem. The Court’s leadership and continuing work in simplifying and promoting better access to the courts (including remote access) is equally important to the ultimate goal of making legal services affordable and accessible for all, as is proper funding for pro bono and legal aid for people who are not in a position to pay for services.

While each of these three prongs is essential to achieving a truly fair and accessible justice system, it is imperative that we maximize the ability for market-based solutions to improve access. The Task Force’s recommendations are designed to do just that. The full Report of the Task Force follows.
SUMMARY OF RECOMMENDATIONS

The overarching issue the Task Force has worked to address is the growing disconnect between the legal needs of the public and lawyers who could serve them. Our Task Force proposals directly address this disconnect in three interrelated and often overlapping ways:

HELPING LAWYERS CONNECT TO MORE POTENTIAL CLIENTS AND OFFER MORE AFFORDABLE AND ACCESSIBLE SOLUTIONS

1. Recommendation #1: Recognize a new Intermediary Entity model to help lawyers connect with legal consumers and access necessary business and administrative services (Page 29)
   a. This proposal clarifies that so long as there is protection of the lawyer’s professional independence of judgment, lawyers can responsibly collaborate with other entities to:
      i. Improve and expand the ways they can connect with legal consumers, and
      ii. Access the business, technology, and administrative services necessary for solo and small firms to succeed in today’s world.

   **Summary:** Our Rules of Professional Conduct artificially restrict the business models lawyers can use and are unduly constraining lawyers from collaborating with the business, marketing, technology, and other professional disciplines needed to connect with and sustainably serve the large untapped middle market. Under the current Rules, solo and small firm lawyers are unreasonably expected to do it all – be good lawyers, be good businesspeople, and develop brands that can attract consumers.

   Other professions are way ahead of us and allow doctors, dentists, accountants, and others to utilize a broad range of business models for their practices to best meet their needs. This proposal would enable solo and small firm lawyers to do the same by allowing them to collaborate with other “intermediary entities” that bring the necessary scale and expertise.

2. Recommendations #2A-B: Enhancing the availability of technology-based legal products and services and authorizing greater participation by lawyers in technology solutions (Page 38)
   a. Recommendation #2A enables lawyers to responsibly offer technology-based legal products and services that today’s legal consumers expect and demand, enabling lawyers to compete on a level playing field with other entities already doing so (Page 42).
   b. Recommendation #2B, with the knowledge that a growing number of entities today already offer technology-based legal solutions and legal consumers are responding, would formally authorize and recognize an “Approved Legal Technology Provider” designation. To qualify for this designation, individuals or entities would have to meet criteria that are intended to provide consumer protection (Page 47).

   **Summary:** Our current Rules of Professional Conduct are constraining lawyers from competing on a level playing field with legal technology companies that are creating technology-based legal products to meet the growing demand for legal services by low- and middle-income people and
small businesses. Consumers want access to these products as one of their options for legal services, and it is a growing share of the market. This proposal enables lawyers to responsibly offer technology-based legal products and services that today’s legal consumers expect and demand, enabling lawyers to compete on a level playing field with other entities already doing so.

This proposal also modernizes the rules to create a new regulated category of entities known as Approved Legal Technology Providers. By meeting certain requirements outlined in the proposed rules, lawyers could provide technology-based legal products and services in collaboration with these entities and the public would be better served.

3. **Recommendations #3A-D: Improve the Rules for limited scope representation (Page 51)**
   a. These proposals encourage wider use of limited scope for the benefit of lawyers, clients, and the courts by:
      i. Recommendation #3A: Streamlining the limited scope rules to expand the use of Limited Scope Court Appearances (Page 53),
      ii. Recommendation #3B: Enhancing educational programming on limited scope for law students, attorneys, judges, and court staff (Page 58),
      iii. Recommendation #3C: Expanding and improving data collection on limited scope representation (Page 62), and
      iv. Recommendation #3D: Considering expansion of limited scope representation in federal court (Page 63).

   **Summary:** Collectively, these four recommendations aim to streamline and promote the rules for limited scope representation, an underutilized tool to better serve clients who otherwise are not currently going to lawyers.

4. **Recommendation #4: Develop new/amended Rules on alternative fees and fee petitions (Page 64)**
   a. These proposals clarify that:
      i. Lawyers are encouraged to use recognized alternative fee structures to better meet client needs, and
      ii. These alternative fee structures can be the basis for a fee petition.

   **Summary:** One of the biggest impediments to affordable legal help in the consumer and small business market is that the market for legal services today is largely opaque when it comes to pricing. People who might be able to afford the legal help they need often do not even try to get a lawyer because they have no idea what it might cost and assume it will be unaffordable. This proposal would amend the rules to explicitly authorize and encourage the use of fee agreements not based on an hourly rate and create a new Supreme Court Rule that explicitly authorizes the filing of fee petitions based on alternative fee arrangements.
5. **Recommendation #5:** Recognize a new Licensed Paralegal model so that lawyers can offer more efficient and affordable services in high volume areas of need (Page 67)
   a. This proposal expands the services that a new category of licensed paralegals can offer while working under the supervision of a lawyer, using Rule 711 as a framework.

   **Summary:** Solo and small firm lawyers have a challenge in making their services affordable to the underserved middle market because they have to handle most aspects of the legal work on their own, including routine court appearances such as status hearings. Serving clients in the many “legal deserts” around the state where there are few if any lawyers is even more challenging. This proposed recommendation would create a new licensed paralegal designation that would expand the services that a new category of paralegals can offer while working under the supervision of a lawyer, using Rule 711 as a framework. This change would help attorneys reduce the cost of legal services and better reach underserved communities around our state.

**HELPING PEOPLE TO RECOGNIZE WHEN THEY HAVE A LEGAL PROBLEM AND WHERE THEY CAN TURN FOR AFFORDABLE AND RELIABLE LEGAL HELP**

6. **Recommendation #6:** Streamline and modernize the Rules around lawyer advertising (Page 74)
   a. This proposal would streamline the overly prescriptive, confusing, and counterproductive Rule 7 series of the Rules of Professional Conduct to focus on the core principle that lawyers should refrain from making false, misleading, coercive, or harassing communications.

   **Summary:** Studies regularly show that many, if not most, people in our community today do not know how to connect to reliable legal information or find a good lawyer whose skillset matches their needs — and that is when they know they have a legal problem. The ability of lawyers to advertise to raise awareness and stimulate the market is a crucial part of helping people recognize they have legal problems with potential legal solutions. However, the current Rules are confusing and overly prescriptive, creating a chilling effect on innovation and communication by lawyers who are trying to comply with the requirements. This proposal streamlines the overly prescriptive, confusing, and counterproductive Rule 7 series of the Rules to focus on the core principle that lawyers should refrain from making false, misleading, coercive, or harassing communications. Solo and small firm lawyers then could use the same tactics to advertise and market their services as in other professions and industries so long as they are consistent with that core principle.

7. **Recommendation #7:** Recognize a new Community Justice Navigator model to build off the success of Illinois JusticeCorps in the courts (Page 84)
   a. This proposal essentially would create a community-based counterpart to Illinois JusticeCorps to help the public identify legitimate sources of legal information and resources and connect people to lawyers and other appropriate forms of legal help.
Summary: There is a well-documented problem for access to legal help that starts well before people come to court. Many people in our community today often do not recognize when a problem has a legal dimension and may best be resolved through the justice system. When they do recognize that the problem may be legal in nature, people often do not know how to connect to reliable legal information or to find a good lawyer. To help reach people where they already turn to for help in their communities, the Task Force proposes that the Illinois Supreme Court work with the Administrative Office of the Illinois Courts to expand the AOIC’s court navigator network by adding the new position of “Community Justice Navigator.” These community-based Navigators would build off the already successful Illinois JusticeCorps model in the courts and operate within existing and trusted community institutions, such as public libraries, schools, religious institutions, community organizations, and offices of local, state and national legislators. The new program would be modeled after the Court’s Language Access Program, with a policy, registry, and Code of Conduct.

8. Recommendation #8: Create a hub where the public can find Court-approved sources for information and assistance (Page 89)
   a. By recognizing the new categories of Intermediary Entities (#1), Approved Legal Technology Providers (#2), and Community Justice Navigators (#7), the Court for the first time could create a web-based hub where the public could easily find vetted and approved sources for legal information and assistance.
   b. While it would not be an endorsement of any individual or entity, this new hub would fill a big gap in the system right now: the lack of any practical way for the public to know where they can turn for reliable legal help.

Summary: One of the biggest problems for the public today is not knowing how to find lawyers and other legal resources and assess whether they are the right fit for their needs. The Task Force’s recommendations to recognize these key intermediaries and resources would enable the Court to create a convenient resources page for the public similar to what the IRS already provides for tax issues.10

SPURRING MORE INNOVATION IN THE PROFESSION AND DELIVERY OF SERVICES*

* The full suite of Task Force proposals are integral to encouraging more innovation in the delivery of legal services, particularly the proposals to recognize an Intermediary Entity model (#1) and the proposals for technology-based products and services (#2A and #2B).

9. Recommendation #9: Adopt a clearer practice of law definition with a recognized safe harbor (Page 91)
   a. This proposal builds off the Court’s “Safe Harbor” policy for court personnel to provide a clearer and more realistic definition for the practice of law with a defined safe harbor

b. The current “we know it when we see it” definition of the practice of law is confusing for all concerned and inhibits innovation

**Summary:** We essentially have a “we know it when we see it” definition for the practice of law today, which serves no one well and opens up the Court and the profession to claims of protectionism when protecting the public is the primary goal. The uncertainty around the definition both inhibits much-needed innovation in legal assistance for the public and is a bad look for the profession when we so vigilantly try to enforce something we can’t define at a time when most people in need of legal help are not getting it. This proposed recommendation builds off the Court’s “Safe Harbor” policy for court personnel to provide a clearer and more realistic definition for the practice of law with a defined safe harbor.


a. Recommendation #10A: Undertake a broader plain language review of the Rules to modernize them with the lightest hand of regulation needed to achieve the Court’s regulatory objectives (Page 96).
   i. This proposal encourages the Court to undertake a broader review of the Rules of Professional Conduct to incorporate plain language principles and rethink overly prescriptive or unnecessary regulatory provisions.
   ii. The Task Force already has worked as much as practicable to limit unnecessary regulation and incorporate “plain language” into its proposals.

b. Recommendation #10B: LTF and ARDC should work together, with input from other stakeholders, to amend Rule 1.15 to accommodate the Court’s plain language initiatives (Page 98).

**Summary:** The Illinois Rules of Professional Conduct are in desperate need of a plain language overhaul in their entirety. The rules are long, and many sections are difficult to understand even for seasoned lawyers. The Task Force has tackled one of the most glaring examples by streamlining the Rule 7 series. This proposal encourages the Court to undertake a broader review of the Rules of Professional Conduct to incorporate plain language principles and rethink overly prescriptive or unnecessary regulatory provisions.

**11. Recommendation #11: Reconsider whether the Rule 5.4 restrictions on ownership of law firms are necessary and appropriate (Page 99)**

a. While the Task Force ultimately proposed the more limited recommendations to recognize the new categories of Intermediary Entities (#1) and Approved Legal Technology Providers (#2A-B), the Task Force recommends that the Court establish a process to evaluate whether broader changes to Rule 5.4’s limitations on ownership of law firms are necessary to spur more innovation in the delivery of services.

**Summary:** The current Rules artificially limit the business models that lawyers can utilize in their practices, which is contributing to the failure in the market for legal services. While the Task
Force recommendations for new “Intermediary Entity” and “Approved Legal Technology Provider” rules would go a long way towards remedying these problems, a majority of the Task Force believes that preventing people who are not attorneys from having an ownership stake in law firms is unduly stifling innovation and hindering solo and small firm lawyers from reaching the scale necessary to reach the consumer legal market. Other professions already allow different ownership structures, and other states considering regulatory reform around the country (notably Arizona and Utah) already have lifted these ownership restrictions. Rather than suggesting these broader changes to the rule right now, the Committee recommends the Court create a new committee to further study the benefits and potential harms of eliminating the prohibition on ownership and outside investment of law firms.

By adopting the above recommendations and collecting data following implementation so as to reliably measure their efficacy, the Supreme Court can create a better functioning legal market for all concerned: for lawyers, for the public, and for the court system.

These proposals would collectively promote a well-functioning consumer market for legal services that would look more like the consumer markets for other professional services. Lawyers would have access to a range of business models and collaborations to better meet the needs of the public. Consumers would have a variety of legal service options that range from free and low-cost “self-help” resources, to various forms of limited scope representation, to full representation. And they would be able to obtain those services through a transparent and competitive market that includes a variety of options:

- Online technology-based resources like Illinois Legal Aid Online and Legal Zoom
- Traditional, independent law firms
- Bar association lawyer referral programs
- Other for profit and nonprofit connecting services
- Local, regional, and national legal services networks
- Prepaid legal insurance plans
- An online resource hub and both community and court-based navigators to help people find and connect with appropriate legal resources and services.

Most of these market options currently exist in some form, but not in a transparent or easily navigable market for consumers.
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*These task force members were designated by the Illinois State Bar Association and Illinois Bar Foundation.

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Frederic S. Ury, Ury & Moskow, LLC

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COMMITTEE LIST

MODERNIZING LAWYER REFERRAL & LAW FIRM MODELS COMMITTEE

This committee was charged with expanding and improving the lawyer referral system and opportunities to connect more lawyers to paying legal consumers, (2) considering how we can open the door to different law practice models to expand opportunities for lawyers to represent clients in an affordable, financially viable manner, and (3) exploring modernizing the rules around fees and fee petitions. It put forth recommendation #’s 1, 4, 6 and 11.

Chair: Trisha M. Rich, Holland & Knight LLP
Reporters: Jessica Bednarz & Bob Glaves, The Chicago Bar Foundation

Members: Bridget Duignan, Latherow & Duignan; Regina P. Etherton, Regina P. Etherton & Associates; Agostino Filippone, Chokshi Filippone Law, LLC; Stephen L. Hoffman, Law Office of Stephen L. Hoffman, LLC; E. Lynn Grayson, Nijman Franzetti LLP; Jennifer Kelly, Anesi Ozmon; Edward T. Malone, Barack Ferrazzano Kirschbaum & Nagelberg LLP; Jayne Reardon, Illinois Supreme Court Commission on Professionalism; Roya Samarghandi, Carmel Law, LLC; and Gary Wachtel, Discover Financial Services

National Advisory Council Members: Jean Clauson, ARAG; Fred Headon, Air Canada; Scott Kelly, Community Lawyer, and Lynda Shely, The Shely Firm, P.C.

OPTIMIZING THE USE OF OTHER LEGAL PROFESSIONALS COMMITTEE

This Committee was charged with considering how the Illinois legal system might model the medical profession allowing differing legal paraprofessionals to assist clients and provide a variety of legal services such as community legal navigators, limited licensed legal technicians or reliance upon other professionals to assist with specific types of legal support and evaluate what training and/or certifications such providers might require. It put forth recommendation #’s 5, 7 and 9.

Committee Chair: Allison Wood, Legal Ethics Consulting, P.C.
Committee Reporter: Terry Brooks, Consultant

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11 The Optimizing Committee considered many existing models including those outline in the Legal Assistance Models Using Other Professionals or Laypeople chart in Appendix H (Page 116).
Committee Members: Hon. Robert Anderson (Ret.), Circuit Court of DuPage County; Jessica Bednarz, The Chicago Bar Foundation; Doug Brann, Greater Chicago Legal Clinic; Tisha Delgado, Amata Law Offices Suites; Bob Glaves, The Chicago Bar Foundation; Scott Kozlov, ARDC; Mark Marquardt, Lawyers Trust Fund of Illinois; Hon. Mary Anne Mason, Illinois Appellate Court (Ret.) & JAMS; Kruti Patel, Charles Wintersteen & Associates; Mony Ruiz-Velasco, Alianza Americas; and Mike Santomauro, Office of the Cook County Public Defender

National Advisory Council Members: Bridget Gramme, Center for Public Interest Law, San Diego; Fred Headon, Air Canada; Danielle Hirsch, National Center for State Courts; Rebecca Sandefur, Arizona State University School of Social and Family Dynamics & American Bar Foundation; and Kristen Sonday, Paladin

REGULATING TECHNOLOGY-BASED LEGAL PRODUCTS AND SERVICES COMMITTEE

This committee was charged with exploring how the legal profession can most effectively regulate technology-based legal products and services and the lawyers and entities that provide them to make reliable legal services, forms, documents, and self-help resources readily available to the public. It put forth recommendation #’s 2A and 2B.

Committee Chair: Mary Robinson, Robinson, Stewart, Montgomery & Doppke, LLC

Committee Reporter: William Hornsby, Law Office of William Hornsby

Committee Members: IV Ashton, LegalServer; Alex Bandza, Barnes & Thornburg LLP; Jessica Bednarz, The Chicago Bar Foundation; David Berten, Global IP Law Group; E. Lynn Grayson, Nijman Franzetti LLP; Tracy Kepler, CNA; Conor Malloy, Lawyers Committee for Better Housing; Patricia McCarthy, LexisNexis; Samira Nazem, The Chicago Bar Foundation; Audrey Rubin, Rubin Solutions; Lara Wagner, Rian Immigrant Center; and Stacey Weiler, Illinois Bar Foundation

National Advisory Council Members: Jean Clauson, ARAG; Fred Headon, Air Canada; Danielle Hirsch, National Center for State Courts; Scott Kelly, Community Lawyer; Josh King, RealSelf; Arthur J. Lachman, Attorney at Law; Dan Linna, Northwestern Pritzker School of Law & McCormick School of Engineering; John Mayer, Center for Computer Assisted Instruction; Joyce Raby, Independent Consultant; Allen Rodriguez, ONE400; Rebecca Sandefur, Arizona State University School of Social and Family Dynamics & American Bar Foundation; and Frederic S. Ury, Ury & Moskow, LLC

EXPANDING THE LIMITED SCOPE RULES COMMITTEE

This committee was charged with assessing ways to better promote and support limited scope representation under the rules and whether the limited scope rules in Illinois should be expanded beyond civil cases in state court to include misdemeanor, or quasi-criminal and/or federal court cases. It put forth recommendation #’s 3A, 3B, 3C and 3D.
Committee Chair:  Hon. LaShonda A. Hunt, Northern District of Illinois

Committee Reporter:  Samira Nazem, The Chicago Bar Foundation

Committee Members:  Jessica Bednarz, The Chicago Bar Foundation; J. Timothy Eaton, Taft Stettinius & Hollister LLP; David Holtermann, Lawyers Trust Fund of Illinois; Hon. Mary Anne Mason, Illinois Appellate Court (Ret.) & JAMS; Jeff Moskowitz, Attorney at Law; and John Thies, Webber & Thies, P.C.

PLAIN LANGUAGE ETHICS RULES COMMITTEE

This committee was charged with undertaking a critical review and assessment of the Illinois Rules of Professional Conduct with a focus on a renewed “plain English” approach. It put forth recommendation #’s 10A and 10B.

Committee Chair:  James J. Grogan, Loyola University School of Law

Committee Reporter:  Angela Inzano, The Chicago Bar Foundation

Committee Members:  Jessica Bednarz, The Chicago Bar Foundation; Steve Fus, Law Office of Steven Fus; Jim Grandone, Grandone Media Strategies; E. Lynn Grayson, Nijman Franzetti LLP; Jim Lestikow, Hinshaw & Culbertson LLP; Hon. Mary Anne Mason, Illinois Appellate Court (Ret.) & JAMS; Wendy Muchman, Northwestern University Pritzker School of Law; and Alison Spanner, Administrative Office of the Illinois Courts

National Advisory Council Members:  Arthur J. Lachman, Attorney at Law

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A CONFLUENCE OF VISION AND NEED: THE FORMATION OF THE CBA/CBF TASK FORCE

When the joint Chicago Bar Association/Chicago Bar Foundation Task Force on the Sustainable Practice of Law and Innovation convened in October 2019, it was widely understood that our system of delivering justice was not working – not for a large percentage of lawyers and certainly not for the majority of people that the justice system exists to serve. Over the past decade, our Supreme Court has spearheaded efforts on a variety of fronts to address the difficulties posed by the increasing percentage of litigants attempting to navigate the court system without a lawyer. Since 2012, the Commission on Access to Justice has endeavored to make the court system more accessible by, among other things, simplifying and standardizing court forms. For the past ten years, Illinois JusticeCorps, a project conceived by The Chicago Bar Foundation and later expanded into a statewide program in partnership with the Illinois Bar Foundation and the Illinois Supreme Court Commission on Access to Justice, has provided in-person guidance to litigants appearing in court. The Court amended Illinois Supreme Court Rule 13 in 2013 to permit lawyers to appear for limited purposes in a case, such as arguing a contested motion or handling an evidentiary hearing. Ill. Sup. Ct. Rule 13(c)(6) (eff. July 1, 2017). Beginning in July 2015, the rollout of e-filing began and brought with it the potential to eliminate unnecessary trips to the courthouse. The court has encouraged pro bono representation by counsel in civil cases, both at the trial and appellate level.

As laudable as these efforts have been, the improvements to delivery of services were not significant enough to address the gravity of the situation. The trend of people appearing in court without a lawyer has persisted and grown exponentially. The failures in the delivery system and the urgency of the need to address them were laid bare by the COVID-19 pandemic and the worldwide social unrest following the murder of George Floyd underscored the critical need for systemic reform.

While these circumstances existed before the onset of the COVID-19 pandemic, and the need to address them was obvious and urgent, the current health crisis has only served to magnify the imperative to act and to act now. As Michigan Supreme Court Justice Bridget McCormack observed, the pandemic “is the disruption our industry needed, even if it wasn’t the disruption our industry wanted.”12 The current health crisis has laid bare the fault lines in our already fragile and outdated method of resolving legal disputes.13 The inability of growing numbers of parties to effectively utilize our justice system to resolve their disputes, the inability of many lawyers to practice law in a satisfying and sustainable manner, and the inability of our courts to resolve cases other than through inconvenient, expensive, and time-consuming in-person appearances poses a serious threat to the viability of the third, co-equal branch of government and, ultimately, to respect for the rule of law as the guidepost for human conduct.

The goals of the Task Force dovetail with Resolution 2 of the Conference of Chief Justices passed on February 5, 2020,\textsuperscript{14}

"[T]he Conference of Chief Justices urges its members to consider regulatory innovations that have the potential to improve the accessibility, affordability and quality of civil legal services, while ensuring the necessary and appropriate protections for the public."

as well as the vision of our Supreme Court in the Strategic Agenda 2019-2022 released October 2, 2019.\textsuperscript{15} This Report is the product of the Task Force’s efforts.

HOW WE GOT HERE

Increasing numbers of lawyers today, particularly solo and small firm practitioners,\textsuperscript{16} struggle to earn a living. A study commissioned by the State Bar of California in 2018 found that, beginning in the 1970s, the segment of the legal profession serving individuals trended downward in terms of both the number of paying clients and lawyer income. William D. Henderson, “Legal Market Landscape Report” (July 2018) at 3\textsuperscript{17} According to the IRS, solo practitioners earned an inflation-adjusted $70,747 in 1988. By 2012, earnings (average earnings, not starting salaries) had fallen to $49,130.\textsuperscript{18} And according to the 2018 Clio Tents Report, 42% of the solo and small firm attorneys surveyed earned between $50,000 and $100,000 and 9% earned less than $50,000.\textsuperscript{19}

Mirroring the steady decline in profitability, lawyers practicing in solo and small firm settings spend only a small fraction of their time actually rendering legal services. A 2017 study found that the average small firm lawyer spends only 2.3 hours per day performing legal work. \textit{Id.} at 14, citing 2017 CLIO Legal Trends Report (2017).\textsuperscript{20} The remainder of a solo or small firm practitioner’s working day is generally spent on such necessary tasks as business development, office management, and bill generation and collection. \textit{Id.} While law schools train lawyers to practice law, they do not train them to run a business. But because our regulations prohibit lawyers from partnering with any professionals other than another lawyer, lawyers are saddled with a business model that prevents them from practicing our profession at the top of their license.

\textsuperscript{14} https://www.ncsc.org/__data/assets/pdf_file/0010/23500/02052020-urging-consideration-regulatory-innovations.pdf

\textsuperscript{15} (“If the courts are to continue to make good on the promise of equal justice under the law in the new and challenging environment, we must be proactive. Waiting for problems to develop and then responding will no longer do. Rather, it is critical that we anticipate the difficulties ahead and prepare for them in a reasoned and coordinated way, drawing on the insights and experience of every part, every level and every region of the Judicial Branch. It is with this purpose and in this spirit that our court decided last year to fundamentally restructure the Illinois Judicial Conference and assign it a new and specific responsibility: formulating a strategic plan to guide the future of the Judicial Branch.”).

\textsuperscript{16} Solo and small firm practitioners make up 41% of the Illinois State Bar Association membership and at least 25% of the membership of the Chicago Bar Association membership.

\textsuperscript{17} http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf (scroll to page 5)

\textsuperscript{18} https://www.cnn.com/2015/05/22/opinions/barton-rise-and-fall-of-lawyers/index.html

\textsuperscript{19} https://www.clio.com/resources/legal-trends/2019-report/read-online/

\textsuperscript{20} The same study also found that of the hours spent rendering legal services, only 82 percent was actually billed to clients and, of that amount, only 86 percent was collected, resulting in a collection rate representing the equivalent of 1.6 hours per day. \textit{Id.}
The inability of some solo and small firm lawyers to practice law in a sustainable manner has also contributed to the migration of new lawyers to areas where higher paying jobs are located in private practice, corporations, and government. In Illinois and across the country, lawyers are increasingly concentrated in large urban communities, leading to “legal deserts” in less populated areas. \(^{21}\) A survey of more recent data, including the November 2019 class of admitted Illinois attorneys, confirms an even bleaker reality. \(^{22}\)

Over the same period of time that lawyers have seen their practices shrinking, the percentage of litigants facing legal problems, but appearing in court without legal representation, has steadily continued to grow. The Commission on Access to Justice’s statewide survey reported in the Illinois 2017-2020 Strategic Plan confirms that 93 of Illinois’ 102 counties report at least 50% of civil cases involved a self-represented litigant on at least one side and in some case types, the rate was as high as 80%. In a 2016 survey conducted by the Commission’s Committee on Court Guidance and Training, 86% of judges and 98% of circuit clerks reported that the presence of self-represented litigants has made their work more complicated. The increasing prevalence of Illinois litigants without lawyers in civil matters is consistent with national trends. The most recent data from the National Center on State Courts found at least one party was unrepresented in 75% of civil cases, and in some areas of law that percentage was even higher.

At the same time more and more litigants are forgoing legal services. Studies show that representation by a lawyer positively impacts outcomes in low value, high volume cases such as landlord-tenant, mortgage foreclosure, and collection matters. See Rebecca L. Sandefur, “The Impact of Counsel: An Analysis of Empirical Evidence,” Seattle Journal for Social Justice, Vol. 9, Iss.1, Article 3 (2010) at 71-74 (tenants facing eviction for nonpayment of rent represented by lawyers are 4.4 times more likely to retain possession than those without a lawyer; in cases of average procedural complexity – tax, immigration, employment law, landlord/tenant, consumer claims, and general personal civil litigation - attorney representation in court increased by 6.5 times the likelihood that a litigant would prevail). But the majority of litigants involved in such matters, unable to locate or afford a lawyer, must fend for themselves. And to make matters worse, in large numbers of cases, one side – the landlord, the lender, the creditor, the employer, or the spouse who controls the assets – appears through a lawyer. No matter how simplified we make court forms, no matter how informative the guides to the courthouse are, and no matter how much assistance short of legal advice judges attempt to afford unrepresented litigants, \(^{23}\) people are at a huge disadvantage when they do not have access to an attorney, which can create the appearance that the judicial system itself is unfair.

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\(^{21}\) See [www.2Civility.org/the-disappearing-rural-lawyer](http://www.2Civility.org/the-disappearing-rural-lawyer) (noting statistics from the Illinois Supreme Court Commission on Access to Justice’s Advancing Access to Justice in Illinois 2017-20 Strategic Plan published in May 2017 that Cook County and collar counties account for 65% of the state’s population and 90% of its lawyers; 52 counties admitted fewer than five new attorneys in the last five years; 16 counties admitted none).

\(^{22}\) See [https://www.2civility.org/the-disappearing-rural-lawyer-part-ii/](https://www.2civility.org/the-disappearing-rural-lawyer-part-ii/) (noting that 76 Illinois counties have five or fewer new attorneys (or attorneys admitted in the last four years) and that more than one-third of Illinois counties (39) do not have any new attorneys.

\(^{23}\) See Ill. Sup. Ct. Rule 63(a)(4): “A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.”
The issues litigants face in these matters often have profound negative impacts on many aspects of their lives and the fair handling of these cases is critically important to society as a whole. For example, eviction quite often leads to homelessness or housing instability, triggering a cascade of problems including loss of employment, mental and physical health issues, and school absences for children. Shortly after the pandemic resulted in massive job layoffs, it was widely reported that most families could not handle an unexpected expense of $400, which underscores the potential impact of an adverse judgment in a consumer debt collection case. When the well-being of so many members of society is impacted by their involvement in the judicial system, we, as a profession, have a duty to be responsive to those needs.

Added to the perceived unfairness of our judicial system is the fact that, unlike virtually every other aspect of modern life, justice at the trial level is largely dispensed, as it has been for centuries, in brick and mortar buildings, in person, and in slow motion.24 Today people shop, pay their bills, prepare their taxes, and consult their doctors online and at a time and place convenient for them. Cell phones, almost universally available in our society, allow them to do that. Indeed, the computational power of today’s cell phones is “a thousand times greater and a million times less expensive than all the computing power housed at MIT in 1965.” John O. McGinnis and Russell G. Pearce, “The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services,” 82 Fordham L. Rev. 3041, 3045 (2014). But, at least until the onset of the current health crisis,25 the norm was that people without a lawyer had to appear in person at a courthouse, during regular business hours, and on multiple occasions to attend to a legal matter potentially affecting their ability to stay in their home, provide for their families, or redress their rights.

Despite these persistent and widening gaps in the availability of legal services for a large percentage of consumers, certain segments of the market function relatively efficiently, as measured by the ability of consumers to identify a legal problem and locate legal representation. At one end of the spectrum, corporations, wealthy individuals, and parties with contingent fee claims, are generally able to find lawyers to represent them and competition among lawyers in this market segment is fierce. In addition to traditional litigation, this group of consumers has available alternative means of resolving their disputes – private arbitration or mediation – which are viewed as less expensive and more efficient. While amounts spent on legal services rendered to individuals shrunk substantially between 2007 and 2012, dollars spent by corporate clients grew by over $26 billion during this same period – a growth rate of nearly 20%. Henderson, “Legal Market Landscape Report,” supra at 13.

At the opposite end of the spectrum – the market for free or low-cost legal services – nonprofit providers, increasingly through the use of technology, efficiently connect consumers with lawyers able to represent them. The problem in this part of the market is that due to a shortage of resources, the need for pro bono and legal aid services far outstrips the capacity to meet that need.

25 Both the Illinois Supreme Court and the business community at large have recognized that the lessons learned during the current health crisis should outlast the pandemic and prompt systemic change.
It is the ever-growing swath of people in between — low- and middle-income individuals and small businesses on one side, and lawyers unable to (i) connect with legal consumers in need of their services, and (ii) offer them affordable representation even if they could, on the other — that demonstrates the near total market failure in what has become the majority of matters pending in our court system. Under the status quo, the unavoidable and intolerable result is that two tiers of justice exist in Illinois: full representation justice for both (i) the wealthy and plaintiffs possessing claims that lawyers will take on a contingent fee basis and (ii) those eligible for free legal services who are lucky enough to connect to the lawyer who can represent them; and, for everyone else, DIY (Do It Yourself) justice. Through meaningful rule changes and regulatory reform, we have the perfect opportunity to reclaim our profession’s rightful place as representatives of every citizen entitled to access their chosen means of obtaining justice.

The Access to Justice Case

Improving the sorry state of access to justice for the public is a multi-tiered problem, and regulatory reform is just one part of the solution. It is not a replacement for pro bono and proper funding for legal aid services, which has been chronically underfunded for decades. Nor is it a replacement for the major court reform necessary to modernize and streamline access to the court process.

However, for moderate-income people (who make up more than half of the market) who fall in the gap between those who qualify for already overstretched free legal aid resources and those who can afford firms serving the high end of the market, there is a fundamental access to justice problem.

This is where we need to look at the regulatory structure for the business of law, which artificially restricts the business models lawyers can use to better serve this market and discourages collaboration with the other professionals and entities necessary to succeed in the modern world.

When regulations have allowed it, there is ample proof of improvements in access to justice for the broken middle market. First, when laypeople and other professionals have been given defined, vetted, and approved roles to assist, research shows they make a real difference. Just two of many examples are trained laypeople serving as court navigators (including Illinois JusticeCorps) to help unrepresented people in the courts, and accredited representatives in immigration, who play an integral, regulated role in the delivery system for immigration legal services.

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26 More than half of Illinoisans, and 52% of U.S. adults nationally, are considered "middle class," according to analysis by the Pew Research Center. [https://www.cnbc.com/amp/2020/07/23/calculator-tells-you-whether-or-not-youre-middle-class.html?s=09](https://www.cnbc.com/amp/2020/07/23/calculator-tells-you-whether-or-not-youre-middle-class.html?s=09)

27 Additional funding for legal aid organization and other resources has been a critically important issue for decades and will become even more pressing in the wake of the pandemic. The Chicago Bar Foundation’s fundamental mission of expanding access to pro bono and legal aid services and advocating for systemic change must proceed on a parallel track to those necessary to address the needs of middle class consumers of legal services. While the Task Force fully supports the ongoing and impactful efforts of the Foundation on this front, these issues are not the focus of the Task Force’s work.
Similarly, when technology-based solutions are permitted, they can materially improve access, and consumers clearly are responding. For example, the IRS explicitly permits and promotes a variety of free and paid self-help tools like TurboTax® for filing taxes, and millions use these services to prepare their taxes each year. While not explicitly permitted or promoted in the same way, millions of people and small businesses have turned to LegalZoom®, which offers a combination of online self-help tools and legal insurance plans and was valued at more than $2 billion in 2018. Even successful large law firms have created similar technology-based self-help resources for their corporate clients to complement their traditional firm services (e.g., Littler Edge, Norton Rose CASL Advisor).

Lastly, where other business models have been allowed, there is proof that more innovation in serving the consumer and small business markets has followed. In the United Kingdom, despite an overly complicated and restrictive regime for opening up their legal market, research shows that firms that adopted alternative business structures (ABS) are more innovative and have launched new models to better serve the middle class legal market. Co-op Legal Services is just one example of an ABS doing quite well there and better serving the public.

In sum, these solutions are expanding access where they are permitted and are striking a chord with both consumers and businesses, who are flocking to these services when given the opportunity. However, the lack of clarity in the rules on when these approaches cross the line into the unauthorized practice of law hinders the ability of solo and small firm lawyers to deliver these solutions to the consumers who need them, dissuades other professionals and laypeople from getting involved, and discourages other entities from entering the market.

Lessons from Other Professions

Other professions are far ahead of us in modernizing their business practices, and there is much we can learn from their experience.

For example, the medical and dental professions are well ahead of the legal profession in improving access. There are a continuum of care options with many different entry points for the patient. A range of professionals are available to assist and are known by who they are rather than being called “non-doctors” or “non-dentists.” And key to the first two, doctors and dentists have a variety of business models available to them for their practices to best meet the needs of both the professionals and their patients.

Similarly, three lessons stand out from the recent evolution of the tax and accounting professions in this context. Consumers have access to a continuum of resources and solutions that in most instances can be accessed from anywhere, starting with free and low-cost online self-help resources and gradually working up to more intensive, expert professional services depending on the situation. A range of professionals are available to serve the varying consumer needs. And finally, a variety of business models are available to the professionals that have fostered innovation and significant increases in access.

The expectations of clients and potential clients are shaped by what they experience in the rest of their lives. And they expect a continuum of options that starts online. And that goes for pricing too—having transparent, value-based options (e.g., one set price or a monthly subscription package) is now a default expectation.
To deliver these options to clients requires a range of expertise beyond legal savvy that the typical lawyer does not possess, including business, marketing, technology, and finance. And for a solo or small firm lawyer trying to affordably and effectively serve the consumer legal market, limiting their business options to the traditional law firm partnership model is like asking them to do so with one or both hands tied behind their backs. Other professions have thrived when they afforded their professionals a range of business models to choose from to best serve their clients. There is no reason the legal profession should not be able to do the same.

**Lessons from Better Functioning Parts of the Legal Market**

There also is much we can learn from the parts of our profession where the market is functioning better for lawyers and clients.

The corporate legal market is characterized by sophisticated buyers of services who have a very competitive market of large law firms and specialty boutique firms from which to choose.

The large firms serving this market have the size and scale to hire the other business and technology professionals they need, who now play an integral role in the success of these firms. They also have the resources and scale to invest in the technology necessary to efficiently and effectively deliver their services.

While smaller boutique firms serving this market may not have the size to hire these professionals full-time, serving a more lucrative part of the market typically allows them to invest in the necessary technology and to hire other professionals they need as contractors or consultants.

The personal injury segment of the legal market is another area that functions well. Personal injury firms, similar to the boutique firms serving the corporate and higher income individual markets, generally have the means to invest in the professionals and technology resources needed to succeed in their practices. And with their services focused on the consumer market, personal injury firms have the means to invest significant resources in the marketing and advertising necessary to educate and attract clients.

For clients, the contingent fee model gives them price transparency and certainty, aligns risks and rewards well, and gives them access to many lawyers who can serve them when they have good cases.

As is true with other professions, there is much we can learn from these and other efficiently functioning areas of the legal market to improve the broader consumer market for the critically important issues faced by the ever-growing numbers of litigants in our judicial system.

First and foremost, solo and small firms need access to business models beyond the traditional law firm model to be able to realistically invest in the other professionals and technology resources that larger firms and lawyers serving more lucrative areas of the market now take for granted.
THE TASK FORCE

In 2018, several jurisdictions across the country recognized the growing dysfunction in the market for legal services and began studying ways to revise their regulatory frameworks for the profession. As of this writing, supreme courts in Arizona, Florida, New Mexico, and Utah have commissioned bodies to study ways to improve the delivery of legal services through innovation. In addition, bar associations in a number of other jurisdictions, including California, Connecticut, the District of Columbia, and North Carolina, have done the same.28

Prior to the launch of the CBA/ CBF Task Force in October 2019, all states in which such committees had been formed had unified bar associations, i.e., membership by all lawyers admitted to practice law in the state is mandatory. Illinois is the first state in which a task force was launched by a bar association in which membership is voluntary. (The Connecticut Bar Association has since followed suit.) That the Chicago Bar Association, which relies on the voluntary payment of dues by its members, was prepared to lead the way on this project speaks volumes to its commitment to meaningful innovations for the benefit not only of the legal profession, but of all Illinois residents as well.

The 51-member Task Force draws on the experience and views of all segments of the legal profession: the judiciary, private practitioners in small, medium, large firm and corporate settings, solo practitioners, government lawyers, attorneys involved in alternative means of delivering legal services via technology, attorneys for regulatory bodies, attorneys working in the nonprofit sector, and paralegals. The Task Force is especially indebted to Bob Glaves, the CBF’s Executive Director, and Jessica Bednarz, CBF Director of Innovation and the Justice Entrepreneurs Project, for their leadership and assistance in bringing this project to fruition and keeping us on track. We acknowledge as well the invaluable assistance of staff members Angela Inzano and Samira Nazem, and volunteers Terry Brooks and Will Hornsby, on committee work. Finally, the Task Force is grateful to the Illinois Supreme Court for its support of this project and for the appointment of Alison D. Spanner, Administrative Office of the Illinois Courts, as liaison.

In addition to regular members, the Task Force has also been able to draw on the combined wisdom of a National Advisory Council comprised of 17 experts nationwide involved in similar efforts in other jurisdictions. Council members are recognized leaders in business, public service, academia, and law, but share the same passion to improve access to justice throughout the country, and in the communities where we live and work. Each Council member provides a unique expertise, background, and experience that have been invaluable to the Task Force in examining areas such as expanding the use of legal technology, updating ethics rules to reflect current law practice, and devising legal innovations to help lawyers, the judiciary, and the public we serve.

28 For a current list of state Task Forces and Committees, visit https://www.americanbar.org/groups/centers_commissions/center-for-innovation/
The five Task Force Committees met at least once a month following the inaugural Task Force Meeting in October and have diligently addressed the many issues they were asked to consider. They have routinely consulted with members of the Advisory Council, who have provided substantive and valuable input. Following the statewide stay-at-home order entered in mid-March, the Committees seamlessly transitioned their work to an online forum and the flow of work was uninterrupted. If anything, the pandemic has sharpened the focus of the work of the Committees and spurred the Task Force as a whole to adhere to the aggressive timelines set out last fall, which contemplated completion of the Report to present to the CBA and CBF Boards at their June meetings.
RECOMMENDATIONS

HELPING LAWYERS CONNECT TO MORE POTENTIAL CLIENTS
AND OFFER MORE AFFORDABLE AND ACCESSIBLE SOLUTIONS

Recommendation #1: Recognize a new Intermediary Entity model to help lawyers connect with legal consumers and access necessary business and administrative services

Recommendation #2A: Modernize the Rules so that lawyers can more actively participate in the development and delivery of technology-based products and services

Recommendation #2B: Explicitly authorize the delivery of technology-based legal products and services by individuals or entities and appoint a board to develop an appropriate regulatory mechanism responsible for registering and vetting Approved Legal Technology Providers

Recommendation #3A: Streamline the Limited Scope Rules to Expand the Use of Limited Scope Court Appearances

Recommendation #3B: Enhance Educational Programming on Limited Scope for Law Students, Attorneys, Judges, and Court Staff

Recommendation #3C: Expand and Improve Data Collection on Limited Scope Representation

Recommendation #3D: Consider Expansion of Limited Scope Representation in Federal Court

Recommendation #4: Develop new/amended Rules on alternative fees and fee petitions

Recommendation #5: Recognize a new Licensed Paralegal model so that lawyers can offer more efficient and affordable services in high volume areas of need

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RECOMMENDATION #1: RECOGNIZE A NEW INTERMEDIARY ENTITY MODEL TO HELP CONNECT LAWYERS WITH LEGAL CONSUMERS AND COLLABORATE WITH BUSINESS AND/OR ADMINISTRATIVE SERVICES

Watch the pocket chat for this recommendation

At a time when we have more lawyers actively practicing in Illinois than ever before, and more than half in solo or small firm settings, the great majority of Illinoisans with “bread and butter” legal issues are not getting help from lawyers. More people than ever before are going to court on their own even though most would prefer to be represented, and many could afford to pay something for it. Yet lawyers trying to serve this consumer legal market are not connecting with these potential clients and increasingly are facing financial challenges.

This is the classic definition of a market failure. In the rest of the business and professional world, the market would respond with innovative solutions and sophisticated marketing and advertising campaigns to attract and serve the untapped market. However, we do not see this happening in the legal profession at the scale necessary to close the gap.

The problem is that our current Rules of Professional Conduct artificially limit the business models that lawyers can utilize to address this market failure and better serve the increasingly untapped consumer legal market. By limiting solo and small firm lawyers to the traditional law firm model, the Rules are making it unduly difficult for them to compete in the modern business world and fueling the dysfunction in the market in two major ways.

First, the artificial business model limitations in the Rules require lawyers to not just be good practitioners, but also to have the business, marketing, technology, and finance expertise necessary to succeed in today’s world. Few lawyers possess all or even most of these necessary skills, and it is no wonder they increasingly are struggling to compete. Larger law firms and boutique firms serving more lucrative parts of the legal market can and do hire other professionals who bring this necessary expertise, but that is not a realistic option for solo and small firms serving the consumer legal market.

Second, the Rules limit the ability of lawyers to collaborate with larger entities and networks that have the scale and expertise to build brands that can effectively reach the broader consumer legal market. The expectations of legal consumers are shaped by what they see in the rest of their lives, and what they expect today is a range of options that they can easily find and assess online. While there are companies that try to bring this service to lawyers and the public, the lack of clarity and arbitrary limits in the current Rules on how fees can be collected and distributed between the parties distorts the market and discourages lawyers and entities alike from more innovative solutions.

In short, the current rules have created a confusing and distorted market that is not serving any of the key stakeholders well – lawyers, the public, or the justice system. And it is people in need of legal help who ultimately suffer most.

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As the rules hold lawyers back from meeting these needs, other business entities are stepping into the void, taking advantage of exceptions in the rules. These entities are bringing innovation and new service models into the system, but not always in a way that best serves the public when what people really need is a lawyer to help them.

**The Challenge for Solo or Small Firms Under the Current Rules**

Lawyers can and should be at the center of these innovations and solutions but need more flexibility to responsibly collaborate with other professionals to do so. Some forward-thinking firms and entities are proving lawyers can successfully serve the consumer market through innovation and new practice models, but only a small subset of our profession has the range of skills (business, marketing, technology, etc.) necessary to do so under the traditional solo or small law firm model.

In addition to being good lawyers, solo or small firm lawyers trying to serve this market effectively have to be the chief executive officer, chief financial officer, chief operating officer, chief technology officer, and chief marketing officer all-in-one in an increasingly complex world. Larger firms and other business entities have the capital and scale to hire other professionals for these roles, but that rarely is a realistic option for solo and small firms who are artificially limited to the traditional law firm business model.

Solo and small firms also find it extremely challenging to scale their business models to meet the need under the current rules. They need the flexibility to be able to join broader networks that have the scale to build brands in the market and better connect with legal consumers.

The current rules contain a number of exceptions that open the door for lawyers to take advantage of developing options (e.g., lead generation, legal insurance, and litigation funding), or to avoid the restrictions otherwise in place if they work with particular entities like bar associations. However, the resulting panoply of rules and exceptions is arbitrarily limited and unduly complex, and it distorts the legal market in a way that does not serve the public or the profession well.

Other professions like the medical, dental, accounting, and financial services sectors offer guidance on what a better functioning market would look like while also protecting the public and ensuring professional independence.  

**The Modernizing Lawyer Referral & Law Firm Models Committee Proposals**

In developing its proposals below, the Modernizing Lawyer Referral & Law Firm Models Committee (Modernizing Committee) built off the experience of both other jurisdictions and other professions, and carefully considered the underlying purposes of the current regulations limiting the ability of lawyers to collaborate with other professionals or entities. The Modernizing Committee’s proposed new framework is intended to clarify the current rules so that lawyers have the ability to responsibly collaborate with business, marketing, technology, and other professional disciplines to succeed in the modern marketplace. At the same time, the framework regulates with as light a hand as possible to preserve the core values of the legal profession, protect the public, and enable market forces to better address the current failure in the consumer legal services market.

The proposal solves the problem in three key ways:

• Helps potential clients find lawyers and helps lawyers better connect to potential clients;
• Enables solo and small firm lawyers to access broader networks with the scale to build brands that can reach the larger consumer legal market and help educate and attract the untapped latent market for legal services; and
• Gives solo and small firm lawyers the ability to access necessary business, marketing, technology, and finance expertise to help them build and sustain successful practices.

In developing this proposal, the Task Force intentionally stopped short of proposing a full repeal of Rule 5.4’s restrictions on the ownership of law firms, but recommends later in this report that the Supreme Court evaluate whether that restriction should be relaxed or lifted to promote more innovation in the profession. Other Task Force recommendations are also integral to helping solo and small firm lawyers better serve the consumer legal market and are discussed separately.

This recommendation amends Rule 5.4 to give lawyers the ability to responsibly collaborate with business, marketing, technology, and other professional disciplines to succeed in the modern marketplace while also preserving the prohibition of ownership of law firms by people who are not lawyers. This recommendation further proposes new Supreme Court Rules 800 and 801 to create a mechanism for intermediary entities to register with a new regulatory Board and meet the proposed standards. Finally, this recommendation proposes a new Rule 503 of the Rules of Evidence to underscore and clarify that communications to and through an Intermediary Entity for the purpose of obtaining legal services are privileged. The rationale for this new provision in Rule 5.4 (a)(5) is similar to the justification for allowing prepaid legal services.

As the Modernizing Committee developed its proposals, it was aware the ARDC was undertaking its own process to address one of the issues noted above: the ability to collaborate with connecting services to better connect legal consumers with lawyers who can serve them. The Modernizing Committee believes its Intermediary Entity proposal is the better and more comprehensive solution to the growing market failure, but as part of its work, the Modernizing Committee also submitted formal comments31 to the ARDC proposal32 and worked with the ARDC to develop consensus around their more limited proposal to recognize and regulate connecting services.

The Task Force ultimately agreed to support the revised ARDC proposal as a helpful first step with a few noted caveats, but the Modernizing Committee continues to believe that this more comprehensive proposal should be adopted by the Court and would complement the new ICS framework should the Court choose to adopt the ARDC proposal. Having both options in the market would give lawyers more ways to connect to and more efficiently and effectively serve the consumer market.

RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(l) an agreement by a lawyer with the lawyer’s firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer’s death, to the lawyer’s estate or to one or more specified persons;

31 See Appendix F (Page 105).
32 https://www.iardc.org/icsproposal/index.html
(2) A lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) A lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(5) **A lawyer or law firm may pay a portion of a legal fee to an Intermediary Entity as defined under Rule 801(a) if:**
   
   a. there is no interference with the lawyer’s professional independence of judgment
   b. the amount paid to the entity is a standard, reasonable charge for marketing, business, or administrative services; is paid at the time of connection to the client; and, with the exception of nonprofit or bar association lawyer referral programs, is not contingent on the merits or outcome of any individual matter;
   c. no services provided by the entity involve the practice of law; and
   d. the entity is registered under Rule 801.

(6) A lawyer may share fees with an Approved Legal Technology Provider for products or services provided by or in coordination with the Approved Legal Technology Provider.33

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law except that a lawyer may enter into a partnership or other business association with a nonlawyer for purposes of establishing and/or operating an Approved Legal Technology Provider.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit if:

   1. a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
   2. a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
   3. a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Notwithstanding Section (d) of this Rule, a lawyer may practice law in association with an Approved Legal Technology Provider that is owned in whole or in part by nonlawyers.

33 This additional subsection a(6) and proposed new subsection (e) are proposed in connection with the Recommendations #2A and 2B.
Comment

[1] The provisions of this Rule express traditional limitations on sharing fees in order to protect the lawyer’s professional independence of judgment. Where someone other than the client pays the lawyer’s fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer’s obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer’s professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer’s professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer’s independent professional judgment and the client gives informed consent).

[3] A lawyer or law firm who engages the services of an intermediary entity that connects prospective clients with lawyers or provides other business and administrative services as part of the connecting service has a duty to confirm the entity is registered and approved under Rule 801 and otherwise meets the requirements of Rule 5.4(a)(5) at the time the connection to the client is made.

The fee paid by the lawyer may vary by the type of service or matter involved so long as it is a reasonable charge for the marketing, business, or administrative services; is standard for each particular type of service or matter; and is not contingent on the merits or outcome of any individual matter. The sharing of fees that are contingent on the merits or outcome of an individual matter raises heightened concerns for protecting clients from misleading and coercive conduct, and thus is only allowable between lawyers when the requirements of Rule 1.5 (d) and (e) are met.

(4) The traditional limitations on fee sharing and practicing law as part of an entity owned or controlled by persons who are not lawyers do not have the same impact in the case of technology based legal products and services. Facilitating the availability of Legal Technology Providers is critical to expanding consumer access to legal solutions. Successful development and operation of technology-based enterprises requires the collaboration of those with technical and business knowledge and skills and those with legal knowledge and skills, as well as outside capital in many instances. Consumers benefit from active involvement of lawyers as owners, employees, and affiliates of technology-based entities.34

PROPOSED ILLINOIS SUPREME COURT RULES 800 AND 801 – REPORTING & REGISTRATION OF INTERMEDIARY ENTITIES

The Task Force recommends that the Supreme Court appoint a new board to oversee the reporting, registration, and enforcement of Intermediary Entities. The same board should also oversee the reporting, registration, and enforcement of “Authorized Legal Technology Companies” that the Task Force is separately proposing be recognized. For now, we will refer to this board as the “Board.”

34 This additional comment is proposed in connection with the Recommendations #2A and 2B.
RULE 800. LEGAL TECHNOLOGY REGULATION BOARD

(a) Authority of the Board. The registration and regulation of Intermediary Entities and Approved Legal Technology Providers shall be under the administrative supervision of a Legal Technology Regulation Board.35

(b) Membership and Terms. The Board shall consist of nine members appointed by the Supreme Court. No more than five members may be members of the bar of Illinois, and at least two members shall have experience in designing or providing direct-to-consumer technology products and services. Where feasible, membership should include lawyers who represent low- and middle-income individuals and small companies, representatives of not-for-profit legal service providers, community service leaders, and court employees or officials involved in providing assistance to pro se litigants. One member shall be designated by the court as chairperson and one member shall be designated by the court as vice-chairperson. Unless the court specifies a shorter term, all members shall be appointed for three-year terms and shall serve until their successors are appointed. Any member of the Board may be removed by the court at any time, without cause.

(c) Compensation. None of the members of the Board shall receive compensation for serving as such, but all members shall be reimbursed for their necessary expenses.

(d) Quorum. Five members of the Board shall constitute a quorum for the transaction of business. The concurrence of five members shall be required for all action taken by the Board.

(e) Duties. The Board shall have the following duties and authority:

1. to appoint, with the approval of the Supreme Court, an administrator to serve as the principal executive officer of the Legal Technology Board. The Administrator shall receive such compensation as the Board authorizes from time to time.

2. to authorize the Administrator to hire staff and contract with outside professionals able to support the regulation of entities.

3. to develop criteria and procedures for registration and regulation of Intermediary Entities consistent with the provisions of Supreme Court Rule 801.

4. to develop criteria and procedures for registration, approval and regulation of Legal Technology Providers consistent with the provisions of Supreme Court Rule 802.

5. to adopt rules for audits and other review of information and certifications submitted by Intermediary Entities and Legal Technology Providers.

6. to recommend to the Supreme Court fees to be charged for registration and regulation of Intermediary Entities and Legal Technology Providers, with fees being sufficient to ensure that the Board is self-supporting.

35 Should the Court adopt the more limited ARDC proposal, the ARDC could continue to regulate “Intermediary Connecting Services” as defined in their proposed rule. Entities would then have the option of registering under either rule, depending on whether they simply want to serve as a connecting service or offer the more comprehensive suite of services that Intermediary Entities could offer under Rules 504, 800, and 801.
7. To submit an annual report to the Court evaluating the effectiveness of its activities for purposes of expanding access to legal services and providing consumer protection. There shall be an independent annual audit of Board funds as directed by the Court, the expenses of which shall be paid out of the fund. The audit shall be submitted as part of the annual report to the Court.

PROPOSED RULE 801. REGISTRATION OF INTERMEDIARY ENTITIES

(a) Intermediary Entity Definition. An Intermediary Entity is an entity that connects potential clients with lawyers and provides other business and administrative services supporting lawyer practices, and splits fees with lawyers or law firms in accordance with Rule 5.4(a)(5).

(b) Roll of Registered Intermediary Entities. The Legal Technology Regulation Board shall maintain a list of intermediary entities registered pursuant to this rule.

(c) Initial Registration. Intermediary Entities seeking to offer services to lawyers licensed to practice law in Illinois shall register with the Board. To register, the intermediary entity must file with the Board an initial registration application (provided by the Board) and pay a registration fee set by the Court upon recommendation of the Board. Not-for-profit entities that are not generating revenue from their intermediary services are not required to pay a registration fee.

(d) Application. The Board shall determine the contents of the registration application, to include, at minimum:

1. Sufficient identifying information so that the Board can verify the identity and the legal structure of the entity, its authorized decision-makers, and place of business for purposes of service of process;

2. A list of other jurisdictions in which the intermediary entity is operating or has operated, and where applicable, a list of all governmental bodies responsible for the regulation of the authorized or unauthorized practice of law with which the intermediary entity is or has registered.

3. A description of the services which the intermediary entity offers.

4. A description of the Provider’s procedures for accepting and addressing consumer complaints.

5. A signed statement by an individual responsible for the affairs of the intermediary entity, designating that individual as the agent of and principal contact for the entity, and containing certifications and disclosures which the Board determines warranted to assure that the entity conducts its operations and services consistent with lawyers’ professional responsibilities and effective consumer protection. The statement shall include:

   A. Certification that the entity has in place procedures and practices sufficient to assure the accuracy of information offered to consumers by the entity, including information about the license status and legal experience of participating lawyers and whether they carry malpractice insurance.
B. Certification that the entity has in place procedures and practices sufficient to assure that information submitted by consumers and communications exchanged between lawyers and current or prospective clients will be held confidential.

C. Certification that the entity does not sell or otherwise share data entered by consumers and lawyers who use the entity's services.

D. Certification that the Provider is sufficiently financed to address potential consumer harm and requests for refunds.

(e) Annual Registration. An entity registered under this Rule can renew its status each year by filing an annual renewal application (provided by the Board) and paying an annual registration fee. Not-for-profit entities that are not generating revenue from their intermediary services are not required to pay an annual registration fee. The Board shall determine the content of the annual renewal application to assure that the entity provides the information and commitments necessary to assure that it conducts its operations and services consistent with lawyers’ professional responsibilities and effective consumer protection.

(f) Use of Registration Fees. The Board shall retain the fees received under Paragraphs (c) and (d) to fund its expenses to administer this rule.

(g) Denial of Registration. If the Board determines that the service does not meet the requirements set forth in Illinois Rule of Professional Conduct 5.4(a)(5) or has omitted material information that fundamentally challenges the ability of the Board to carry out its appropriate regulatory authority, the Board may deny the registration. If the Board denies the registration, it shall inform the entity’s agent and explain the basis for the denial. Upon notice the registration has been denied, the entity may resubmit an amended registration application or amended annual registration documents or seek review by the Court upon motion.

(h) Registration is Not an Endorsement. The registration of any intermediary entity under this rule shall not be construed to indicate the Board endorses or rates the service.

(i) Public Documents. All documents filed pursuant to Paragraphs (c) and (d), and all documents filed to update such information, are considered public documents and shall be available for public inspection during normal business hours.

(j) Removal of an Intermediary Entity from the Roll.

1. On or after the first day of April of each year, the Board shall remove from the roll of registered intermediary entities the name of any intermediary entity that has not registered for that year. An intermediary entity will be deemed not registered for the year if it has not paid all required fees and has not provided all required information.

2. An intermediary entity that has been removed from the roll solely for the failure to register and pay all required fees may be reinstated to the roll as a matter of course upon registering and paying all required fees prescribed for the period of its suspension from the roll, plus a required penalty for delinquency.
PROPOSED ILLINOIS RULE OF EVIDENCE 503 PROTECTIONS OF COMMUNICATIONS WITH INTERMEDIARY ENTITIES

**Privilege.** A disclosure of information to or through an intermediary entity as defined in Rule 5.4 for the purpose of seeking or facilitating access to legal assistance shall be deemed a privileged lawyer-client communication.

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RECOMMENDATION #2: ENHANCING THE AVAILABILITY OF TECHNOLOGY-BASED LEGAL PRODUCTS AND SERVICES AND AUTHORIZING GREATER PARTICIPATION BY LAWYERS IN TECHNOLOGY SOLUTIONS

Watch the pocket chat for this recommendation

Recognizing overwhelming evidence that the vast majority of Americans are not able to access legal solutions to their legal problems, our Regulating Technology-Based Legal Products and Services Committee (Tech Committee) focused its consideration on what role technology can play in addressing the gulf between legal needs and legal services, particularly for low- and moderate-income consumers, and what changes to the Rules of Professional Conduct and present regulatory structures would enhance the efficacy of technology-based solutions.

**Benefits of Enhancing the Availability of Technology-Based Legal Services**

Studies show that the gulf between legal needs and utilization of legal services has multiple causes. An obvious factor is cost. Another less obvious factor is that a very large number of consumers who are facing legal problems do not recognize those problems as having legal solutions and so do not consider hiring a lawyer. In addition, consumers not accustomed to using lawyers are intimidated by the process of finding and interacting with a professional in an unfamiliar arena. A third factor is that our monopoly on the practice of law has restricted market access for legal technology companies that have the competency to deliver one-to-many legal services but that are owned in whole or in part by a person who is not a lawyer. At the same time, our current Rules of Professional Conduct are constraining lawyers from competing on a level playing field with legal technology companies that are creating technology-based products to meet this growing demand by either partnering with a technology professional or by creating and offering such products through their firms.

**Ease of Access**

Technology-based legal solutions can be accessed from the safety of a consumer’s living room, at any time of night or day, without taking time off work, arranging child care, incurring the costs of travel, and enduring the social discomfort of wading into unfamiliar territory. Particularly for consumers who have not previously used the services of lawyers, the prospect of identifying an attorney who will be affordable and adept at the legal problem they face can be daunting. Internet access to information that can help identify what options are available and what they will cost is free and private. Internet access to actual solutions can avoid the costs and uncertainty of identifying and meeting with a lawyer and perhaps paying a fee just to learn what options exist and what they would cost. By the same token, that access can give a consumer a reasonably easy path to understand the value and cost of connecting with a lawyer.

**Identifying Availability of Legal Solutions**

Internet accessible technology would appear to be one of the most effective tools for giving consumers information that would allow them to recognize how problems they face have legal ramifications. Electronic searches are convenient and free and have become for many consumers the first step toward finding information and solutions for their problems and needs. Electronic searches can, with some ease, bring consumers to a recognition of the legal attributes of their problems and available legal solutions,
which may include options they can utilize on their own as well as information that helps them find their way to a lawyer.

**Cost**

For many consumers, the cost of traditional legal representation is entirely out of reach. Technology is not a full solution to that problem, but it is an attractive and, likely effective, solution for many common legal problems and needs. Where a legal solution depends upon a discreet set of reasonably objective circumstances that lead to clearly identifiable options, technology can capture the process of eliciting information and laying out paths to solutions without human intervention, delivering a one-to-many option. Development costs can be substantial, but if the problem or need is sufficiently common, there will be enough consumers interested in the solution to spread those costs and make the solution available at a very reasonable cost to each user.

Even when legal problems do not lend themselves to straightforward solutions, technology can reduce costs by automating facets of legal representation, including the collection of information and documentation and then can generate legal instruments and pleadings that include repeating content. For a lawyer who serves low- to middle-income consumers or small businesses, an attractive option would be to invite consumers to use a technology-based product through the lawyer’s web site with the lawyer being able to share in the fees generated by that usage. Then, if the consumer seeks individualized services, the lawyer would be able to utilize the information already entered by the consumer and produce documentation the client may need using the automated features of the software.

**Expanded Opportunity for Lawyers**

Our monopoly on the practice of law has discouraged legal technology companies with the capability of delivering one-to-many legal products and services where those companies are owned in whole or in part by people who are not lawyers. Coinciding with that fact, our current Rules of Professional Conduct are constraining lawyers from competing on a level playing field with legal technology companies that are creating technology-based products to meet this growing need by either partnering with a technology professional or by creating and offering such products through their firms.

Lawyers could and should be at the center of these innovations and solutions but need more flexibility in the Rules of Professional Conduct in order to do so. The Tech Committee’s recommendations are aimed at expanding opportunities for lawyers to be more competitive in the modern marketplace for consumer legal services by partnering with or working for a legal technology company to create “Approved Legal Technology Products” (defined in the Recommendations below).

**Obstacles**

**Unauthorized Practice of Law**

Although technology-based legal product and services have found some acceptance in regulatory circles, there remains uncertainty as to how any given jurisdiction will approach a given product or service. It took decades before there was regulatory consensus that the sale of legal forms should not be prosecuted as the unauthorized practice of law. Many in the legal profession continue to question whether technology-based legal solutions involves unauthorized practice by allowing consumers to purchase legal documents generated by their responses to queries for information and preferences.
Without greater regulatory certainty, the investment required to develop and operate technology-based companies is unreasonably risky, and lawyers who are associated as owners or employees or in a contractual capacity risk prosecution for aiding the unauthorized practice of law.

One-to-Many v. One-to-One Legal Services

Traditional legal services are modeled on a one-to-one paradigm. Client meets with lawyer, explains problem, and lawyer uses their training and experience to elicit all relevant information and to assist the client in defining objectives. Lawyer then explains what legal options are available to assist in achieving those objectives, explains the risks and benefits of each option, and comes to an agreement with the client on the terms of a retention aimed at achieving those objectives. Pursuant to the retention, lawyer then applies their knowledge and experience in drafting documentation and taking other action directed to the client’s objectives.

Technology-based legal products and services focus on what is common in a legal problem shared by many. The premise is that there are legal problems and needs that have common attributes and common solutions, and that consumers can achieve objectives by utilizing a model that captures the common elements. The technology model utilizes lawyer knowledge and experience for the same functions that comprise a traditional one-on-one representation, but at the front end, in design, and as applied to the common elements. Lawyer knowledge and experience is needed to competently identify the categories of information and preferences typically necessary to arrive at a good solution, structure inquiries that will elicit accurate and useful responses, identify the legal options available depending upon the information and preferences provided by an individual user, and construct the information, documentation, and instructions that will comprise the solution.

Lawyers understandably prize the traditional model of one-to-one representation. It is eminently satisfying to conduct relationships that are so singularly dedicated to an individual client’s circumstances. In many instances, that ideal is practical and serves the client well. But from the perspective of the wide swath of consumers not presently being served by the legal system, the model is impractical and creates impenetrable obstacles to the consumer accessing the benefits of the law.

Technology-based legal products and services can be understood as a form of limited scope representation, but do not fit easily within the contours of Rule 1.2(b) of the Rules of Professional Conduct. Under that Rule, limited scope representation requires the informed consent of the client, defined as “agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” Rule 1.0(e). Adequate information and explanation of material risks and reasonably available alternatives assumes a consultation that evokes the particular individual's circumstances and goals. A technology based one-to-many solution does not lend itself to such a consultation.

Instead, the one-to-many solution assumes that consumers should be able to choose a more limited option, where generalized warning of risks and generalized suggestions of alternatives can be offered, but where the consumer does not have to undertake a more personalized relationship.

Fee Sharing and Prohibitions on Ownership of Law Firms by People who are not Lawyers

Great uncertainty abounds in terms of what relationships lawyers can undertake in connection with technology-based legal product and services providers. To the extent that any products or services
offered by the provider could be characterized as the practice of law, any relationship where a lawyer shares ownership or profits with a technology provider could be deemed a violation of Rule 5.4.

The result is to either require that technology-based legal service providers be owned exclusively by lawyers (thereby eliminating the availability of the independent capital typically required to develop and maintain the technology) or to exclude lawyers from ownership roles. The prospect of pushing lawyers out of ownership involvement in technology-based services seems counterintuitive, more likely to impede than encourage outcomes that will best serve consumers.

In addition, the present rules inhibit lawyers from developing options for providing technology product solutions to the general public and/or ongoing clients through the lawyer’s practice or otherwise to the extent that the lawyer would seek to contract with the owner/developer of the technology for a per use fee.

Recommendations

As noted at the outset, our Tech Committee limited its focus to technology-based solutions for enhancing access to justice and increasing opportunities for lawyers. Our proposals are similarly limited, but not simply because we stuck to our charge. Instead, we believe there is wisdom in recognizing the promise of technology and in concentrating efforts on changes that could enhance its value to consumers without trying to first resolve all of the wider unauthorized practice of law issues.

Technology solutions are not going away, nor should they. They have become and ought to be an important method for informing consumers of legal options and delivering legal services to those who are not interested in, or cannot afford, traditional legal representation. As such, direct-to-consumer legal technology products and services should be brought within the fold of the Supreme Court’s authority to regulate the practice of law.

Regulation need not be onerous. The goals should match those of attorney regulation with emphasis on consumer protection and recognition of the novelty of the task.

The Tech Committee recommends the Supreme Court adopt measures that would:

- Explicitly authorize the delivery of technology-based legal products and services by individuals or entities that have been approved as having practices that meet criteria deemed warranted to provide consumer protection (to be designated “Approved Legal Technology Providers” for purposes of this report);

- Appoint a board to develop an appropriate regulatory mechanism responsible for registering and vetting Approved Legal Technology Providers; and

- Authorize lawyers to participate as owners of, employees of and advisors to Approved Legal Technology Providers; to share fees/profits with such providers; and to make use of the products and services offered by such providers in their representation of clients by amending Rules of Professional Conduct 1.2, 5.4 and 5.5.
RECOMMENDATION #2A: MODERNIZE THE RULES SO THAT LAWYERS CAN MORE ACTIVELY PARTICIPATE IN THE DEVELOPMENT AND DELIVERY OF TECHNOLOGY-BASED PRODUCTS AND SERVICES

Watch the pocket chat for this recommendation

The Tech Committee believes that an important component of enhancing consumer protection should be to authorize a more robust role for licensed lawyers as owners of, employees of, business affiliates of, and collaborators with the technology providers. Lawyers should be involved in the development of content, in directing the nature of how technology providers do business, and in employing technology-based products and services within their own practices without risking disciplinary consequences. In order to enable more robust involvement for lawyers, the Tech Committee recommends amending the Rules of Professional Conduct as follows:

- Rule 1.2: Expand the Rule’s authorization of limited scope representation to include a provision authorizing lawyers to participate in providing technology-based legal product and services by an Approved Legal Technology Provider so long as the provider, prior to accepting any payment from a consumer, secures the consumer’s acknowledgment of the limitations of the products and services. The change is intended to authorize lawyers to participate in providing one-to-many legal technology solutions without the individualized consultation sufficient to constitute informed consent for traditional limited scope representation.

- Rule 5.4: Authorize lawyers to enter into co-ownership of Approved Legal Technology Providers with people who are not lawyers and to share fees with such providers whether or not owned by lawyers.

- Rule 5.5: Add a Comment stating that for purposes of the Rule, the activities of an Approved Legal Technology Provider do not constitute the unauthorized practice of law and that a lawyer may assist such a provider in its authorized activities.

RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation within an attorney-client relationship if the limitation is reasonable under the circumstances and the client gives informed consent.
(d) A lawyer who owns, is employed by, or is otherwise affiliated with an Approved Legal Technology Provider may participate in the provision of limited scope legal services outside of an attorney-client relationship through the Approved Legal Technology Provider if, prior to accepting any payment from a consumer or prior to providing the service if no payment is required, the Approved Legal Technology Provider secures the consumer’s acknowledgment of the limitations of its products and services in a manner approved by the Legal Technology Regulatory Board.

(e) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

(1) discuss the legal consequences of any proposed course of conduct with a client,

(2) counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law, and

(3) counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.

(f) After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer’s firm the responsibility for performing or completing that employment, without the client’s informed consent.


……..

New comment (8)*

Section (d) permits a lawyer to provide legal products that are the property of an Approved Legal Technology Provider to members of the public without creating an attorney-client relationship as long as the user of the legal product indicates an understanding that the product is not a substitute for legal representation, whether limited in scope or full service. This rule enables lawyers and non-lawyers to have equal standing in their respective capacities to provide the public with affordable technological legal tools.

* Current Comments 8 through 15 would become paragraphs 9 through 16, respectively.

RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer’s firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer’s death, to the lawyer’s estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) A lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(5) A lawyer or law firm may pay a portion of a legal fee to an Intermediary Entity as defined under Rule 801(a) if:

   (a) there is no interference with the lawyer’s professional independence of judgment

   (b) the amount paid to the entity is a standard, reasonable charge for marketing, business, or administrative services; is paid at the time of connection to the client; and, with the exception of nonprofit or bar association lawyer referral programs, is not contingent on the merits or outcome of any individual matter;

   (c) no services provided by the entity involve the practice of law; and

   (d) the entity is registered under Rule 801.

(6) A lawyer may share fees with an Approved Legal Technology Provider for products or services provided by or in coordination with the Approved Legal Technology Provider.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law except that a lawyer may enter into a partnership or other business association with a nonlawyer for purposes of establishing and/or operating an Approved Legal Technology Provider.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit if:

   (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

   (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

   (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Notwithstanding Section (d) of this Rule, a lawyer may practice law in association with an Approved Legal Technology Provider that is owned in whole or in part by nonlawyers.

....
Comment

[1] The provisions of this Rule express traditional limitations on sharing fees in order to protect the lawyer’s professional independence of judgment. Where someone other than the client pays the lawyer’s fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer’s obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer’s professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer’s professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer’s independent professional judgment and the client gives informed consent).

[3] A lawyer or law firm who engages the services of an intermediary entity that connects prospective clients with lawyers or provides other business and administrative services as part of the connecting service has a duty to confirm the entity is registered and approved under Rule 801 and otherwise meets the requirements of Rule 5.4(a)(5) at the time the connection to the client is made. The fee paid by the lawyer may vary by the type of service or matter involved so long as it is a reasonable charge for the marketing, business, or administrative services; is standard for each particular type of service or matter; and is not contingent on the merits or outcome of any individual matter. The sharing of fees that are contingent on the merits or outcome of an individual matter raises heightened concerns for protecting clients from misleading and coercive conduct, and thus is only allowable between lawyers when the requirements of Rule 1.5 (d) and (e) are met.

(4) The traditional limitations on fee sharing and practicing law as part of an entity owned or controlled by persons who are not lawyers do not have the same impact in the case of technology based legal products and services. Facilitating the availability of Legal Technology Providers is critical to expanding consumer access to legal solutions. Successful development and operation of technology-based enterprises requires the collaboration of those with technical and business knowledge and skills and those with legal knowledge and skills, as well as outside capital in many instances. Consumers benefit from active involvement of lawyers as owners, employees, and affiliates of technology-based entities.

This additional comment is proposed in connection with the Recommendations #2A and 2B.
RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

RULE UNCHANGED

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer’s direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. For purposes of this rule, the activities of an Approved Legal Technology Provider authorized pursuant to Supreme Court Rule 802 do not constitute the unauthorized practice of law, and a lawyer may assist an Approved Legal Technology Provider in its authorized activities. Whatever the definition, limiting the practice of law to members of the bar or other entities or individuals authorized by the Supreme Court of the jurisdiction in which services are being provided protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.....
RECOMMENDATION #2B: EXPLICITLY AUTHORIZE THE DELIVERY OF TECHNOLOGY-BASED LEGAL PRODUCTS AND SERVICES BY INDIVIDUALS OR ENTITIES AND APPOINT A BOARD TO DEVELOP AN APPROPRIATE REGULATORY MECHANISM RESPONSIBLE FOR REGISTERING AND VETTING APPROVED LEGAL TECHNOLOGY PROVIDERS

Watch the pocket chat for this recommendation

The Tech Committee recommends the Illinois Supreme Court adopt measures that would explicitly authorize the delivery of technology-based legal products and services by individuals or entities that have been approved as having practices that meet criteria deemed warranted to provide consumer protection (to be designated “Approved Legal Technology Providers” for purposes of this report).

“Approved Legal Technology Providers” would be defined as individuals or entities that offer electronically accessible systems which generate legal advice, identify legal strategies, and/or generate documents intended to be legally binding through collection of factual information, goals, and preferences from consumers residing or doing business in Illinois. This regulation is not intended to apply to government-sponsored or court-approved forms and systems nor to consumer-interfacing technology tools that are not based on the factual circumstances of the specific user. The Tech Committee envisions this definition being formalized in an Illinois Supreme Court Rule.

Ideally, the legal profession would have a national regulator of Approved Legal Technology Providers which would allow for uniform standards across all 50 states. Unfortunately, one does not currently exist. The Tech Committee therefore also recommends the Illinois Supreme Court appoint a board to develop an appropriate regulatory mechanism responsible for registering and vetting approved legal technology providers. Board members should include a range of professionals with knowledge and experience in relevant legal and technology fields, which might include not-for-profit legal services, legal representation of low- and middle-income individuals and small businesses, community service, direct-to-consumer technology products and services, law school technology programs, and business capitalization.

The Board should be tasked with developing an appropriate framework for addressing regulatory concerns. The Tech Committee shares the sentiment expressed by other jurisdictions studying new regulatory options that at the outset, the framework should be as flexible as the Board finds feasible while honoring due process considerations. There is much to be learned through trial and error that can and should inform a final regulatory model.

Flexibility requires giving providers room to work in collaboration with regulators to make improvements or adjustments to their products and services without being frozen out of the market for protracted periods. The Tech Committee recommends that the model should allow a provider to secure provisional certification upon submission of an application that provides basic information about ownership, content, and policies relevant to consumer protection. The Board can then develop practices for review and appropriate audit of the information provided, and steps for removing the provisional character of the certification.

While committed to a fluid model, the Tech Committee recommends identifying basic criteria for certification that should guide the Board’s development of policies and practices. The Tech Committee recommends the following as basic criteria:
• Competence: the provider’s content was prepared and/or vetted by capable legal professionals and is accurate and accomplishes what is advertised.

• Confidentiality:
  o provider has implemented effective security against external intrusions;
  o provider has implemented limitations on internal access to client information with practices aimed at protecting attorney-client privilege when communications between clients and lawyers are exchanged through the provider, and disclaimers that accurately warn users when information might not be protected; and
  o provider does not sell or otherwise share data entered by consumers and lawyers who use the provider’s products and services. This last attribute deserves specific comment. The monetization of user data is a pervasive feature of electronic services and applications that is concerning in any context, but it is particularly unacceptable in the context of legal services. There is presently no regulatory interference with that practice.37

• Financial responsibility: provider is sufficiently financed to be able to stand behind the product and to make refunds when required.

• Consumer complaint procedures: provider has clearly identified and easily employed procedures for consumers to submit complaints, and sound practices for internal review of and responses to consumer complaints.

• Disclaimers: as appropriate and necessary to properly advise and protect consumers, provider includes disclaimers identifying the limitations of the provider’s product and services as compared to individualized consultation with a licensed attorney.

The Tech Committee envisions this regulatory framework to be formalized in a Supreme Court Rule.

RULE 802. REGISTRATION AND REGULATION OF APPROVED LEGAL TECHNOLOGY PROVIDERS

(a) Legal Technology Provider Definition. A Legal Technology Provider is an individual or entity that offers electronically accessible systems which generate legal advice, identify legal strategies, and/or generate documents intended to be legally binding through collection of factual information, goals and preferences from consumers residing or doing business in Illinois.

(b) Safe Harbor. A Legal Technology Provider may offer access to services and products in Illinois through approval and registration under this Rule, and may also then collaborate with Illinois lawyers in accordance with Rules 5.4(a)(6), 5.4(b) and 5.4(e).

37 See Overview of Data Privacy and Protection Laws in the United States at the Federal and State Level in Appendix G (Page 113).
(c) Initial Application. A Legal Technology Provider may submit an application for provisional approval by providing information as required by the Legal Technology Board and paying an application fee. The Board shall determine the contents of the application, to include, at minimum:

1. Sufficient identifying information so that the Board can verify the identity and the legal structure of the Provider, its authorized decision-makers, and place of business for purposes of service of process;

2. A list of other jurisdictions in which the Provider is operating or has operated, and where applicable, a list of all governmental bodies responsible for the regulation of the authorized or unauthorized practice of law with which the Provider is or has registered.

3. A description of the products and services which the Provider offers.

4. A description of the Provider’s procedures for accepting and addressing consumer complaints.

5. A description of the steps the Provider has taken to make its products or services accessible to people with disabilities.

6. Text of any and all notices to consumers of the limited scope of the products and services provided and of any and all disclaimers that are employed by the Provider.

7. A signed statement by an individual responsible for the affairs of the Provider, designating that individual as the agent of and principal contact for the Provider and containing certifications and disclosures which the Board determines warranted to assure that the Provider conducts its operations and services consistent with lawyers’ professional responsibilities and effective consumer protection. The statement shall include:

   A. Certification that the Provider has in place procedures and practices sufficient to assure the accuracy of information and the efficacy of legal solutions offered to consumers by the Provider;

   B. Certification that the Provider has in place procedures and practices sufficient to assure that information submitted by consumers and communications exchanged between lawyers and current or prospective clients will be held confidential.

   C. Certification that the Provider does not sell or otherwise share data entered by consumers and lawyers who use the entity’s services.

   D. Certification that the Provider is sufficiently financed to address potential consumer harm and requests for refunds.

8. Such other information as the Board may require.

(d) Provisional Approval. Upon review sufficient to verify that the application is complete and that the fee has been paid, the Board shall issue a provisional approval authorizing the Legal Technology Provider to offer products and services to Illinois residents and businesses.
**Assessment.** The Board shall establish procedures for verifying the information and certifications submitted by Legal Technology Providers in initial applications. Providers must cooperate in the Board's review of their information and systems and shall promptly provide information requested by the Board and access to the Provider's systems sufficient to assure compliance with the Provider's certifications.

1. For purposes of its review, the Board may rely on audits or reviews provided by reliable outside vendors retained by the Provider.

2. As part of its review, the Board shall assess the efficacy of the Provider's warnings to potential consumers of the limited scope of the products and services available through the Provider.

3. When, during the course of its review, the Board identifies features of a Provider's systems that raise a concern of consumer harm, the Provider should be given prompt notice of the issues and an opportunity to take corrective action.

**Final Approval.** Upon completion of an assessment that verifies the accuracy of information submitted by the Provider and reliability of the Provider's certifications, the Board shall issue a final approval to the Provider.

**Denial of Approval.** Upon completion of an assessment that results in the Board's determination that the Provider's procedures and practices are insufficient to assure the accuracy and efficacy of the legal products and services offered to consumers, insufficient to assure confidentiality of client information, insufficient to fairly address consumer complaints, or inconsistent with lawyer professional responsibility obligations, the Board shall revoke the Provider's provisional approval and deny final approval in a writing that identifies 1) the specific procedures or practices deemed faulty; 2) ameliorative efforts suggested by the Board; 3) the Provider's response to the suggested ameliorative efforts; and 4) the reasons for the Board's determination that further efforts would not be effective. The Provider may seek review of the Board's finding by motion to the Supreme Court.

**Roll of Approved Legal Technology Providers.** The Board shall maintain and make publicly accessible a list of Legal Technology Providers that have been given provisional or final approval by the Board.

**Annual Registration.** Once a Provider has been issued a final approval, the Provider must register annually by providing information as required by the Board and paying the annual fee set by the Supreme Court upon the Board's recommendation.

1. On or after the first day of April of each year, the Board shall remove from the roll of Approved Legal Technology Providers the name of any Provider that has not registered for that year.

2. An Approved Legal Technology Provider that has been removed from the roll solely for the failure to register and pay all required fees may be reinstated to the roll as a matter of course upon registering and paying all required fees prescribed for the period of its suspension from the roll, plus a penalty fee for delinquency.
(i) **Complaints.** The Board shall have authority to inquire into complaints of improper conduct or practices by a Provider. The Board shall establish rules and practices for such inquiries, including requirements for the Provider’s cooperation in the inquiry and consequences for failure to cooperate.

(j) **Revocation of Approval.** The Board shall have authority to revoke a final approval of a Provider upon finding that the Provider: 1) has engaged in dishonest conduct that has resulted in harm to a user of the Provider’s products or services; 2) has provided products or services that are inaccurate or do not accomplish the represented legal solution, and after warning, has failed to take corrective action; 3) has sold or otherwise shared information collected from users; 4) has become financially unable to honor obligations to users; or 5) has otherwise shown itself unable to conform to the certifications made in the application process.

1. The Board shall establish rules and procedures for notice to the Provider, hearing, and decision.

2. Where the Board deems appropriate and consistent with protection of consumers, the Board shall have authority to allow a Provider opportunity to address failures in systems, before or after a hearing on charges of noncompliance.

3. The Provider may seek review of a Board determination to revoke approval by motion to the Supreme Court.

(k) **Public Documents.** All documents filed pursuant to Paragraph (c), all documents filed to update such information, and written determinations by the Board to deny or revoke approval pursuant to Paragraphs (g) and (j), respectively, are considered public documents and shall be available for public inspection during normal business hours.

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RECOMMENDATION #3: IMPROVE THE RULES FOR LIMITED SCOPE REPRESENTATION

Watch the pocket chat for this recommendation

In 2013, the Illinois Supreme Court adopted a series of rule changes intended to expand and clarify the permissible uses of limited scope representation in Illinois. The rule changes authorized the broad use of limited scope services ranging from coaching or advising self-represented litigants to document drafting to limited court appearances. The rules were intended to promote access to justice by making legal help more flexible and affordable for middle income families and individuals and to help lawyers and law firms reach new clients and offer an expanded range of legal services.

In the subsequent years, however, anecdotal data suggests that there has been only a modest increase in limited scope representation throughout Illinois. While legal aid and pro bono programs have been quick to embrace the new rules, the private bar has been slow to change. And while studies show that the public is interested in more flexible and affordable alternative to traditional representation, they do not know how to connect with attorneys offering limited scope services. In particular, the number of limited scope court appearances filed in Illinois remains stubbornly low, while the number of self-represented litigants continues to grow.38

In conversations with stakeholders from across the state, a small number of concerns and challenges are raised repeatedly. Lawyers need greater assurances from the Court that they will be able to withdraw from a limited scope appearance once it is completed, as the rule states. The legal community needs more education and training on limited scope representation to fully embrace the rules. More data is needed to fully understand the areas of the law and parts of the state where limited scope representation is working well, and the areas where there is more potential.

These conversations and concerns have prompted the Task Force Committee on Expanding the Limited Scope Rules (Limited Scope Committee) to review the current rules and landscape of limited scope representation in Illinois and to make the following recommendations. Collectively, these four recommendations aim to streamline, educate, and promote the rules of limited scope representation.

38 For a national perspective, see https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_tipping_point_article.authcheckdam.pdf.

For a national perspective, see https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_tipping_point_article.authcheckdam.pdf.
RECOMMENDATION #3A: STREAMLINE RULES TO EXPAND THE USE OF LIMITED SCOPE COURT APPEARANCES

Watch the pocket chat for this recommendation

The Limited Scope Committee proposed several amendments to Supreme Court Rule 13 which governs limited scope court appearances. The amendments would offer more flexibility and certainty for practitioners seeking to represent litigants on a limited scope basis. Practitioners would still have two options for terminating a limited scope appearance – in open court or in writing. However, under the proposed rule changes, the appearance would terminate automatically at the time of presentment or filing without a waiting period or other delay.

The proposed changes are intended to streamline the current process and to address criticisms and concerns that have been raised by practitioners since the Rule was first adopted in 2013 and have often been cited by private attorneys as a reason for not offering limited scope representation. Under the current rules, practitioners withdraw from a limited scope appearance by making an oral motion in open court or by filing a written notice and waiting for 21 days. This proposal would streamline that process by using a standardized form, Notice of Completion of Limited Scope Appearance, and by making the termination automatic at the time of filing or presentment. The amendments would also simplify the current objection process and bring it in line with the comparable procedures for objecting to any other Motion to Withdraw.

The proposed changes would also make use of standardized forms for both entering and terminating limited scope appearances. The Illinois Supreme Court Commission on Access to Justice (“ATJ Commission”) has created standardized, plain language court forms for use across the state for several years. The consistent use of such forms will make it easier for judges, clerks, and court staff to easily recognize and identify limited scope appearance forms. The use of one standardized set of forms will also facilitate better data collection across the state (as described in more detail below) allowing for a more robust analysis of where and how limited scope appearances are used. Lastly, the ATJ Commission can ensure that all forms are written in plain language that can be easily understood by the consumers of limited scope services to minimize the risk to both lawyers and clients.  

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RULE 13. APPEARANCES—TIME TO PLEAD—WITHDRAWAL

(a) Written Appearances. If a written appearance is filed, copies of the appearance shall be served in the manner required for the service of copies of pleadings.

(b) Time to Plead. A party who appears without having been served with summons is required to plead within the same time as if served with summons on the day he appears.

(c) Appearance and Withdrawal of Attorneys.

(1) Addressing the Court. An attorney shall file a written appearance or other pleading before addressing the court unless the attorney is presenting a motion for leave to appear by intervention or otherwise.

39 For information on how other states have approached this issue, see https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf.
(2) **Notice of Withdrawal.** An attorney may not withdraw his or her appearance for a party without leave of court and notice to all parties of record. Unless another attorney is substituted, the attorney must give reasonable notice of the time and place of the presentation of the motion for leave to withdraw, by personal service, certified mail, or a third-party carrier, directed to the party represented at the party's last known business or residence address. Alternatively, the attorney may give such notice electronically, if receipt is acknowledged by the party. Such notice shall advise said party that to insure notice of any action in said cause, the party should retain other counsel therein or file with the clerk of the court, within 21 days after entry of the order of withdrawal, a supplementary appearance stating therein an address to which service of notices or other documents may be made.

(3) **Motion to Withdraw.** The motion for leave to withdraw shall be in writing and, unless another attorney is substituted, shall state the last known address(es) of the party represented. The motion may be denied by the court if granting the motion would delay the trial of the case, or would otherwise be inequitable.

(4) **Copy to be Served on Party.** If the party does not appear at the time the motion for withdrawal is granted, either in person or by substitute counsel, then, within three days of the entry of the order of withdrawal, the withdrawing attorney shall serve the order upon the party in the manner provided in paragraph (c)(2) of this rule, and file proof of service of the order.

(5) **Supplemental Appearance.** Unless another attorney is, at the time of such withdrawal, substituted for the one withdrawing, the party shall file in the case within 21 days after entry of the order of withdrawal a supplementary appearance, stating therein an address at which the service of notices or other documents may be had upon him or her. A self-represented litigant may supply an e-mail address for service, pursuant to Rule 11(b). In the case of the party's failure to file such supplementary appearance, subsequent notices and filings shall be directed to the party at the last known business or residence address.

(6) **Limited Scope Appearance.** An attorney may make a limited scope appearance on behalf of a party in a civil proceeding pursuant to Rule of Professional Conduct 1.2(c) when the attorney has entered into a written agreement with that party to provide limited scope representation. The attorney shall file a Notice of Limited Scope Appearance, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article I Forms Appendix, using a statewide form approved by the Illinois Supreme Court, identifying each aspect of the proceeding to which the limited scope appearance pertains.

An attorney may file a Notice of Limited Scope Appearance more than once in a case. An attorney must file a new Notice of Limited Scope Appearance before any additional aspect of the proceeding in which the attorney intends to appear. A party shall not be required to pay more than one appearance fee in a case.
Withdrawal Following Completion of Limited Scope Representation. Upon completing the representation specified in the Notice of Limited Scope Appearance filed pursuant to paragraph (6), the attorney shall withdraw by oral motion or written notice as from the Limited Scope Appearance through one of the methods provided in parts (i)-(iv) and (ii) of this paragraph, using a statewide form approved by the Illinois Supreme Court. A withdrawal for any reason other than completion of the representation shall be requested by motion under paragraphs (c)(2) and (c)(3).

(i) If the attorney completes the representation at or before a court hearing attended by the party the attorney represents, the attorney may make an oral motion for withdrawal, present the Notice of Completion of Limited Scope Representation without prior notice to the party the attorney represents or to other parties. The court must grant the motion unless the party objects on the ground that the attorney has not completed the representation. The order granting the withdrawal may require the attorney to give written notice of the order to parties who were neither present nor represented at the hearing. If the party objects that the attorney has not completed the representation, the court must hold an evidentiary hearing on the objection, either immediately or on a specified later date. After hearing the evidence, the court must grant the motion to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance. Upon presentment of the Notice of Completion of Limited Scope Representation, the attorney’s appearance terminates without the necessity of leave of court.

(ii) An attorney may also withdraw from the Limited Scope Appearance by filing a Notice of Withdrawal Completion of Limited Scope Appearance, prepared by utilizing, or substantially adopting the appearance outside of open court, and content of, the form provided in the Article I Forms Appendix in the form attached to this rule. The attorney must serve the Notice on the party the attorney represents and must also serve it on, the other counsel of record, and other parties not represented by counsel, unless the court by order excuses service on other counsel and other parties. The attorney must also serve the Notice on the judge then presiding over the case. The attorney must file proof of service in compliance with this paragraph. Within 21 days after the service of the Notice, the party may file an Objection to Withdrawal Completion of Limited Scope Appearance, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article I Forms Appendix. The party must serve the Objection on the attorney and must also serve it on other counsel of record and other parties not represented by counsel unless the court by order excuses service on other counsel and other parties. If no timely Objection is filed, the attorney’s limited scope appearance automatically terminates, without entry of a court order when the 21-day period expires. If a timely Objection is filed, however, the attorney must notice a hearing on the Objection. If the ground for the Objection is the necessity of leave of court.
If the party objects that the attorney has not completed the representation specified in the Notice of, either in-person if the Limited Scope Appearance is terminated pursuant to paragraph (7)(i) or by motion if the Limited Scope Appearance is terminated pursuant to paragraph (7)(ii), the court must hold an evidentiary hearing on the objection. After the requisite hearing the evidence, the court must enter an order allowing the attorney to withdraw unless the court expressly finds that the attorney has not completed the representation as specified in the Notice of Limited Scope Appearance.


Committee Comments

(rev. June 14, 2013)

Rule 13 was added in 1982. It was patterned after Proposed Uniform Circuit Court Rule III, which was prepared by a special committee of the Illinois State Bar Association and approved by the ISBA Board of Governors on June 22, 1976. Under paragraph (c) of this rule, an attorney's written appearance on behalf of a client before any court in this State binds the attorney to continue to represent that client in that cause until the court, after notice and motion, grants leave for the attorney to withdraw. See Rule of Professional Conduct 1.16(c).

Committee Comments

(June 14, 2013)

Paragraph (c)(6) addresses the provision of limited scope representation to clients under Rule of Professional Conduct 1.2(c). The paragraph is not intended to regulate or impede appearances made pursuant to other types of limited engagements by attorneys, who may appear and withdraw as otherwise provided by Rule 13.

An attorney making a limited scope appearance in a civil proceeding must first enter into a written agreement with the party disclosing the limited nature of the representation. The limited appearance is then effected by using the form Notice of Limited Scope Appearance appended to this Rule. Utilizing this standardized form promotes consistency in the filing of limited scope appearances, makes the notices easily recognizable to judges and court personnel, and helps ensure that the scope of the representation is identified with specificity.

A party on whose behalf an attorney has filed a Notice of Limited Scope Appearance remains responsible, either personally or through an attorney who represents the party, for all matters not specifically identified in the Notice of Limited Scope Appearance.
Paragraph (c)(6) does not restrict (1) the number of limited scope appearances an attorney may make in a case, (2) the aspects of the case for which an attorney may file a limited scope appearance such as, for example, specified court proceedings, depositions, or settlement negotiations, or (3) the purposes for which an attorney may file a limited scope appearance. Notwithstanding the absence of numeric or subject matter restrictions on filing limited scope appearances, nothing in the Rule restricts the ability of a court to manage the cases before it, including taking appropriate action in response to client or lawyer abuse of the limited scope representation procedures.

Paragraph (c)(7) provides two alternative ways for an attorney to withdraw when the representation specified in the Notice of Limited Scope Appearance has been completed. The first method—an oral motion in-court presentment of a Notice of Completion of Limited Scope Appearance—can be used whenever the representation is completed at or before a hearing attended by the party the attorney represents. Prior notice of such a hearing is not required. The attorney should use this method whenever possible, because its use ensures that withdrawal occurs as soon as possible and that the court knows of the withdrawal. The attorney’s withdrawal is automatic, and the court should enter an order to that effect.

The second method—filing a Notice of Withdrawal Completion of Limited Scope Appearance—enables the attorney to withdraw easily in other situations, without having to make a court appearance, except when there is a genuine dispute about the attorney’s completion of the representation. The Notice must be served on the party represented and on other counsel of record and other parties not represented by counsel unless the court excuses service on other counsel of record and other parties not represented by counsel. The Notice must also be served on the judge then presiding over the case to ensure that the judge is made aware that the limited scope representation has been completed, subject to the client’s right to object. The attorney’s withdrawal is automatic, without entry of an order, unless the client files a timely Objection to Withdrawal of Limited Scope Appearance.

If the attorney makes an oral motion to withdraw pursuant to paragraph (c)(7)(i), with or without client objection, or if the client files a timely Objection to Withdrawal of Limited Scope Appearance pursuant to paragraph (c)(7)(ii), the court must allow the attorney to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance. An evidentiary hearing is required if the client objects to the attorney’s withdrawal based on the attorney’s failure to complete the representation. A nonevidentiary hearing is required if the client objects on a ground other than the attorney’s failure to complete the representation, although the primary function of such a hearing is to explain to the client that such an objection is not well-founded. A court’s refusal to permit withdrawal of a completed limited scope representation, a court’s refusal to recognize a properly filed Notice of Completion of Limited Scope Appearance or even its encouragement of the attorney to extend the representation, would disserve the interests of justice by discouraging attorneys from undertaking limited scope representations out of concern that agreements with clients for such representations would not be enforced.

A limited scope appearance under the rule is unrelated to “special and limited” appearances formerly used to object to the lack of personal jurisdiction. The use of such appearances ended with the adoption of Public Act 91-145, which amended section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301) effective January 1, 2000.
RECOMMENDATION #3B: ENHANCE EDUCATIONAL PROGRAMMING FOR LAW STUDENTS, ATTORNEYS, JUDGES, AND COURT STAFF

Watch the pocket chat for this recommendation

The Limited Scope Committee also proposed modifications to Supreme Court Rules 793 and 794 to expand access to educational programming on limited scope representation.

The proposed amendments would add limited scope representation as a recommended topic for the Basic Skills Course required for all newly admitted attorneys in Illinois. By introducing this important topic early in their careers, new attorneys will be more comfortable with the idea of limited scope representation and more likely to consider incorporating it into their practices or to offer limited scope pro bono services. The proposal would add limited scope representation to the list of topics for which lawyers can receive professionalism CLE credit as part of their ongoing educational requirements. While this would not be a required course, it would offer more visibility to limited scope representation in general and to its importance for both access to justice and the sustainable practice of law.

The Limited Scope Committee similarly encourages law schools across the state to incorporate limited scope representation into the curriculum for their ethics classes. By doing so, new lawyers will be prepared to ethically and responsibly offer limited scope representation to their clients when appropriate, and to appear opposite limited scope attorneys in court.

Lastly, the Limited Scope Committee recommends that the Administrative Office of the Illinois Courts (AOIC) continue to offer educational programming and other resources to judges, circuit clerks, and court staff on the limited scope representation rules. The Limited Scope Committee recommends that limited scope representation be a regular part of both the curriculum for new judges and the biennial judicial education conference. The Limited Scope Committee further encourages local courts to consider regional programming on limited scope representation for the judges, clerks, lawyers, and court staff in their local legal communities.

RULE 793. REQUIREMENT FOR NEWLY-ADMITTED ATTORNEYS

(a) Scope

Except as specified in paragraph (f), every Illinois attorney admitted to practice on or after October 1, 2011, must complete the requirement for newly-admitted attorneys described in paragraph (c).

(b) Completion Deadline

The requirements established in paragraphs (c), (f) and (h) must be completed by the last day of the month that occurs one year after the newly-admitted attorney’s admission to practice in Illinois.

(c) Elements of the Requirement for Newly-Admitted Attorneys

The requirement for newly-admitted attorneys includes three elements:
A Basic Skills Course of no less than six hours covering topics such as practice techniques and procedures under the Illinois Rules of Professional Conduct, client communications, use of trust accounts, attorneys’ other obligations under the Court’s Rules, required record keeping, professional responsibility topics (which may include professionalism, diversity and inclusion, mental health and substance abuse, limited scope representation, access to justice, and civility) and may cover other rudimentary elements of practice. The Basic Skills Course must include at least six hours approved for professional responsibility credit. An attorney may satisfy this requirement by participating in a mentoring program approved by the Commission on Professionalism pursuant to Rule 795(d)(11); and

(2) At least nine additional hours of MCLE credit. These nine hours may include any number of hours approved for professional responsibility credit;

(3) Reporting to the MCLE Board as required by Rule 796.

(d) Exemption From Other Requirements

During this period, the newly-admitted lawyer shall be exempt from the other MCLE requirements, including Rule 794(d)(2). A newly-admitted attorney may earn carryover credit as established by Rule 794(c)(2).

(e) Initial Reporting Period

The newly admitted attorney’s initial two-year reporting period for complying with the MCLE requirements contained in Rule 794 shall commence, following the deadline for the attorney to complete the newly-admitted attorney requirement, on the next July 1 of an even-numbered year for lawyers whose last names begin with a letter A through M, and on the next July 1 of an odd-numbered year for lawyers whose last names begin with a letter N through Z.

(f) Prior Practice

(1) Attorneys admitted to the Illinois bar before October 1, 2011

The newly-admitted attorney requirements of Rule 793(c) do not apply to attorneys who are admitted in Illinois before October 1, 2011, and after practicing law in other states for a period of one year or more. Attorneys shall report this prior practice exemption to the MCLE Board under Rule 796. Thereafter, such attorneys will be subject to MCLE requirements under the appropriate schedule for each attorney.

(2) Attorneys admitted to the Illinois bar on October 1, 2011, and thereafter

The newly-admitted attorney requirements of Rule 793(c) do not apply to attorneys who: (i) were admitted in Illinois on October 1, 2011, and thereafter; and (ii) were admitted in Illinois after practicing law in other states for a period of at least one year in the three years immediately preceding admission in Illinois. Instead, such attorneys must complete 15 hours of MCLE credit (including four hours of professional responsibility credits) within one year of the attorney’s admission to practice in Illinois. Such attorneys shall report compliance with this requirement to the MCLE Board under Rule 796. Thereafter, such attorneys will be subject to the MCLE requirements under the appropriate schedule for each attorney.
(g) Approval

The Basic Skills Course shall be offered by CLE providers, including “in-house” program providers, authorized by the MCLE Board after its approval of the provider’s planned curriculum and after approval by the Commission on Professionalism of the professional responsibility credit. Courses shall be offered throughout the state and at reasonable cost.

(h) Applicability to Attorneys Admitted after December 31, 2005, and before October 1, 2011

Attorneys admitted to practice after December 31, 2005, and before October 1, 2011, have the option of completing a Basic Skills Course totaling at least 15 actual hours of instruction as detailed under the prior Rule 793(c) or of satisfying the requirements of paragraph (c).


RULE 794. CONTINUING LEGAL EDUCATION REQUIREMENT

(a) Hours Required

Except as provided by Rules 791 or 793, every Illinois attorney subject to these Rules shall be required to complete 20 hours of CLE activity during the initial two-year reporting period (as determined on the basis of the lawyer’s last name pursuant to paragraph (b), below) ending on June 30 of either 2008 or 2009, 24 hours of CLE activity during the two-year reporting period ending on June 30 of either 2010 or 2011, and 30 hours of CLE activity during all subsequent two-year reporting periods.

(b) Reporting Period

The applicable two-year reporting period shall begin on July 1 of even-numbered years for lawyers whose last names begin with the letters A through M, and on July 1 of odd-numbered years for lawyers whose last names begin with the letters N through Z.

(c) Carryover of Hours

(1) For attorneys with two-year reporting periods

All CLE hours may be earned in one year or split in any manner between the two-year reporting period.

(i) If an attorney earns more than the required CLE hours in the two-year reporting periods of July 1, 2006, through June 30, 2008, or July 1, 2007, through June 30, 2009, the attorney may carry over a maximum of 10 hours earned during that period to the next reporting period, except for professional responsibility credits referred to in paragraph (d).

(ii) If an attorney earns more than the required CLE hours in the two-year reporting periods of July 1, 2008, through June 30, 2010, or July 1, 2009, through June 30, 2011, and all reporting periods thereafter, the attorney may carry over to the next reporting period a maximum of 10 hours, including hours approved for professional responsibility credit. Professional responsibility credit carried over to the next reporting period may be used to meet the professional responsibility requirement of the next reporting period.
(2) For newly-admitted attorneys subject to Rule 793

(i) For an attorney admitted to practice in Illinois on January 1, 2006, through June 30, 2009, such newly-admitted attorney may carry over to his or her first two-year reporting period a maximum of 10 CLE hours (except for professional responsibility credits referred to in paragraph (d)) earned after completing the newly-admitted attorney requirement pursuant to Rule 793.

(ii) For an attorney admitted to practice in Illinois on July 1, 2009, and thereafter, such newly-admitted attorney may carry over to his or her first two-year reporting period a maximum of 15 CLE hours earned in excess of those required by Rule 793(c) or Rule 793(f)(2) if those excess hours were earned after the attorney’s admission to the Illinois bar and before the start of the attorney’s first two-year reporting period. Those carryover hours may include up to six hours approved for professional responsibility credit. Professional responsibility credit carried over to the next reporting period may be used to meet the professional responsibility requirement of the next reporting period.

(3) An attorney, other than a newly admitted attorney, may carry over to his or her first two-year reporting period a maximum of 10 CLE activity hours (except for professional responsibility credits referred to in paragraph (d)) earned between January 1, 2006, and the beginning of that period.

(d) Professional Responsibility Requirement

(1) Each attorney subject to these Rules shall complete a minimum of six of the total CLE hours for each two-year reporting period in the area of professionalism, civility, legal ethics, diversity and inclusion, or mental health and substance abuse, access to justice, or limited scope representation.

(2) Beginning with the two-year reporting period ending June 30, 2019, these minimum six hours shall include either completing the Rule 795(d)(11) yearlong Lawyer-to-Lawyer Mentoring Program or:

(i) At least one hour in the area of diversity and inclusion and

(ii) At least one hour in the area of mental health and substance abuse.
RECOMMENDATION #3C: EXPAND AND IMPROVE DATA COLLECTION ON LIMITED SCOPE REPRESENTATION

Watch the pocket chat for this recommendation

The Limited Scope Committee recommends that the AOIC continue to collect data on the use of limited scope appearances in Illinois, and work with court stakeholders to improve the quality and quantity of publicly available data.

Since 2017, the AOIC has required each Court Clerk in Illinois to provide quarterly data on the number of limited scope appearances filed by case type. However, the data has been incomplete due to discrepancies in how limited scope appearances are counted and tracked throughout the state and differences in case management systems. Without consistent and accurate data reports, a clear picture of limited scope representation in Illinois remains elusive.

The Limited Scope Committee recommends that the AOIC and ATJ Commission continue to work with Circuit Clerks to improve data collection efforts related to limited scope representation. The Limited Scope Committee also recommends that the AOIC and ATJ Commission work with Tyler Technologies, the vendor that operates the state’s e-filing system, to obtain information on the numbers and types of limited scope appearances that are filed electronically in Illinois. This data should be shared publicly and can guide future educational programming, outreach, and other efforts to expand limited scope representation in Illinois.

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RECOMMENDATION #3D: CONSIDER EXPANSION OF LIMITED SCOPE REPRESENTATION IN FEDERAL COURT

Watch the pocket chat for this recommendation

The Limited Scope Committee recommends that the Federal District Courts in Illinois consider rule amendments to allow for limited scope representation in civil matters in federal court. In the Northern District of Illinois, for example, the current rules broadly prohibit the practice with some exceptions carved out for court-sponsored pro bono programs. These pro bono programs have been successful in allowing attorneys to use their time most efficiently to secure positive outcomes for their clients and to alleviate the stress on the court of having large numbers of unrepresented litigants. An expansion of the rules would allow even more attorneys to provide responsible and ethical limited scope representation to facilitate settlements, provide support to pro se litigants, and improve the administration of justice.

The Limited Scope Committee reviewed a series of rules changes that were recently implemented in the District of Colorado. The rules were passed by the judiciary during their biennial review of the federal rules and were implemented in large part as a response to the rise in unrepresented litigants in the District Court. The rule changes endorsed the idea of limited scope representation with appropriate procedural safeguards, with the goal of expanding pro bono service and access to legal representation more broadly. While the rules were in large part modeled after the parallel state court rules, some adjustments were made to accommodate the specific needs and concerns of the federal judiciary. This balanced approach could serve as the framework for adopting and implementing similar rules in the three Federal District Courts in Illinois.

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RECOMMENDATION #4: DEVELOP NEW/AMENDED RULES ON ALTERNATIVE FEES AND FEE PETITIONS

Watch the pocket chat for this recommendation

One of the biggest impediments to affordable legal help in the consumer and small business market is that the market for legal services today is largely opaque when it comes to pricing. People who might be able to afford the legal help they need often do not even try to get a lawyer because they have no idea what it might cost.

This problem exists because the billable hour remains the primary means of pricing services in this market. In addition to lacking transparency and cost certainty for clients, the billable hour also misaligns incentives for efficiency, innovation, and value.

In contrast, fixed and subscription fee billing have become the norm in most other industries today. Consumers expect companies to tell them up front how much their products and services are going to cost. Doing so allows all consumers, especially budget-conscious consumers, to determine whether the product or service fits within their budget prior to making the purchase.

Legal services should be no different, and in fact many attorneys (e.g., attorneys in the CBF Justice Entrepreneurs Project) already have recognized the importance and benefits of offering fixed and subscription fee agreements: predictability and transparency for the legal consumer and better cash flow for the attorney. Not surprisingly, the response from legal consumers has been overwhelmingly positive. Yet because the Rules of Professional Conduct don’t explicitly permit the use of these other types of fee agreements (only implicitly in IRPC 1.5 and 1.15) or the filing of fee petitions based on these agreements, many attorneys and judges question whether using them is ethical. Choosing to avoid the risk associated with the uncertainty, most attorneys continue to resort to hourly rate agreements, which is problematic for legal consumers and attorneys alike.

The proposed comment to Rule 1.5 is meant to achieve two goals. The first goal is to clarify that offering fee agreements based on arrangements other than an hourly rate is permitted under the Rules. The second goal is to encourage broader use of these alternative agreements by attorneys through the provision of concrete examples of fee arrangements not based on an hourly rate.

The proposed Supreme Court Rule is meant to clarify for judges and attorneys that any fee agreement that is reasonable under the circumstances under Rule 1.5 can be the basis for a fee petition and does not require time-based entries except in the limited circumstances specified in the Rule. The new Rule will explicitly allow lawyers who utilize other types of value-based fee agreements to petition for fees without having to revert to the billable hour, encouraging more lawyers to offer this more consumer-friendly pricing and improving access to affordable legal help in the process.

PROPOSED COMMENT FOR RULE 1.5: FEES

Comment

Types of Fee Agreements Permitted

[4] Rule 1.5 allows fee agreements that are not based on an hourly rate so long as the fee is reasonable for the services performed. Attorneys are encouraged to make fee agreements that are not based on an
hourly rate because it makes the cost of legal services more transparent, predictable, and often more affordable for clients. Some examples of these types of fee agreements include:

- fixed fees by task or phase of a case,
- fixed fees for an entire case,
- recurring fixed monthly fees (also called a subscription fees),
- pure contingency fees (the attorney receives a percentage of the amount recovered for the client),
- reverse contingency fees (the attorney receives a percentage of the amount of money saved for the client), and
- a hybrid of any of these arrangements.

The fees received under these fee agreements must be reasonable as allowed under Rule 1.5. Lawyers using these fee agreements may establish the reasonableness of fees based upon the value provided.

PROPOSED NEW ILLINOIS SUPREME COURT RULE 300 – ATTORNEY’S FEE PETITIONS

(a) In any action where an attorney’s fees are recoverable by statute, rule, contract, or order of the Court, an attorney may file a fee petition. The fee petition can be based on any fee agreement that is allowed under Rule 1.5 of the Rules of Professional Conduct, so long as:

(1) the fee petition is based on the attorney’s written fee agreement with their client,
(2) the fee agreement with their client was reasonable under the circumstances as allowed under Rule 1.5, and
(3) the fee petition includes a reasonable summary of the value of the attorney’s services to their client and of the fee agreement.

A contingent fee agreement, however, cannot be the basis for a fee petition against an opposing party.

(b) An attorney’s fee petition does not require time-based entries unless:

(1) the attorney’s fee agreement was based, in whole or in part, on an hourly rate;
(2) the attorney seeks to recover more than the amount the client agreed to pay under the fee agreement, and the amount of the award is not otherwise fixed by statute, rule, contract, or order of the court; or
(3) the attorney had a contingent fee agreement with their client and seeks to recover a fee under a statutory, contractual, or other fee-shifting provision.

(c) The fact that the attorney originally took the case on a pro bono basis shall not prevent the attorney from petitioning for and recovering fees so long as the attorney complies with sections (a)(3) and (b) of this Rule.

Comment

This Rule clarifies that any fee agreement that is reasonable under the circumstances under Rule 1.5 may be the basis for an attorney’s fee petition, with limited exceptions.

Historically, courts have required attorney’s fee petitions to be based on an hourly fee arrangement even when that was not the agreement with the client. Under Rule 1.5, there are many fee agreements
beyond the traditional hourly billing model that are allowed. Examples include recurring fixed monthly fees, fixed fees for an entire case or part of a case, and contingent fees, among others.

Going forward, if the fee petition is based on the actual fee agreement with the client and includes a summary of the value of the services provided to the client, courts cannot require submission of time-based entries unless section (b) applies.

The Rule clarifies that a contingent fee agreement can be used as the basis for a fee petition except when the attorney seeks to enforce the petition against an opposing party, in which case section (b) of the Rule applies. Nothing in this Rule, however, is intended to displace the longstanding law that allows a discharged attorney who has asserted a lien on a former client’s recovery from enforcing that lien.

Section (c) of the Rule codifies the prevailing case law that an attorney can file a fee petition even though they originally took the case pro bono so long as the attorney complies with this Rule. The public policies that support fee shifting statutes and rules would be frustrated if the award of attorney’s fees were dependent on the type of fee arrangement the attorney had with their client.

Determining the value of the attorney’s services to the client involves more than the actual legal services provided. It includes other value the client receives from a particular fee agreement that is not based on the traditional hourly billing model. Examples include price transparency, price certainty, risk management, convenience, accessibility, and peace of mind.

An additional way the value of the attorney’s services should be recognized is the attorney’s skill in explaining the legal process to the client and helping the client to understand what happened, what is happening, and what is likely to happen in the future of the legal matter. An attorney with this skill will limit uncertainty and stress for the client.
RECOMMENDATION #5: RECOGNIZE A NEW LICENSED PARALEGAL MODEL SO THAT LAWYERS CAN OFFER MORE EFFICIENT AND AFFORDABLE SERVICES IN HIGH VOLUME AREAS OF NEED

Watch the pocket chat for this recommendation

The Optimizing the Use of Other Professionals Committee (Optimizing Committee) recommends that the Court issue a new rule within the Rules on Admission and Discipline of Attorneys, based on Rule 711 (Representation by Supervised Law Students or Graduates), that would authorize Licensed Paralegals to provide a broader range of client services, in designated legal areas where there is documented high unmet need, beyond those currently permitted for traditional paralegals.

Supervision by an Illinois lawyer in good standing would be required for Licensed Paralegals. The lawyer or law firm employing a Licensed Paralegal would be required to carry malpractice insurance that covers the acts of the paralegal. Further, Licensed Paralegals would be subject to stringent training and experiential requirements before they could obtain a license from the Supreme Court. Once a paralegal has met all requirements for licensing, they would be permitted to provide services in limited types of cases, and to provide an attenuated range of client services. Licensed Paralegals would be subject to discipline and withdrawal of license by the Attorney Registration and Disciplinary Commission.

The potential for enhanced lawyer efficiency and cost-effectiveness provides the rationale for creating this new class of provider. Some aspects of the practice of law in high-demand (and often high-volume) proceedings do not require significant legal analysis and judgment. Lawyers spend considerable amounts of time in simple status hearings, or preparing routine pleadings and documents. This is especially true in the types of cases – family law, evictions, and small consumer debt matters - where this proposed rule would authorize Licensed Paralegals to assume an expanded role.

Some other jurisdictions have experimented, or are considering experimenting, with creating new categories of independent Limited License Legal Technicians or independent Licensed Document Preparers. Those categories of provider are permitted to practice law, with restrictions, without lawyer supervision. The Optimizing Committee does not recommend that Illinois follow this approach, as we do not see it as the most efficient or effective way to expand services or lower the costs of legal services. The Committee notes that other factors impede the ability of consumers to readily find solutions to their legal problems, such as failing to recognize a matter is legal in nature, not knowing where to turn for reliable legal help, and the murky transparency and overall cost of services. Given the fact that these independent providers would have the same operation costs and the same challenges in connecting to clients that lawyers face, the Committee believes it is unlikely that these providers would be able to deliver services at scale at significantly lower cost.

The proposal offered by this Optimizing Committee takes a different approach – it seeks to increase lawyer efficiency by offering the option of placing greater reliance for some tasks on supervised Licensed

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Paralegals. By relying more heavily on Licensed Paralegals for things like routine preliminary court appearances, the lawyer can focus their attention on the more complex aspects of a case where legal analysis and judgment are key. Licensed Paralegals also can address the shortage of providers in the many “legal deserts” in the state, expanding the pool of providers in those areas under the ultimate supervision of Illinois lawyers.

Illinois is not entirely alone in considering this alternate approach to expanding the use of paralegals. The Minnesota Supreme Court is requesting public comment on a pilot project for use of paraprofessionals to provide certain legal services in two areas (housing and family law) under the supervision of a licensed Minnesota lawyer through an expansion of state student practice rules.

The Optimizing Committee considered, at length, each aspect of the proposal:

**A. Title:** The Optimizing Committee considered several possible titles for this proposed new category of provider, including “Certified Paralegal,” and “Accredited Paralegal.” It was noted that there are several voluntary national professional paralegal organizations that offer paralegal certification, so the use of “Certified Paralegal” in Illinois might be confusing since some paralegals may have already obtained certification through these voluntary organizations, meaning they have met educational requirements, prior work experience as a paralegal, and passed a rigorous examination of the knowledge necessary to be an effective professional paralegal (and the term “Certified Paralegal” is actually a trademarked name of NALA-The Paralegal Association). Similarly, the voluntary Illinois Paralegal Association has created a training/accreditation program through which it would designate their members as “Accredited Paralegals,” by paying a fee and without taking any formal examination. Therefore, to avoid confusion, the Optimizing Committee proposes that the Supreme Court use the term “Licensed Paralegal” for the proposed new category of provider.

**B. Categories of cases permitted:** The Optimizing Committee sought to identify the categories of cases where there is the highest demand for services (particularly among persons of limited means), and where many aspects of practice are routine and form- or template-based. Permitting a broader range of out-of-court and in-court services for Licensed Paralegals would enable both nonprofit and higher-volume private practice firms to increase their efficiency, and in the case of private firms may permit the lowering of costs. As a starting point for testing this concept in Illinois, the Optimizing Committee proposes that practice be limited to family law, evictions, and consumer debt matters below a certain threshold. If the proposed rule is implemented, the Court can gather data on its utilization, effectiveness, and any problems that arise, and then later determine if these categories should be further restricted or expanded.

**C. Service types permitted:** The Optimizing Committee determined that in the categories of cases where Licensed Paralegals are proposed to be permitted to operate, the types of services that they should be permitted to perform should track Rule 711 but be limited to those occurring before a matter goes to trial. One Optimizing Committee member, however, believes that such a limitation is

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41 See William D. Henderson, Legal Market Landscape Report (2018), available at: http://board.calbar.ca.gov/Agenda.aspx?id=14807&tid=0&show=100018904&s=true#10026438. Henderson finds that a key impediment to increases in productivity in service-oriented industries - including law - is the difficulty in increasing efficiency of providers. “The core market problem is one of lagging legal productivity that, over time, increases the price of traditional consultative legal services relative to other goods and services.” Henderson, at 35.

42 See: www.2Civility.org/the-disappearing-rural-lawyer

unnecessary, and that Licensed Paralegals should be permitted to provide the full range of services in these types of cases, including primary responsibility for trials and appeals.

**D. Malpractice insurance:** The Optimizing Committee had a robust debate concerning whether lawyers (or law firms) who supervise Licensed Paralegals should be required to carry malpractice insurance. Some members initially suggested that, since Illinois lawyers are not required to carry such insurance, it is illogical to require this sub-category of lawyers to do so. Also, all lawyers are subject to discipline if they do not provide competent services, including services provided with the assistance of a paralegal. Requiring malpractice insurance before a lawyer/law firm is permitted to utilize a Licensed Paralegal may be a disincentive for adoption of a business model that includes this new type of provider. However, ultimately the Optimizing Committee reached consensus that malpractice insurance should be required for the lawyer/law firm employing a Licensed Paralegal. Because this proposal would implement an untested new concept that potentially carries some added risk to clients, protection of the public should be paramount, and malpractice insurance should be required. The Optimizing Committee considered including a provision concerning the insurance limits that must be included in the policy, but did not think that such a provision would be realistically enforceable, and therefore decided to simply require that a policy covering the acts of the Licensed Paralegal must be in effect.

**E. Education and experience:** The Optimizing Committee also engaged in robust discussion of the education and experience requirements for a person to be granted a license as a “Licensed Paralegal” by the Illinois Supreme Court. A principal matter of debate focused on whether a person with a high school degree could obtain licensed status in Illinois with some amount of supervised experience in a traditional paralegal position. Two other jurisdictions, by statute, regulate the traditional paralegal profession in their states, including specifying detailed education and experience. These states limit paralegals to the traditional role, but do require a person to meet certain requirements before they may function in that role. Montana permits a person with only a high school degree to become a paralegal, but only after obtaining 4,800 hours of experience. New Mexico takes a similar approach, but requires seven years of experience. One member of the Optimizing Committee felt strongly that Illinois should not permit those with only a high school degree to become a Licensed Paralegal, with any amount of experience as a traditional paralegal. This member stated the belief that even many hours of substantive legal work is not a substitute for education in an accredited academic institution. This member asserted that the reason attorneys have to attend law school and not just apprentice with a licensed attorney is because this formal education is seen by the bar as the only way to ensure that lawyers have the competence to adequately represent individuals in a court of law. The majority of the Optimizing Committee, however, agreed with the consensus position that an experiential path to Licensed Paralegal status is important. Many people, due to various life circumstances, may not have access to higher education, but can demonstrate aptitude and intelligence through service and experience. Furthermore, there may currently be many Illinois paralegals with significant years of experience who could function well as Licensed Paralegals, but who lack a higher education degree. Therefore, the majority of the Optimizing Committee believed that the educational and experiential requirements set forth in the proposal are sufficient for protection of the public. Public protection will be buttressed further because, under the proposal, applicants for Licensed Paralegal status will be tested for knowledge of professional ethics, under lawyer supervision, covered by malpractice insurance, and subject to discipline and license withdrawal if they do not perform well.

A detailed proposal for a Licensed Paralegal Rule is set forth below. In addition to the matters discussed above, the proposal addresses such issues as administration of the Rule, ethics requirements, and CLE requirements. Of course, full implementation would require adjustments to other Illinois rules and policies, including appropriate changes relating to the Administrative Office of the Illinois Courts, the Attorney Registration and Discipline Commission, etc. Further refinement of the concept will be
assisted by review and comment from interested groups and individuals, including the judiciary, the bar, and paralegals.

PROPOSED LICENSED PARALEGAL RULE 7XX. REPRESENTATION BY LICENSED PARALEGAL

(a) Authorization. A paralegal who has completed the licensing requirements described in paragraph (c) of this title may provide the services described in paragraph (d) of this title as a Licensed Paralegal.

(b) Conditions Under Which Services Must be Performed. The services authorized by this rule may only be carried out if all of the following requirements are met:

(i) The Licensed Paralegal is employed by:
   (i) a lawyer who is licensed and in good standing in the state of Illinois;
   (ii) a law firm that has obtained a certificate of registration from the Supreme Court of Illinois; or
   (iii) a legal aid bureau, legal assistance program, organization, or clinic chartered by the State of Illinois.

(ii) The lawyer, law firm, or other permissible institution employing the Licensed Paralegal provides supervision of the Licensed Paralegal by a licensed Illinois lawyer in good standing.

(iii) The lawyer, law firm, or other institution employing and supervising the Licensed Paralegal:
   (i) Maintains malpractice insurance coverage that includes coverage for acts of the Licensed Paralegal, and verifies such coverage annually when filing a license renewal with the ARDC, and
   (ii) Actively practices in the types of cases where the supervised Licensed Paralegal is providing services.

(iv) The law firm or lawyer providing supervision obtains written consent to representation from the person on whose behalf a Licensed Paralegal is acting and shall file the consent with the court in each case where such representation is provided.

(c) Paralegal Licensing. A paralegal must be licensed by the Supreme Court of Illinois to provide services in the types of cases described in paragraph (d)(1). To obtain a license to provide services in such cases, a paralegal must:

(i) Meet one or more of the following educational, training, and work experience qualifications:
   (i) have received an associate's degree in paralegal education from an accredited institution or a baccalaureate degree in paralegal education from an accredited college or university, or a baccalaureate degree in any discipline plus a post-baccalaureate certificate or master's degree in a paralegal or legal education/studies program;
   (ii) have received a baccalaureate degree in any discipline from an accredited college or university and have performed at least 2,000 hours of substantive legal work in any of the types of cases described in paragraph (d)(1) or as a general litigation paralegal under the supervision of a licensed attorney, documented by the certification of the attorney or attorneys under whom the work was done on a form provided by the Supreme Court, and have completed at least five hours of approved continuing legal education in the area of legal ethics and professional responsibility;
   (ii) have received a high school diploma or its equivalent, and have performed at least 4,000 hours of substantive legal work in any of the types of cases described in paragraph (d)(1) or as a general litigation paralegal under the supervision of a licensed attorney, documented by the certification of the attorney or attorneys under whom the work was done, and have completed at least five hours of approved continuing legal education in the area of legal ethics and professional responsibility;
   (iv) have received certification or accreditation by the Illinois Paralegal Association, the National Association of Legal Assistants, Incorporated (NALS), the National Federation of Paralegal Associations,
Incorporated (NFPA), the Association for Legal Professionals (NALS), the American Alliance of Paralegals (AAPI), or other national or state competency examination; or

(v) have graduated from an accredited law school and have not been disbarred or suspended from the practice of law by any jurisdiction.

(2) Pass the Multi-State Professional Ethics Exam.

(3) File a character and fitness registration application with the Optimizing Committees on Character and Fitness and receive a recommendation for licensing pursuant to that application.

(4) Maintain licensing by completing five hours of continuing legal education in the types of cases in which they provide services and at least two hours of professional ethics education every 24 months.

(d) Services Permitted. A Licensed Paralegal may only render services in one or more of the types of cases enumerated in paragraph (1) below, and may only provide the types of services described in paragraph (2) below:

(1) Case types where services may be rendered:
   (i) Domestic relations matters under the Illinois Marriage and Dissolution of Marriage and Parentage Acts;
   (ii) Civil matters under the Illinois Domestic Violence Act, Civil No Contact Order Act and Stalking No Contact Order Act;
   (iii) Guardianships of the person of minors under the Illinois Probate Act;
   (iv) Evictions; and
   (v) Contract and debt collection cases where less than $25,000 is at stake.

(2) Types of Service Permitted:
   (i) Counsel and advise clients;
   (ii) Negotiate a settlement;
   (iii) Represent clients in mediation and other non-litigation matters; and
   (iv) Prepare written documents, including contracts, settlement agreements, appearances, pleadings, motions, and other documents to be filed with the court which may be signed by the Licensed Paralegal with the accompanying designation “Licensed Paralegal” but must also be signed by the supervising member of the bar.
   (v) Appear in the civil trial courts and administrative tribunals of Illinois for all pretrial proceedings, and court-annexed arbitration and mediation. The supervising lawyer need not be present during such appearances.

(e) Regulation and Discipline. A Licensed Paralegal is subject to the Illinois Rules of Professional Conduct applicable to licensed Illinois lawyers, and is subject to disciplinary proceedings by the ARDC.

Comment

[1] Because this is a new and untested business model, as a matter of public protection lawyers who utilize licensed paralegals should be required to carry malpractice insurance. Further, the types of clients to be served under this new model may be among the most vulnerable, and thus most deserving of additional protection. While requiring supervising lawyers to carry malpractice insurance may provide some disincentive to adopt a business model including licensed paralegals due to that additional burden, the Optimizing Committee developing the rule believes that on balance it is more important to assure that clients are protected.

[2] The Optimizing Committee discussed training and experience requirements at some length before arriving at the formulation offered in this draft. The provisions suggested here are largely borrowed from Montana and New Mexico regulations regarding paralegals, but with some adjustments to those models to try to keep the barriers from entry as low as reasonably possible. There was consensus among Optimizing Committee members that the rule should include an experiential path to
licensure for applicants with only a high school education, but one member strongly disagreed and believes that only applicants with a higher education degree should be able to receive a license.

[3] The Optimizing Committee discussed whether it should propose a rule that creates a single type of licensed paralegal, or three different paralegal licenses – one each for domestic relations, eviction, and consumer matters. Ultimately, it chose to suggest a single license, believing that either broad training through respected sources, or on-the-job training plus significant experience in any one area would likely provide adequate preparation for a licensed paralegal to undertake other types of cases as well, with ongoing attorney supervision. Moreover, it will at all times be the responsibility of the supervising lawyer to carefully oversee the work of each licensed paralegal.

[4] The model proposed by this draft rule is, to the knowledge of the Optimizing Committee, unique. It is unlike the “independent” paralegal models that are being piloted in several other states. Adding new types of independent legal providers (Limited License Legal Technicians, etc.) will not necessarily increase access to services, because those new types of providers will be subject to the same types of operating costs and market forces that historically dictate the costs to consumers of the services. Therefore, the model suggested by this draft rule attacks the problem of access to legal services from a different direction – it offers a path to increased lawyer efficiency by lowering operating costs through deployment of lower-cost labor within a firm: labor that is authorized to provide a much broader range of client services than the traditional paralegal is permitted to undertake. This will enable the attorney to truly practice “at the top of their license,” by focusing on legal analysis and the more complex aspects of client service (e.g. trials and appeals), while authorizing licensed paralegals to provide a full range of the more routine aspects of client service.
HELPING PEOPLE TO RECOGNIZE WHEN THEY HAVE A LEGAL PROBLEM AND WHERE THEY CAN TURN FOR AFFORDABLE AND RELIABLE HELP

Recommendation #6: Streamline and modernize the Rules around lawyer Advertising

Recommendation #7: Recognize a new Community Justice Navigator model to build off the success of Illinois JusticeCorps in the courts

Recommendation #8: Create a hub where the public can find Court-approved sources for information and assistance

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RECOMMENDATION #6: STREAMLINE AND MODERNIZE THE RULES AROUND LAWYER ADVERTISING

Watch the pocket chat for this recommendation

Rules 7.1 and 7.3 (a) and (b) define the core principles for lawyers and the marketing of legal services: i.e., lawyers should refrain from making any false, misleading, coercive or harassing communications. Other than some clarifying amendments to Rule 7.3 (a) and (b), these parts of the Rules should remain intact and stand alone as the guiding principles for lawyers on these issues.

Rule 7.2, Rule 7.3 (c) and (d), and Rule 7.4 are confusing, unnecessary, duplicative, and/or overly prescriptive and have a chilling effect on lawyers using both innovative and proven means to market their services to potential clients. As a result, other for-profit legal providers increasingly are attracting customers who would be better served by a lawyer representing them, but are not connecting to one due to obstacles created by the current Rules.

The backdrop for these proposals is studies regularly showing that many, if not most, people in our community today do not know how to connect to reliable legal information or find a good lawyer whose skillset matches their needs – and that is when they know they have a legal problem. As a recent American Bar Foundation study by the now nationally acclaimed Rebecca Sandefur found, most people do not even recognize when they have a legal problem or a potential legal solution.

The ability for lawyers to advertise to raise awareness and stimulate the market is a crucial part of helping people recognize they have legal problems with potential legal solutions. Where appropriate, it is also important that lawyers have the ability to solicit clients who are known to be in need of legal services in order to connect to potential clients who may not otherwise know where to turn. So long as these actions are done truthfully and without coercion or harassment, lawyers should be permitted to engage in these activities that are widely accepted in other professions and industries, as well as consistent with commercial speech protection under the First Amendment.

Apart from the chilling effect the current rules create around marketing of legal services, there are two other issues that create more practical challenges for lawyers trying to serve the consumer market:

1. Rule 7.2, which prohibits a lawyer from giving anything of value to someone recommending their services. This is unnecessarily restrictive and should be allowed so long as the lawyer does not violate the core principles of the Rule 7.1; and

[45] Clio’s COVID-19 Impact Research Briefing: June 17 indicates that roughly a quarter of legal consumers believe lawyers have stopped offering their services during the pandemic. https://www.clio.com/resources/legal-trends/covid-impact/briefing-june-17/?utm_source=internal&utm_medium=email&utm_campaign=covid-19-research-b2&utm_content=show&mkt_tok=eyJpIjoiWkRkak1qUmlOVFHTjIWbCIsInQiOiJBN21CY0cyV25pcEhoaFFzUldYVnNqWDBHeG1wY2RKRFlTNdgdpVXZkbEt5a0jFSFF6QWV1LYkdOXlj6aTl5J2YyYdFYUSNQVwvRmtzdWdWSVNCSDNmbk02dUNaUVlalBLblRibWF0alNnWUNqUHlubmh2VWxUYnpMUUJRFVVZU8ifQ%3D%3D
2. Rule 7.3 on solicitation, which broadly limits solicitation of a client known to be in need of legal services. This is overbroad; solicitation should only be prohibited where it involves coercion, duress, or harassment, or the client has indicated they do not wish to be solicited.

The ABA recently revised the Rule 7 series of its Model Rules of Professional Conduct in a more limited way than we suggest here. While a modest improvement over the current rules, these changes to the Model Rules would leave an unduly complex and overly prescriptive set of rules that does not adequately resolve the practical challenges noted above and would continue to hinder innovation.

Virginia, on the other hand, three years ago approved a more streamlined approach similar to what we are suggesting for Illinois (deleting VA rules 7.2, 7.4, and 7.5 and consolidating them into one new rule 7.3). Utah and Arizona have recently followed suit, and the Association of Professional Responsibility Lawyers has recommended many of these changes as well.

A recent article from the United Kingdom sheds some light on why we have such a huge market failure now even though there are lots of lawyers out there. Two quotes in particular stand out:

"Where you’ve got a market that is very highly regulated in one way but where there can be limits to the information that is available to the consumers, it doesn’t follow that the competition is fair and open, and that the consumers of legal services are the ones benefiting from the competition.

“We should celebrate the fact that most people who use – and are lucky enough to be able to afford to use – legal services are satisfied with how they’ve been dealt with, but that shouldn’t stop us from saying ‘But a lot of people don’t use them in the first place because they can’t find out how to use them or they think they’re too expensive…’"

The approach we suggest for Illinois with respect to the Rule 7 series follows in that spirit, maintaining the fundamental ethical principles all agree that lawyers should abide by in marketing and communication, but stripping out the overly prescriptive pieces of the current Rules that have the effect of confusing lawyers and inhibiting innovation.

**RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER’S SERVICES**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

**Comment**

[1] This Rule governs all commercial communications about a lawyer’s services. Whatever means are used to make known a lawyer’s services, statements about them must be truthful.

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Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer’s communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation.

Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if:

(a) it omits a fact necessary to make the lawyer’s communication considered as a whole not materially misleading;

(b) if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation; or

(c) it is presented in a way that leads a reasonable person to believe the lawyer’s communication requires that person to take further action when, in fact, no action is required.

A commercial communication that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client’s case. Similarly, an unsubstantiated claim about a lawyer’s or law firm’s services or fees, or an unsubstantiated comparison of the lawyer’s or law firm’s services or fees with the services or fees of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

**RULE 7.2: ADVERTISING**

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may

—— (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
—— (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
—— (3) pay for a law practice in accordance with Rule 1.17; and
—— (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
(i) the reciprocal referral agreement is not exclusive, and
(ii) the client is informed of the existence and nature of the agreement.

Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now one of among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange initiated by the lawyer, that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class-action litigation.

Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for channeling professional work recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, online directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client development services, such as publicists, publicity personnel, business-development staff, and website designers. Moreover, a lawyer may pay others for generating client leads,
such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator’s communications are consistent with Rule 7.1 (communications concerning a lawyer’s services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person’s legal problems when determining which lawyer should receive the referral. See also Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers; Rule 8.4(a) for the duty to avoid violating the Rules through the acts of another, who prepare marketing materials for them.

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer’s professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer’s professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

RULE 7.3: SOLICITATION OF CLIENTS

A lawyer may solicit professional employment unless:

(a) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
(b) the solicitation involves coercion, duress, or harassment.
(c) the solicitation seeks representation of the respondent in a case brought under any law providing for an ex parte protective order for personal protection when the solicitation is made prior to the respondent having been served with the order.

Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services.

[2] There is a potential for abuse when a solicitation involves direct real-time contact by a lawyer with someone known to need legal services when the person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest. The situation can be fraught with the possibility of undue influence, intimidation, and over-reaching. As a result, the lawyer should take special caution before soliciting a person for legal services when the lawyer knows or reasonably should know that the person’s circumstances could make the solicitation coercive. Pursuant to Rule 8.4(a), the prohibitions in this Rule apply equally to anyone acting on the lawyer’s behalf.

[3] Paragraph (c) is meant to address lawyers’ contact with prospective clients at a point in an ex parte proceeding when contact poses a substantial risk of physical harm to the party seeking the protective order. Examples of laws providing for ex parte protective orders for personal protection include, inter alia, the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 et seq.), the Stalking No Contact Order Act (740 ILCS 21/1 et seq.), the Civil No Contact Order Act (740 ILCS 22/101 et seq.), and relevant sections of the Illinois Code of Criminal Procedure (725 ILCS 5/112A-1 et seq.).

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:
   — (1) is a lawyer; or
   — (2) has a family, close personal, or prior professional relationship with the lawyer.
(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
   — (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
   — (2) the solicitation involves coercion, duress or harassment; or
   — (3) the solicitation seeks representation of the respondent in a case brought under any law providing for an ex parte protective order for personal protection when the solicitation is made prior to the respondent having been served with the order.
(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.


Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer’s communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or realtime electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone or realtime electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or realtime electronic persuasion that may overwhelm a person’s judgment.

[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public rather than direct in-person, live telephone or realtime electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might
constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona-fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer’s firm is willing to offer. This form of communication is not directed to persons who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] The requirement in Rule 7.3(c) that certain communications be marked “Advertising Material” does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the
Plan of otherwise. The communication permitted by these organizations also must not be directed to a Person known to need legal services in a particular matter, but it is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

Paragraph (b)(3) is meant to address lawyers’ contact with prospective clients at a point in an ex parte proceeding when contact poses a substantial risk of physical harm to the party seeking the protective order. Examples of laws providing for ex parte protective orders for personal protection include, inter alia, the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 et seq.), the Stalking No Contact Order Act (740 ILCS 21/1 et seq.), the Civil No Contact Order Act (740 ILCS 22/101 et seq.), and relevant sections of the Illinois Code of Criminal Procedure (725 ILCS 5/112A-1 et seq.).


RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) The Supreme Court of Illinois does not recognize certifications of specialties in the practice of law, nor does it recognize certifications of expertise in any phase of the practice of law by any agency, governmental or private, or by any group, organization or association. A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation.

(c) Except when identifying certificates, awards or recognitions issued to him or her by an agency or organization, a lawyer may not use the terms “certified,” “specialist,” “expert,” or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of the law. If such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements:

1. the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1;

2. the reference must state that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois.


Comment

Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer’s services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.
Paragraph (b) states the general policy of the Supreme Court of Illinois not to recognize certifications of specialties or expertise, except that it recognizes that admission to patent practice before the Patent and Trademark Office confers a long-established and well-recognized status. The omission of reference to lawyers engaged in trademark or admiralty practice that were contained in the prior rule is not intended to suggest that such lawyers may not use terms such as “Trademark Lawyer” or “Admiralty” to indicate areas of practice as permitted by paragraph (a).

Paragraph (c) permits a lawyer to state that the lawyer is certified, is a specialist in a field of law, or is an “expert” or any other similar term, only if certain requirements are met.

RECOMMENDATION #7: RECOGNIZE A NEW COMMUNITY JUSTICE NAVIGATOR MODEL TO BUILD OFF THE SUCCESS OF ILLINOIS JUSTICECORPS IN THE COURTS

Watch the pocket chat for this recommendation

There is a well-documented problem for access to legal help that starts well before people come to court. Many people in our community today often do not recognize when a problem has a legal dimension and may best be resolved through the justice system.49 If and when it is recognized that the problem may be legal in nature, people often do not know how to connect to reliable legal information or to find a good lawyer. To address this situation, the Optimizing the Use of Other Legal Professionals Committee (Optimizing Committee) proposes that the Illinois Supreme Court enter an administrative order and a policy statement creating the position of “Community Justice Navigator.”

These community-based Navigators would operate within existing and trusted community institutions, such as public libraries, religious institutions, offices of local, state and national legislators, etc. Navigators would receive special free training to permit them to help the public identify legitimate sources of information/referral, use legitimate online resources, help with e-filing and provide other procedural assistance, assist with completion of Illinois Supreme Court approved standardized court forms, and make referrals to free legal aid resources and recognized intermediary entities.

Navigators would be certified through a program run by the Access to Justice Commission similar to the current model for interpreters. They would not be permitted to practice law, and part of the training received would include instruction in the boundaries between their function and the unauthorized practice of law.

The Optimizing Committee carefully considered the best title for this proposed new position. Because people often do not recognize that a problem they have encountered has a legal dimension, the Optimizing Committee proposes to conceptualize this position as a “Justice” navigator, not a “Legal” navigator.

A detailed Community Justice Navigator proposal is set forth below providing extensive discussion of the rationale, the training and certification requirements, the functions to be undertaken, etc.

PROPOSED COMMUNITY JUSTICE NAVIGATOR MODEL

Problem: There is a well-documented problem for access to legal help that starts well before people come to court. Many if not most people in our community today do not know how to connect to reliable legal information or to find a good lawyer whose skillset matches their needs. And that is when they know they have a legal problem.

As a recent American Bar Foundation study by the now nationally acclaimed Rebecca Sandefur found, most people do not even recognize when they have a legal problem or a potential legal solution. And when they do seek help for a problem, they tend to turn to trusted community resources for guidance.

Unfortunately, well-intentioned people in the community can end up giving inaccurate or less than ideal information and referrals, and people can find themselves falling prey to questionable players who market dubious resources or services to the public. This results in unnecessary harm for some people, and people who need or would benefit from the help of a lawyer never connect to one.

While technology and improved outreach and communications from the bar and the courts are key parts of the solution, having trusted community resources – or community justice navigators – better integrated into the larger legal services delivery system is essential. There is no substitute for educating people in their community and connecting them to recognized legal assistance referrals (free and market-based) and other trustworthy legal resources.

Solution: Building on the proven success of Illinois JusticeCorps and other court navigator models around the country, the Supreme Court should formally recognize a new community justice navigator role and identify the qualifications, training, and resources necessary to obtain this recognition. Certification under the program would not be required for all community navigators, but our goal is that the credential and ability to be part of a supportive network of similarly dedicated individuals would be a strong incentive for participation.

The community justice navigator would both expand access to reliable legal information and resources for the public as well as develop new referral channels for lawyers.

Because the community justice navigator would not be providing legal services, we believe that this new policy can be carried out by the Court designating the Access to Justice Division of the Administrative Office of the Illinois Courts to develop and oversee the program as an expansion of the AOIC’s existing court navigator network, in partnership with the Court’s Commission on Access to Justice and the Chicago and Illinois State Bar Associations and their respective foundations. The new program would be modeled after the Court’s Language Access Program, with a policy, registry, and Code of Conduct, as build off of the successful models for the administration of Illinois JusticeCorps and the Commission’s self-represented coordinator program for court staff.

The program should be developed with input and participation from community-based organizations and entities. A marketing and consumer education program would be developed for the program as well.

More specifics on the role of the community justice navigator and requirements for this recognition follow in the proposal below.

Background: Studies already have shown that trained court navigators provide a key service supplementing the role of lawyers and court staff to assist the growing number of people coming to court without lawyers. People coming to court on their own often just need information, procedural guidance, or trustworthy referrals to legal assistance and other services. The Illinois JusticeCorps program and similar court navigator programs around the country have proven the value that lay


http://illinoiscourts.gov/CivilJustice/LanguageAccess/default.asp
advocates provide in the system by supplementing the help that lawyers and court staff play and making the courts function more smoothly and efficiently, as a recent study confirmed.\(^{52}\)

Illinois JusticeCorps is staffed by students and recent graduates who receive training, supervision, and support from a small staff and several full-time AmeriCorps fellows. The Court’s Commission on Access to Justice is a formal partner in the program, and the Access to Justice Division of the AOIC provides training, coordination, and support.

While there is not currently any court-recognized designation in Illinois for navigators who play a similar role for people seeking assistance in their own communities, other jurisdictions have successful programs that play this role. In the United Kingdom, Citizens Advice Bureaus\(^ {53}\) play a similar role to court navigators in communities throughout the UK. The Legal Hand\(^ {54}\) program in New York is another successful community-based example here in the United States.

There are also a number of legal programs in Illinois that include a community outreach or community navigator function, and it is common to see community navigators playing integral roles in the delivery systems for other professions and industries. Health care navigators and small business resource navigators\(^ {55}\) are just two examples.

What is missing today is a common definition of the role the community navigator plays in the larger legal system and a certification program that would give the public, the bar, and the courts confidence in the legitimacy of the services being provided.

This proposed new community justice navigator designation is not intended to be a regulatory requirement, but a credential that would offer that confidence, tie the navigators into a broader network of resources, and make them a more helpful resource to their constituents.

Community navigators already funded and working under other programs could apply, along with public service professionals like librarians; federal, state, and local legislative staff; social workers; and other community service organizations. There would be a general community justice navigator certification, and several more specialty designations for areas of need that require more specialized expertise where further training and support would be necessary for certification.

**Proposal:** Through an expansion of the court navigator network in the AOIC’s Access to Division, the Court should formally recognize a new Community Justice Navigator role as an integral part of the broader access to justice system.

Community Justice Navigators must provide their services free of charge\(^ {56}\) and be associated with a nonprofit or public service entity such as:

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\(^{53}\) [https://www.citizensadvice.org.uk/](https://www.citizensadvice.org.uk/)

\(^{54}\) [http://www.legalhand.org/](http://www.legalhand.org/)


\(^{56}\) However, a Community Justice Navigator who is authorized to provide additional, fee-based services may receive a fee for providing such additional services. An example would be a Community Justice Navigator who is also an Accredited Representative for Immigration proceedings may not charge a fee for providing general information about immigration, but may charge a fee for providing representation in immigration proceedings. An Accredited Representative for Immigration proceedings has no obligation to become a Community Justice Navigator.
• A library
• A nonprofit legal aid or community service organization
• A religious institution
• An office of a public official (e.g., Alderman, Member of Congress)
• An educational institution
• A bar association
• A unit of government

The required association could be a formal employment, volunteer, or partnership agreement with one of these entities.

As explained below, Community Justice Navigators who also pursue an additional specialty designation would also need to become associated with an institution that provides legal services in the particular substantive specialty area.

**Duties**

Consistent with the Court’s Safe Harbor Policy, Community Justice Navigators would:

• Help the public identify legitimate sources of information/referral and connect people to lawyers and other forms of legal help
• Help find and use online resources through Illinois Legal Aid Online, court, and other recognized websites (which the Access to Justice Commission can identify) as well as recognized technology-based options (per proposed new Task Force Rule)
• Help with e-filing and provide other procedural assistance
• Help people complete Illinois Supreme Court approved standardized court forms
• Make referrals to free legal aid resources and court-recognized intermediary entities providing fee-based services (per proposal by Modernizing Committee); they cannot refer to specific lawyers or law firms or receive compensation from firms or other for-profit legal services entities
• Make other relevant social service and government referrals

**Training and Certification**

The new program would be modeled after the Court’s Language Access Program, with a policy, registry, and Code of Conduct, and build off of the successful models for the administration of Illinois JusticeCorps and the Commission’s self-represented coordinator program for court staff.

Community Justice Navigators would:

• Be certified through a certification program run by the Access to Justice Commission similar to the current language access program that certifies court interpreters
• Be provided free training programs run by the AOIC through periodic in-person training and on demand webinars. These trainings would be developed and implemented in partnership with the Court’s Commission on Access to Justice and the Chicago and Illinois State Bar Associations and their respective foundations, with participation and input from community-based organizations and entities
• Need to pass an online competence exam, which could be developed for the certification, demonstrating basic familiarity with the key training topics noted below.
• Become familiar (through trainings) with topics such as the role of the Community Justice Navigator; recognized online resources through Illinois Legal Aid Online, court, and other
recognized websites; recognized technology-based options (per proposed new Task Force Rule); standardized court forms; e-filing and basic court procedures; and court-recognized lawyer referral resources (including intermediary entities approved under proposed new Task Force Rule)

- Receive specific training on the unauthorized practice of law and the Court’s Safe Harbor policy would also be required
- Be able to obtain additional specialty designations in areas of law where there is high need, through additional training relevant to each substantive area
- Be subject to regulation and possible removal of certification through an overall certification/regulation process to be developed by the AOIC’s Access to Justice Division, using the Language Access Program process for interpreters as a model

**Specialty Community Justice Navigator Designations:**

- These navigators would be required to obtain the general community navigator certification and, by meeting other requirements relevant to one or more substantive area(s) of law listed below, could also receive a specialty navigator certification to provide more targeted assistance with those issues
- These each are high areas of need in the consumer legal market, and the specialty certification would also require the navigator have an established training and support relationship with a nonprofit legal aid or public interest law organization with expertise in that area
- For each specialty certification, an advisory committee of subject matter experts (including representation from existing navigator programs in those areas) would help develop the required standards
- Potential specialty certification areas include:
  - Evictions and landlord/tenant issues
  - Mortgage foreclosure
  - Reentry
  - Family law issues (divorce/parentage, parenting time/visitation, child support)
  - Consumer debt
  - Employment/wage theft
  - Immigration (potential automatic certification for DOJ accredited representatives)
- Domestic violence is not included in this specialty certification list because there is already a statutorily recognized and well-functioning advocate program for that area
RECOMMENDATION #8: CREATE A HUB WHERE THE PUBLIC CAN FIND COURT APPROVED SOURCES FOR INFORMATION AND ASSISTANCE

Watch the pocket chat for this recommendation

One of the biggest problems for the public today is not knowing how to find lawyers and other legal resources and know whether they are right for them.

By recognizing the new categories of Intermediary Entities (#1), Approved Legal Technology Providers (#2B), and Community Justice Navigators (#7), the Court for the first time can create a web-based hub where the public could easily find vetted and court-approved sources for legal information and assistance that have been certified under one of these new Rules. While it would not be an endorsement of any individual or entity, this new hub would solve a big gap in the system right now: the lack of any reasonable way for the public to know where they can turn for reliable legal help.

The Task Force’s recommendations to recognize these key intermediaries and resources would enable the Court to create a convenient resources page for the public similar to what the IRS already provides for tax issues.57


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SPURRING MORE INNOVATION IN THE PROFESSION AND DELIVERY OF SERVICES

Recommendation #9: Adopt a clearer practice of law definition with a recognized safe harbor

Recommendation #10A: Undertake a broader plain language review of the Rules to modernize the Rules with the lightest hand of regulation needed to achieve the Court’s regulatory objectives

Recommendation #10B: LTF and ARDC should work together to amend Rule 1.15 to accommodate the Court’s plain language initiatives

Recommendation #11: Reconsider whether the Rule 5.4 restrictions on ownership of law firms are necessary and appropriate

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RECOMMENDATION #9: ADOPT A CLEARER PRACTICE OF LAW DEFINITION WITH A RECOGNIZED SAFE HARBOR

Watch the pocket chat for this recommendation

Other professionals and entities who seek to develop new models and technologies to expand access to justice encounter a paradoxical situation when they seek to understand the extent of permissible activities for providers without an Illinois law license: the unauthorized practice of law is prohibited, but there is no straightforward definition of exactly what constitutes the practice of law. At the same time, there is a strong commitment in the organized bar to enforce the prohibition against the unauthorized practice of law, but lawyers too are unable to define it in a way that others could understand and act upon. The uncertainty around the definition both inhibits much-needed innovation in legal assistance for the public and is a bad look for the profession when we so vigilantly try to enforce something we can’t define at a time when most people in need of legal help are not getting it.

The majority of the Optimizing the Use of Other Legal Professionals Committee (Optimizing Committee) therefore recommends that the Court provide some further definition of the practice of law, so that those who seek to explain or comply with the unauthorized practice prohibition can more clearly understand what is, and is not, permitted.

The Illinois Attorney Act proscribes the practice of law without a license, stating “No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.” The Act does not define what is meant by “to practice as an attorney or counselor at law.” Enforcement of the prohibition of unlicensed practice is delegated by Supreme Court Rule 779 to the Attorney Registration and Discipline Commission under the Court’s inherent authority to govern the practice of law. Rule 779 does not define the practice of law, nor do any other policies or rules of the Court provide such a definition.

Explication of the practice of law has occurred in Illinois solely through Supreme Court caselaw. Generally, caselaw has found that the practice of law is "the giving of advice or rendition of any sort of service...when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill." People ex rel. Chicago Bar Ass’n v. Barasch, 406 Ill. 253, 256, 94 N.E.2d 148, 150 (1950) (quoting People ex rel. Illinois State Bar Ass’n v. Schafer, 404 Ill. 45, 50, 87 N.E.2d 773, 776 (1949)). Unfortunately, caselaw is not the most accessible form of guidance for people without law training, and the definition offered in these cases is itself devoid of clarity regarding particular acts. Therefore, a case-by-case approach, which constitutes little more than “we know it when we see it,” is of little help to those seeking to understand or explain these boundaries.

Illinois is not alone in both prohibiting unauthorized practice of law and failing to define what is prohibited. This situation resulted in appointment of an American Bar Association Task Force in 2002 to seek to establish a model definition. That Task Force struggled with the endeavor. It floated a

58 Attorney Act, 705 ILCS 205/.
59 Ill. S. Ct. R. 779(b) (eff. Dec. 7, 2011)
60 See, also, People ex rel. Chicago Bar Association v. Goodman, 8 N.E.2d 944 (1937)
61 See summary of State Definitions of the Practice of Law, Appendix A to American Bar Association House of Delegates Report at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.pdf (last visited May 23, 2020)
proposal for a model definition, but ultimately achieved only adoption of a policy statement by the ABA calling for each state to adopt a definition:

“RESOLVED, That the American Bar Association recommends that every state and territory adopt a definition of the practice of law.

FURTHER RESOLVED, That each state’s and territory’s definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity.

FURTHER RESOLVED, That each state and territory should determine who may provide services that are included within the state’s or territory’s definition of the practice of law and under what circumstances, based upon the potential harm and benefit to the public. The determination should include consideration of minimum qualifications, competence and accountability.” (Adopted by ABA House of Delegates, August 2003)

The attempt by the ABA to develop a definition of practice was met with resistance from a number of quarters. Notably, the U.S. Department of Justice expressed concern that the proposed (but ultimately not adopted) model definition included overly broad presumptions as to what constitutes the practice of law, and therefore could impede competition.

Against this background, the Optimizing Committee wrestled with the Catch-22 that the current situation presents in Illinois. A majority of the Optimizing Committee concluded that some clarification of the definition of practice is necessary. Indeed, the Court has already issued guidance in the form of a Court policy for court employees and volunteers to encourage appropriate forms of assistance to court patrons. The Court has also sought to clarify, through a Court “Safe Harbor” policy, the distinction between legal information and legal advice. The Court also has adopted a number of Rules identifying specific activities that are permitted that might otherwise constitute or be construed as the practice of law, including Rule 711 and Rule 756.

Approximately a quarter of the active Optimizing Committee members did not agree that an explicit definition of the practice of law would be useful, believing that adoption of such a definition carries more risks than benefits. This minority was divided in their reasons for opposing creation of an explicit definition. Members of the Optimizing Committee who have experience with enforcement of unauthorized practice of law (UPL) prohibitions expressed grave reservations about any attempt to define the practice of law, believing that any definition will contain ambiguities that could provide unscrupulous persons with windows of opportunity to engage in harmful conduct for Illinois consumers. On the other hand, members who favor greater flexibility for community groups and others to provide assistance with legal matters expressed equally strong concern that an explicit definition of practice

63 Available at https://www.americanbar.org/content/dam/aba/directories/policy/2003_am_100.pdf (last visited May 23, 2020)
could lead to even more aggressive enforcement of UPL restrictions, stifling legitimate, innovative approaches to expanding access to justice.

The majority of Optimizing Committee members, however, supported development of more clarity in the definition of practice, to encourage innovators to understand the boundaries, and court employees, court volunteers, legitimate community advocates, and other actors to find ways to provide appropriate legal help while protecting the public from harm. The definition that was developed and is offered as the attached proposal drew on the contributions of all members of the Optimizing Committee. The proposal includes some language drawn from the model proposed by the ABA, but is based primarily upon the principles articulated in the Court’s Safe Harbor Policy and Guide referenced above. The proposal seeks to minimize ambiguity by defining terms that might be seen as vague and setting forth some common examples that do not constitute the practice of law. The proposal also clarifies that it is meant to supplement, not supplant, existing caselaw providing guidance on the definition of the practice of law.

The Optimizing Committee considered approaches to promulgating the proposed definition, either through a new rule or through a new court policy. Members of the Optimizing Committee with UPL enforcement experience suggest that this be implemented through a Court policy statement rather than by adoption of an enforceable Court Rule, an approach that may provide the necessary guidance without constraining the enforcement activities of the ARDC. Other members of the Optimizing Committee and the larger Task Force favor implementation through adoption of a new court rule. The Plain Language committee, whose Chair is the former ARDC Deputy Director & Chief Counsel, also favors implementation through adoption of a new court rule or by incorporating it somewhere within the body of the Rules of Professional Conduct, such as the definition section of the rules found in Rule 1.0, and believes that promulgating the proposed definition through a new court policy would be impracticable.

At some future point, it may be appropriate to seek legislative action to supplement the statutory Illinois Attorney Act with language from this proposal clarifying the types of activities that are and are not considered the practice of law.

**PROPOSED ILLINOIS SUPREME COURT POLICY STATEMENT/RULE DEFINITION OF PRACTICE OF LAW/UNAUTHORIZED PRACTICE**

(a) Subject to (b) below, it is the practice of law to:

- Give legal advice regarding a specific situation or set of circumstances to a person or entity,
- Prepare or present arguments that involve interpretations or applications of the law or substantive legal rights and responsibilities, or
- Represent a person or entity in court or in other legal proceedings

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67 Nothing in this definition displaces or contradicts decisions of the Illinois Supreme Court regarding conduct constituting the unauthorized practice of law.
68 Legal advice is guidance regarding a (person or entity’s) legal rights and obligations in light of their unique facts and circumstances…. Legal advice is the application of specialized judgment to a specific situation: it will vary depending on who is asking for it and the desired outcome. Legal advice is subjective: it will change depending on the specific facts of the case. See https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf
69 An “argument” in the context of a legal matter is stating the legal reasons for the position based on statutes, regulations, case precedents, legal texts, and reasoning applied to facts in the particular situation.
• Negotiate legal rights or responsibilities for a person or entity.

(b) It is not the practice of law:
• To provide general information on court procedures and court rules, including court-approved forms,
• To serve as a mediator, arbitrator, or neutral,
• For court personnel, Illinois JusticeCorps members, or court-recognized community justice navigators to provide assistance in accord with the Court’s Safe Harbor policy,
• To engage in lawful activities permitted by a federal, state, or local administrative body with jurisdiction over a particular type of matter or proceeding,
• To engage in lawful activities permitted under another professional license, or
• For a person to self-represent

(c) Unless otherwise permitted by these Rules, it is the unauthorized practice of law to engage in the practice of law in Illinois without authorization from the Illinois Supreme Court, or for someone to represent to another person that they are a licensed Illinois lawyer when they are not.

Comment

This Rule/Policy is intended to provide an overall definition and general guidance on what does and does not constitute the practice of law or the unauthorized practice of law. These concepts are further defined in the Court’s Safe Harbor policy (https://courts.illinois.gov/SupremeCourt/Policies/Pdf/Safe_Harbor_Policy.pdf), and Safe Harbor Guide (https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf), by exceptions defined elsewhere in these Rules and in the Court’s policies, and in Illinois case law.

Section (b) is intended to note some common situations that are not the practice of law, including assistance provided by Court-recognized individuals in accord with the Court’s Safe Harbor policy. In addition, many federal, state and local administrative bodies grant permission to designated advocates to perform services in proceedings before those bodies that otherwise would constitute the unauthorized practice of law if those services were provided elsewhere. Examples include accredited representatives for immigration and tax proceedings who are certified by the Department of Justice or the Internal Revenue Service.

70 To arrange for or bring about through conference, discussion, and compromise with an opposing party or that party’s lawyer or representative to seek to arrive at the settlement of some matter.
71 Legal information is general factual information about the law or legal process intended to help a court patron navigate the court system. Legal information is neutral: it should not advance one party’s legal position over another party’s position. Legal information is universal: it should be the same regardless of which party is asking for it. Legal information is objective: it does not require knowledge about specific details of the case. Legal information can come from anyone, not just licensed attorneys. See https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf.
72 A lawyer may serve in these roles; when doing so, the lawyer must adhere to the Illinois Rules of Professional Conduct, including Rule 2.4: Lawyer Serving as Third-Party Neutral.
For Section (c) of this Rule/Policy, there are several exceptions in the Supreme Court Rules that permit certain classes of lawyers or other advocates who are not otherwise licensed to practice in Illinois to engage in the practice of law. Examples include Rule 711 for law students and Rule 756 for retired, inactive, or out-of-state lawyers to perform pro bono services.
RECOMMENDATION #10A: UNDERTAKE A BROADER PLAIN LANGUAGE REVIEW OF THE RULES TO MODERNIZE THEM WITH THE LIGHTEST HAND OF REGULATION NEEDED TO ACHIEVE THE COURT'S REGULATORY OBJECTIVES

Watch the pocket chat for this recommendation

The Plain Language Ethics Rules Committee’s mission was to undertake a critical review and assessment of the Illinois Rules of Professional Conduct, with a focus on a renewed “plain English” approach.

The Plain Language Committee primarily carried out this charge by reviewing all Task Force committee recommendations at length and offering suggested edits to the respective committees. These edits, some of which were substantive in nature, were incorporated into the various recommendations throughout this report.

What follows is insight into some of the more robust discussions that took place along the way.

The Plain Language Committee’s Review of the Modernizing Lawyer Referral and Law Firm Models Committee’s Response to the ARDC’s Intermediary Connecting Services Proposal

The Plain Language Committee had the opportunity to review the Modernizing Lawyer Referral and Law Firm Models Committee’s (Modernizing Committee) response to the ARDC’s Intermediary Connecting Services Proposal. Plain Language Committee members agreed with the Modernizing Committee that the ARDC proposal was well-intentioned and certainly was a notable and viable effort to deal with technology and lawyer-client matching services. Nevertheless, Plain Language Committee members expressed the view that the regulatory language contained in the ARDC proposal was, with all due respect, difficult to understand from a plain language perspective. The Plain Language Committee had minor suggested edits and those edits were included in the response the Modernizing Committee submitted to the ARDC in April 2020.

Defining the Practice of Law and Recommendation Concerning the Promulgation of Any Such Provision

The Plain Language Committee reviewed the Optimizing Other Legal Professionals Committee’s (Optimizing Committee) proposed definition for the practice of law. The Plain Language Committee was impressed with the Optimizing Committee’s efforts to craft a workable definition and recommended suggested edits. The Plain Language Committee, however, was of the opinion that the Optimizing Committee’s suggestion that any adopted definition potentially be included in an advisory opinion issued by the Supreme Court or through the adoption of a policy would be impracticable. The Supreme Court has historically rejected the issuance of advisory opinions and any policy statement would best be incorporated in a rule. Due to its critical importance, a definition of the practice of law should be contained within the law of lawyering by incorporating it into either a separate Supreme Court rule or somewhere within the body of the Rules of Professional Conduct, such as in the definition section of the rules found in Rule 1.0. The Plain Language Committee’s feedback was incorporated into the final version of Recommendation #9.
Review of the Community Justice Navigator Model and a Recommendation

The Plain Language Committee reviewed the Optimizing Committee’s proposal to train and certify Community Justice Navigators. The Plain Language Committee applauded the effort and believes the proposal is an important step toward helping members of the public access critical legal information. The Plain Language Committee believes, however, that if a certification process is to be adopted, then a decertification process would also be required in the event that a navigator engages in inappropriate or wrongful conduct. The Plain Language Committee’s feedback was incorporated into the final version of Recommendation #7.

The Term “Limited Scope” is Not Very Plain Language

One plain language recommendation of note from the Plain Language Committee concerns the term “limited scope representation” to describe the various models of limited and accessible unbundled representation options to increase access to justice. The Plain Language Committee felt the term “limited scope representation” was not very plain language in communicating to the public what services were being offered. However, the Plain Language Committee did not reach a consensus as to an alternative and any alternative would require a rewrite of any rules where that terminology exists.

Recommendations Regarding Rule 5.4

Although the Plain Language Committee’s principal focus was to assure that Task Force proposals conformed to plain language guidelines, there were some substantive comments and recommendations made concerning the Modernizing Committee’s Rule 5.4 proposal. The Plain Language Committee noted that the existing rule serves a vital regulatory function in that it seeks to prohibit well documented harms. The Plain Language Committee recommends that great care be taken in drafting a final proposal that will, in its final iteration, allow greater opportunities for lawyers and clients to establish relationships through varying modes of technology, but that still serves to prohibit client exploitation. The Modernizing Committee took the Plain Language Committee’s comments to heart in drafting their final proposals.

Recommendation

The Plain Language Committee recommends that the Supreme Court review and revise all of the Rules of Professional Conduct to conform with the Supreme Court’s plain language directives, regulating only to the extent necessary to carry out the Court’s published Regulatory Objectives. The Plain Language Committee believes that after Rule 1.15 (see Recommendation #10B below), Rules 1.2, 5.4 and 5.5 are in greatest need of attention and recommends the Supreme Court start there.

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73 https://www.iardc.org/Regulatory_Objectives.htm
RECOMMENDATION #10B: LTF AND ARDC SHOULD WORK TOGETHER TO AMEND RULE 1.15 TO ACCOMMODATE THE COURT’S PLAIN LANGUAGE INITIATIVES

Watch the pocket chat for this recommendation

At its initial meeting, the Plain Language Committee determined that Rule of Professional Conduct 1.15, a provision dealing with the segregation of client monies and the management of lawyer trust funds, greatly needed a plain language review. To assist them with this review, the Plain Language Committee consulted with David Holtermann, Associate Director and General Counsel of the Lawyers Trust Fund of Illinois (“LTF”), regarding the history and theory behind the rule. That discussion then prompted the Plain Language Committee Chair to speak with Jerry Larkin, the Administrator of the Attorney Registration and Disciplinary Commission (ARDC), in an effort to get his opinion regarding revising Rule 1.15. Thereafter, the Chair met with Mr. Larkin and spoke further with Mr. Holtermann. Not only was IRPC 1.15 discussed at length, but the Chair also had the opportunity to hear Mr. Holtermann’s insights about the complicated environment that exists for trust fund regulators.

Thereafter, the Plain Language Committee discussed Rule 1.15. It agreed the rule was in desperate need of review, modernization, modification, and editing. However, any redraft of the rule would best be left to the principal constituents with a stake in creating a viable, cogent, and enforceable provision: LTF and the ARDC. The Plain Language Committee recognized that Rule 1.15 is unique among the Illinois ethics provisions. Unlike the other rules, Rule 1.15 deviates quite substantially from its counterpart in the ABA Model Rules. The rule is the product of an evolutionary development that essentially dealt with two conceptually distinct needs. First, the rule exists to provide the ARDC with a mechanism to sanction lawyers who jeopardize client funds, taking into account Illinois lawyer disciplinary precedent (e.g., Rule 1.15’s discussion of advance payment retainers). Second, the rule has evolved quite profoundly since the early 1980’s to create a revenue stream for legal aid service providers, thus increasing access to justice to those most in need of legal help. Each time the rule has been amended over the years, the Supreme Court has been careful to accommodate the ultimate goals of both LTF and the ARDC and to make certain that no unintended consequences result from any language changes to the rule.

It is the unanimous opinion of the Plain Language Committee that the Task Force recommend to the Supreme Court that LTF and ARDC work together with input from other relevant stakeholders to amend Rule 1.15 to accommodate the Court’s plain language initiatives.

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RECOMMENDATION #11: CONVENE A NEW COMMITTEE TO EXPLORE THE POTENTIAL BENEFITS AND HARM ASSOCIATED WITH ELIMINATING THE 5.4 PROHIBITION ON OWNERSHIP OF LAW FIRMS BY PEOPLE WHO ARE NOT LAWYERS

Watch the pocket chat for this recommendation

The Modernizing Lawyer Referral and Law Firm Models Committee (Modernizing Committee) and broader Task Force have found broad consensus on their proposals to modernize the rules to allow for lawyers to responsibly partner with other disciplines so long as the proposals do not change the current prohibition ownership of law firms by people who are not lawyers.

While we elected not to include any change to the rules on ownership in our Task Force recommendations, the Modernizing Committee believes the sections of Rule 5.4 restricting law firm ownership also should be reconsidered. Other professions already allow different ownership structures, and other legal task forces looking at regulatory reform around the country (notably Arizona and Utah) have proposed that these ownership restrictions be lifted. Further, in jurisdictions outside of the U.S. where ownership restrictions have been lifted (notably the United Kingdom and Australia), they have not seen a significant increase in lawyer discipline issues with respect to lawyers sharing fees with people who are not lawyers. Finally, so long as the Rules protect the professional independence of lawyers, restricting the business models that lawyers can utilize to best serve the market goes beyond the Court’s stated regulatory objectives.

Some of the potential benefits of taking the further step to eliminate the ownership restrictions include:

1. It would make it easier for firms to access capital and scale.

2. It would incentivize other professionals to work in law as equal partners.

3. It would allow for and incentivize additional business models, such as attorneys partnering with professionals offering complimentary services, and would create more holistic and comprehensive solutions for legal consumers.

However, the Modernizing Committee also recognizes that other members of the Task Force and a broader segment of our profession have concerns about changing the rules on law firm ownership. For that reason, rather than suggesting changes to that part of the rule right now, the Modernizing Committee recommends the Court create a new Committee to further study the benefits and potential harms of eliminating the prohibition on outside investment of law firms.

74 Many people who submitted written feedback during the public comment period also believe that the Modernizing Committee should have gone further and eliminated the prohibition on nonlawyer ownership in Rule 5.4.
75 https://www.iardc.org/Regulatory_Objectives.htm
APPENDIX

APPENDIX A: REGULATORY OBJECTIVES FOR THE PROVISION OF LEGAL SERVICES OF THE SUPREME COURT OF ILLINOIS

A. Protection of the public
B. Advancement of the administration of justice and the rule of law
C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
E. Delivery of affordable and accessible legal services
F. Efficient, competent, and ethical delivery of legal services
G. Protection of privileged and confidential information
H. Independence of professional judgment
I. Accessible civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct
J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system

Adopted by the Supreme Court
November Term 2017

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APPENDIX B: CONFERENCE OF CHIEF JUSTICES RESOLUTION 2 – URGING CONSIDERATION OF REGULATORY INNOVATION REGARDING THE DELIVERY OF LEGAL SERVICES

WHEREAS, access to affordable legal services is critical in a society that has the rule of law as a foundational principle; and

WHEREAS, legal services are growing more expensive, time-consuming, and complex, which makes it difficult for many people to obtain necessary legal advice and assistance in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody; and

WHEREAS, the Conference of Chief Justices has long championed the importance of meaningful Access to the justice system for all, and in 2015 adopted Resolution 5 which set the aspirational goal of 100 percent access to effective assistance for essential civil legal needs through a continuum of meaningful and appropriate services; and

WHEREAS, traditional solutions to reducing the access to justice gap, such as increased funding for civil legal aid, more pro bono work, or court assistance programs have had some success, but are not likely to resolve the gap, which is only increasing in severity; and

WHEREAS, several states are experimenting with regulatory innovations that are designed to spur new models for legal service delivery that provide greater access while maintaining the quality and affordability of legal services as well as protecting the public interests; and

WHEREAS, these regulatory innovations generally fall within three broad areas including the authorization and regulation of new categories of legal service providers, the consideration of alternative business structures, and the reexamination of provisions related to the unauthorized practice of law; and

WHEREAS, experimentation with different approaches to regulatory innovation provides a measured approach to identify and analyze the best solutions to meeting the public’s growing legal needs;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges its members to consider regulatory innovations that have the potential to improve the accessibility, affordability and quality of civil legal services, while ensuring necessary and appropriate protections for the public.

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RESOLVED, That the American Bar Association encourages U.S. jurisdictions to consider innovative approaches to the access to justice crisis in order to help the more than 80% of people below the poverty line and the many middle-income Americans who lack meaningful access to effective civil legal services.

FURTHER RESOLVED, That the American Bar Association encourages U.S. jurisdictions to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services, while also ensuring necessary and appropriate protections that best serve clients and the public, including the provision of legal counsel as a matter of right and at government expense for children facing essential civil legal matters and for low-income individuals in adversarial proceedings where basic human needs or a loss of physical liberty are at stake.

FURTHER RESOLVED, That the American Bar Association encourages U.S. jurisdictions to collect and assess data regarding regulatory innovations both before and after their adoption to ensure that changes are effective in increasing access to legal services and are in the interest of clients and the public.

FURTHER RESOLVED, That nothing 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.
APPENDIX D: CBA/CBF TASK FORCE ON THE SUSTAINABLE PRACTICE OF LAW & INNOVATION GUIDING PRINCIPLES & OBJECTIVES

Overarching Philosophies

- Recognize that the status quo in the consumer legal market is untenable for lawyers, the public, and the courts and jeopardizes public confidence in and respect for our judicial system and the Rule of Law

- Improve access to justice for anyone with a legal need by increasing access to a spectrum of legal services ranging from self-help to full representation

- Make the practice of law more sustainable for lawyers serving the consumer legal market by ensuring that a range of legal and business opportunities are available and accessible to them within the changing legal marketplace

- Regulate with as light a hand as possible to preserve the core values of the legal profession, protect the public, and enable market forces to better address the current failure in the consumer market for legal services

Objectives of Modernized Regulation

- Empower the public to determine and obtain the level of services appropriate to their legal needs

- Protect the public from harm caused by purchasing or receiving bad legal advice or inappropriate legal services.

- Enable lawyers to compete on a level playing field by:
  (1) Empowering lawyers to offer the full range of legal services—including technology-based solutions—that consumers expect and demand today, and
  (2) Allowing all lawyers to tap into the marketing, business, and technology expertise necessary to succeed in the modern world

- Protect the professional independence of lawyer judgment

- Use “plain English” whenever possible to promote greater clarity and understanding for practitioners and other stakeholders

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APPENDIX E: LEGAL MARKET LANDSCAPE REPORT

2018 Legal Landscape Report76 (Scroll to Page 5), William D. Henderson (July 2018)

Quotes from the report:

“The legal profession is at an inflection point. Solving the problem of lagging legal productivity requires lawyers to work closely with professionals from other disciplines. Unfortunately, the ethics rules hinder this type of collaboration. To the extent these rules promote consumer protection, they do so only for the minority of citizens who can afford legal services.”

“Modifying the ethics rules to facilitate greater collaboration across law and other disciplines will (1) drive down costs; (2) improve access; (3) increase predictability and transparency of legal services; (4) aid the growth of new businesses; and (5) elevate the reputation of the legal profession.”

76 http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf

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Introduction

The CBA/CBF Task Force on the Sustainable Practice of Law & Innovation and its Committee on Modernizing Lawyer Referral and Law Firm Models applaud the ARDC for its leadership in developing its Proposal to Regulate Intermediary Connecting Services. The Task Force shares the proposal’s animating recognition that the current inefficiencies in the consumer legal market are untenable for lawyers, the public and the court and jeopardize public confidence in and respect for our judicial system.

While we see many positives in the ARDC proposal, the Committee believes the proposal is far more complicated and burdensome than necessary to meet valid regulatory objectives. As a result, we believe the proposal will fall far short of the overarching goal to spur market-based forces to better address the current inefficiencies in the consumer legal market. The cautionary tale we have seen from other jurisdictions, for example the United Kingdom, is if you make regulation too complicated to comply with, you won’t get compliance.

Our comments and suggestions are driven by the Task Force’s Guiding Principles and Objectives (appended to these comments), particularly our core tenet that regulation should operate with as light a hand as possible to preserve the core values of the legal profession, protect the public, and enable market forces to better address the current failure in the consumer market for legal services. In the spirit of these principles, the Task Force offers the following comments on the ARDC Proposal. The Task Force also expects to submit its own proposal for addressing these issues.

Before we get into some of our more detailed comments and suggestions, we want to just note a few central points and highlights. The first is the importance of articulating a valid regulatory purpose and connecting the proposed regulation to the regulatory objectives approved by the Supreme Court in 2017. A potentially onerous layer of bureaucracy should not be imposed if there is not good cause, particularly when many of the regulated entities will be operating in multiple jurisdictions.

We all agree that protection of the public and protection of the independence of the lawyer’s professional judgment and practice of law should be the motivating purposes underlying these regulations. But we think the proposed regulations go much further than that and arguably undermine other regulatory objectives, including advancement of the administration of justice and rule of law (Objective B) and delivery of affordable and accessible legal services (Objective E). Also, we have concerns with putting these proposed changes in Rule 7.2, which the Task Force expects to propose be repealed as being redundant and having an unnecessary chilling effect on the market.

We also believe the proposal should broaden the definition of intermediary to include other business, technology, and administrative services. Solo and small firm practitioners would equally benefit from access to these services in addition to connecting services, as they already do in other professions. The Task Force believes these services collectively open up further opportunities to improve the functioning
of the market for all concerned, and that these services collectively can be managed through a similar regulatory framework.

Finally, we want to address specifically what amounts to a proposed access to justice tax in the ARDC proposal. As an entity in the business of advancing access to justice, the CBF regularly works to increase funding for pro bono, legal aid and related access to justice efforts. However, singling out one class of entity for what amounts to a special tax we don’t impose on law firms, corporate legal departments, or other entities recognized under these Rules is not the right approach. We think it is bad optically, adds a whole host of otherwise unnecessary regulatory requirements, and would discourage entities from entering the market, particularly smaller entities who would have a harder time complying with these added requirements and financial burdens that would ultimately get passed on to the end user.

There is still a real access to justice benefit that comes from connecting more people in need of legal help who can pay something for it with lawyers who can help them. We see huge potential for increased access to legal services for that part of our population—who we know are a significant share of the pro se population in the courts and the larger latent market for legal services—particularly for limited scope representation.

Our full comments and suggestions follow below. We focus only on those sections where we have concerns, suggestions or think a section in the proposal is particularly positive and important to be included in the final regulatory framework. Generally, we suggest the amendments should reflect a mindset change to permissive language rather than punitive language unless certain conditions exist.

**Proposed Amendments to ILPC Rule 7.2: ADVERTISING**

ARDC Proposed (b) a lawyer shall not offer the lawyer’s services, or accept a connection of a potential client, through an intermediary connecting service, defined in Supreme Court Rule 730, if

1. The lawyer knows or reasonably should know that the intermediary connecting service does not maintain active registration with the ARDC pursuant to Supreme Court Rule 730,
2. The intermediary connecting service requests or requires the lawyer to act in violation of the Illinois Rules of Professional Conduct, or
3. The lawyer’s participation in the intermediary connecting service or the lawyer’s acceptance of the connection otherwise violates the Illinois Rules of Professional Conduct.

**Task Force Committee Comments:** We recommend framing this provision more positively and permissively (i.e., instead of framing it as “shall not” saying a lawyer may...unless...) and clarifying subsection (1) and deleting subsection (3). Given the significant registration and reporting requirements proposed under the rule and the broad discretion given to the Administrator, a lawyer may not know that an entity that had been appropriately registered when the lawyer began the engagement has sometime thereafter fallen off the rolls. We would suggest subsection (1) be amended to limit it to “at the start of the engagement with the potential client.”

We believe that subsection (3) above is unnecessary because the language contained therein already exists in other sections of the ILPC (e.g., Rule 8.4). In addition to adding unnecessary length to the rule, the language could also have a chilling effect. Attorneys are already overly cautious when it comes to navigating the lengthy and opaque attorney advertising rules. Consistently reminding attorneys that they will be disciplined if they violate the rules is both unnerving and unnecessary.
ARDC Proposed (c) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may (3) pay the usual charges of a registered intermediary connecting service, including a reasonable connecting fee for every connection that results in a potential client hiring the lawyer for the lawyer’s services offered through the intermediary connecting service, if

(iv) Before or within a reasonable time after commencing the representation, the lawyer informs the client in writing, including by electronic means, of the relationship between the lawyer and the intermediary connecting service, the basis or rate of the fees and expenses for which the client will be responsible, and any connecting fee the lawyer has paid or is required to pay to the intermediary connecting service, and

(v) The lawyer does not permit the intermediary connecting service to interfere with the lawyer-client relationship or with the lawyer’s exercise of professional judgment regarding the client matter.

Task Force Committee Comments: We recommend deleting this subsection (c)(3)(iv). We believe exempting contingent fee work from the proposed regulatory framework (as subsection (c) proposes) is a sensible proposal given the already well-functioning market and regulatory framework for those services. However, we think subsection(c)(3)(iv) is overly burdensome for attorneys and does nothing to further protect the public in exchange. Because in this scenario the client proactively searched online for a lawyer and connected with the lawyer representing them through the intermediary connecting service, the client presumably already understands the relationship between the lawyer and the intermediary connecting service. Further, the client will not care what fee, if any, the lawyer had to pay the intermediary service so long as it doesn’t come out of the client’s pocket and the overall fee was reasonable.

Proposed Amendments to ILSC Rule 730: INTERMEDIARY CONNECTING SERVICES

ARDC Proposed Opening Paragraph: No Illinois attorney shall participate in an intermediary connecting service unless the intermediary connection service has been registered as hereinafter set forth.

Task Force Comments: We recommend rewording this sentence so that it is no longer stated in the negative. Here is a suggestion: Attorneys may participate in an intermediary connecting service so long as that entity is registered with the Attorney Registration and Disciplinary Commission.

ARDC Proposed I. Applicability

(a) An “intermediary connecting service” is a lawyer directory, network, matchmaking service, bidding site, question & answer site, prepaid or group legal services plan, or similar marketplace the business or activities of which include: (1) the connecting of its users, customers, members, or beneficiaries to participating lawyers for the performance of legal services in Illinois; or (2) an organization’s users, customers, members, or beneficiaries paying for or receiving legal services from participating lawyers in matters for which the organizations does not bear ultimate responsibility. For purposes of this rule, “participating lawyer” means a lawyer licensed or authorized to practice law in Illinois who uses the service to offer or render their legal services.
Task Force Committee Comments: We believe this subsection is good as far as it goes, but should be broadened to include other business and administrative services an intermediary service might provide. Doctors, dentists, and other professions can and do use entities that effectively act as “intermediary services” for purposes beyond connecting clients, including the provision of other business, technology, and administrative services. So long as the intermediary is not interfering with the lawyer’s independent professional judgment, we believe lawyers should be able to participate under the same terms as a connecting service. Lawyers in solo or small firm settings who just want to focus on practicing law would benefit from access to that broader suite of services just as lawyers in larger firms and corporate settings already do, and could do so more efficiently and effectively to better serve the public.

(b) The definition of “intermediary connecting service” does not apply to: (3) a bar association-operated or legal aid organization-operated referral service, lawyer marketplace or directory, or similar service that connects potential clients to lawyers.

Task Force Committee Comments: We recommend deleting this subsection. We believe that bar associations and nonprofits should be treated as intermediary connecting services and held to the same standards and reporting requirements as for-profit entities. The only caveat is that we think the $1,000 registration fee should be waived for bar associations and nonprofits that don’t financially benefit from that service.

ARDC Proposed II. Registration and Reporting

(a) Initial Registration. At least 90 days prior to commencing operation, the intermediary connecting service shall be registered in the office of the Administrator of the Attorney Registration & Disciplinary Commission. The intermediary connecting service must file an initial registration application with the Administrator, using forms provided by the Administrator, and must pay a fee of $1,000 to the Administrator.

(1) The initial registration application shall be in writing signed by an authorized officer or representative of the intermediary connecting service, and shall set forth or be accompanied by the following:

(i) The name and street address of the corporation, association, limited liability company, registered limited liability partnership, or plan.

(ii) The statute of law under which it is formed, or a copy of the most recent certificate of good standing, certificate of existence/authorization or similar document.

(iii) A copy of the intermediary connecting service’s basic organizational document, including the articles of incorporation, articles of association, articles of organization, operating agreement, partnership agreement, trust agreement, or other organizational document, and all amendments, addenda, or exhibits to any such document.

(iv) A copy of all bylaws, rules, regulations, or similar documents, if any, regulating the conduct of the intermediary connecting service.

(v) A description of the intermediary connecting service’s method for connecting participating lawyers to potential clients.

(vi) A description of the intermediary connecting service’s method of, and criteria for, rating and reviewing participating lawyers, and whether participating lawyers have the opportunity to dispute ratings and reviews.

(vii) A description of the intermediary connecting service’s marketing efforts to lawyers and the public.

(viii) The name and addresses of official positions of, and biographical information concerning any individuals who are responsible for conducting the intermediary connecting
service’s affairs, any individuals or entities that have an ownership interest in the intermediary connecting service, and, if applicable, the plan administrator and principal or sponsor.

(ix) A list of other jurisdictions in which the intermediary connecting service is operating or has operated, or is registered or has registered to operate in accordance with that jurisdictions’ rules, along with the status of the intermediary connecting service and its registration in the other jurisdiction. For purposes of this rule, “other jurisdictions” is defined as the District of Columbia; a country other than the United States, a state, province or territory, or commonwealth of the United States or another country.

(x) A signed statement by an individual responsible for the affairs of the intermediary connecting service, designating that individual as the agent of and principal contact for the service.

(xi) Such other information and documents as the Court may from time to time require.

Task Force Committee Comments: We recommend reconsidering and significantly streamlining the extent of the information required to appropriately regulate these entities. We think many of the requirements in this section impose burdens on registrants. As noted at the outset of our comments, there should be a valid regulatory purpose articulated that connects to these proposed requirements. While we recognize some registration and reporting requirements may be necessary for appropriate regulation (e.g., subsections (i), (ii) and (ix)), requiring an organization to do things like submit organizing documents and describe their marketing efforts is overburdensome and unrelated to the need to protect the public. Further, these requirements may act to frustrate other regulatory objectives, including advancement of the rule of law, access to justice, and the delivery of affordable and accessible legal services.

ARDC Proposed (c) Annual Registration. Subsequent to initial registration, an intermediary connecting service shall be registered annually on or before the first day of November on forms supplied by the Administrator a copy of the service’s financial records for the prior year, showing the total revenue generated from its connecting fees. Failure to receive notice of annual registration shall not constitute an excuse for the failure to register. On or before the first day of November of each year, the intermediary connecting service shall:

(1) Pay a fee of $1,000 to the Administrator; and

(2) Remit to the Administrator 0.25% of the service’s total revenue of the prior year that was generated from the service’s connecting fees.

Task Force Committee Comments: We recommend deleting paragraph (c)(2). Requiring intermediary services to remit to the Administrator 0.25% of all profits generated each year through its connecting services without any relation to administrative expenses is overly burdensome, and we believe it will have a chilling effect on intermediary services entering the market. As an entity in the business of advancing access to justice, the CBF regularly works to increase funding for pro bono, legal aid and related access to justice efforts. However, as noted above, singling out one class of entity for what amounts to a special tax we don’t impose on law firms, corporate legal departments, or other entities recognized under these Rules is not the right approach. We think it is bad optically, adds a whole host of otherwise unnecessary regulatory requirements, and would discourage entities from entering the market, particularly smaller entities who would have a harder time complying with these added requirements and financial burdens.

There is still a real access to justice benefit that comes from connecting more people in need of legal help who can pay something for it with lawyers who can help them. We see huge potential for increased access to legal services for that part of our population—who we know are a significant share of the pro se population in the courts and the larger latent market for legal services—particularly for limited scope representation.
ARDC Proposed (d) Use of Registration Fees and Access to Justice.

(1) The ARDC shall retain the fees received under Section II paragraphs (a) and (c) 1 and Section III paragraph (b) to fund its expenses to administer this rule.
(2) At the direction of the Court, the ARDC shall remit the funds received under Section II paragraph (c)(2) to an access to justice program or entity the Court designates.

Task Force Committee Comments. We recommend deleting paragraph (d)(2). For the reasons noted above in the comments on paragraph (c)(2) of this section, section (d)(2) would no longer be necessary.

ARDC Proposed (e) and (f) Use of Registration Fees and Access to Justice.

(e) Denial of Registration. The Administrator of the Attorney Registration and Disciplinary Commission may conduct an inquiry into the initial registration application and annual registration documents. If the Administrator determines that the service does not meet the definition of “intermediary connecting service,” has not provided complete information, has provided false information, or has otherwise failed to satisfy the registration requirements, the Administrator may deny the registration. If the Administrator denies the registration, the Administrator shall inform the service’s agent and explain the basis for the denial. Upon notice that the registration has been denied, the service may resubmit an amended registration application or amended annual registration documents or seek review by the Court upon motion. The denial of registration shall not be a bar to revocation or disciplinary proceedings arising from the facts upon which the denial is based.

(f) Refusal to Register. The Administrator may refuse to register an intermediary connecting service under this rule if any individual listed pursuant to paragraph (a)(1)(viii) or other persons or entities associated with the intermediary connecting service were associated with an intermediary connecting service that was disciplined in this state or other jurisdiction or whose registration was revoked in this state or pursuant to the equivalent of the this rule in another jurisdiction.

Task Force Committee Comments. We believe the powers given to the Administrator to deny or refuse to register a service are overbroad to meet legitimate regulatory purposes. At a minimum, discretion should be limited to material omissions that fundamentally challenge the ability of the Administrator to carry out its appropriate regulatory authority. Similarly, Rule 730 II (f) is too broad for purposes of denying a service the right of doing business with Illinois lawyers by including the overbroad and unclear phrase “associated with” in its list of powers to deny or refuse registration.

ARDC Proposed II(h) Reporting Requirements

(2) A registered intermediary connecting service shall maintain a period of not less than seven years, and shall provide to the Administrator upon request, records for each participating lawyer, including:
(i) the lawyer’s name and contact information
(ii) the number and type of connections made involving the lawyers; and
(iii) any financial transactions with the lawyer.
Task Force Committee Comments: We question whether this level and specificity of record maintenance is necessary and see no valid reason that the Administrator should be able to request these records.

ARDC Proposed II(j) Compliance. As part of the initial registration, and as part of each subsequent annual registration, the intermediary connecting service shall certify that it complies with all of the following requirements:

(4) Any funds the potential client pays to secure a participating lawyer’s services as a fixed or flat fee or to secure payment of legal fees and expenses are governed by the Illinois Rules of Professional Conduct and shall not be held by the intermediary connecting service. The intermediary connecting service shall not place any condition or restriction on the participating lawyer’s receipt or retention of any fixed fee, flat fee, or earned fee for the lawyer’s services.

Task Force Committee Comments: We recommend redrafting this section in a clearer manner that accounts for the realities that payment may initially go through the intermediary connecting service and that the service should be able to maintain reasonable ground rules for lawyers participating in the network. We believe the purpose of this section is to clarify funds paid through the intermediary service should be treated as client funds under the Rules, but it could be written more clearly and simply to make that point. Also, if a portion of the fee is being paid to the intermediary service consistent with these Rules, that split should be permitted up front before the remaining funds are delivered to the participating lawyer.

Finally, while the intermediary service should not be able to place any condition or restriction on the lawyer that would interfere with the lawyer’s independent professional judgment, we think the last sentence of this paragraph is overly broad as written, as the service would not even be able to hold the participating lawyer responsible for delivering the agreed service for the agreed fee. That is a different matter than attempting to bind a lawyer to something that was not within the boundaries of the initial agreement (e.g., an uncontested divorce that later turns into a contested matter), which should not be permitted.

(5) The intermediary connecting service shall:
   (iii) prominently inform potential clients that additional information about a participating lawyer, including whether the lawyer has malpractice coverage, can be found at www.iardc.org, the website for the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois.

Task Force Committee Comments: We believe subsection (5) is particularly important and commend the ARDC for including it. The Task Force would go further and require any participating lawyer to carry malpractice insurance.

(6) The intermediary connecting service shall not:

   (vii) state, imply, or create a reasonable impression that the intermediary connecting service refers or recommends a participating lawyer, except that the service may permit reviews and ratings of
participating lawyers, and the service may offer a list of participating lawyers based upon a user-defined search from which the potential client can select an attorney.

**Task Force Comments:** We believe this subsection is overly prescriptive and unnecessary. The Task Force is separately going to submit a proposal to significantly streamline and simplify the Rule 7 series around advertising and communication. Consumers want to know when they go to a service of this nature that the service stands behind the quality of its lawyers. So long as the intermediary connecting service is not stating anything false or misleading, which is covered elsewhere, there is no need for this subsection.

**Proposed ILSC Rule 220: Protections of Communications with Lawyer-Client Connecting Services**

**Task Force Committee Comments:** We believe this section is an important addition to the rule and commend the ARDC for addressing the issue of privilege. However, we believe the problem would be better addressed by aligning this provision with traditional attorney-client privilege law. Under traditional law, transmission of communications through agents of lawyers and clients necessary to the communication does not break the privilege. There are no present exceptions for communications to any nonlawyer. Also, present law would require that the agent be committed to keeping the communication confidential. We believe this provision should be recast as protecting communications between lawyers and clients through a connecting service which commits to practices that preclude access to the communications by individuals who are not essential to the provision of legal services.

[return to the table of contents]
Appendix G: Overview of Data Privacy and Protection Laws in the United States at the Federal and State Level

By: Tomasz Lewczykowski, CBF Extern and 3rd Year Law Student at the University of Illinois College of Law

As electronic means of communication and data storage become more prevalent in an increasingly digital world, countries and supranational organizations have begun passing comprehensive legislation to address concerns of data privacy and protection. Some entities, like the European Union, have reacted to these concerns by passing a single piece of legislation that comprehensively addresses consumer data privacy and protection in a general manner. The United States, by contrast, does not have such a broad statute regarding data privacy and protection. Instead, the United States has several federal statutes that address data privacy and protection, but these are rather limited in scope and tend to be focused on specific industries and sectors. Furthermore, data regulation is enforced through the Federal Trade Commission, which relies on language from Section 5 of the Federal Trade Commission Act that prohibits unfair and deceptive business practices. In response to this, a small number of states have passed comprehensive data protection legislation of their own to address this, with several more states considering such legislation in committee, including Illinois.

A. Federal Laws on Data Privacy & Protection

One of the first major federal data privacy and protection laws was the US Privacy Act of 1974. The purpose of the law was to put restrictions on what government agencies can do with personal data that they collect and individual rights regarding that data. These include restrictions on when agencies can disclose personal data to other agencies, limit data collection on individuals “as is relevant and necessary to accomplish a purpose of the agency required,” and permit individuals to modify incorrect data, among other rights and restrictions.

Another major piece of data protection legislation was the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Act required the Department of Health and Human Services to promulgate regulations to protect the privacy of patients and their medical information, which led to the creation of the HIPAA Security Rule and the HIPAA Privacy Rule. These standards, largely codified in 45 C.F.R. § 160–164, were designed to account for technological changes regarding the storing of

78 See e.g., 5 U.S.C. § 552a (2018) (demonstrating that the U.S. Privacy Act is codified and affords protections on the use of government collected personal data).
82 Id.
medical data and balance individual privacy with the ability of medical providers to use such data for treatment options.\footnote{Id.}

A particularly controversial data protection law was the Children’s Online Privacy Protection Act of 1998 (COPPA).\footnote{15 U.S.C. § 6502 (2018).} The law essentially declares that “it is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child” unless otherwise specified in the law.\footnote{Id.} The law has been frequently criticized for failing to protect data collection on children due to the ease of lying about one’s age on the Internet.\footnote{See e.g., Eric Goldman, The FTC’s New Kid Privacy Rules (COPPA) Are a Big Mess, FORBES (Dec. 20, 2012), https://www.forbes.com/sites/ericgoldman/2012/12/20/the-ftcs-new-kid-privacy-rules-coppa-are-a-big-mess/#2f551dcd67a5 (articulating criticisms of COPPA).} Recently, content creators on YouTube have also criticized the law after a suit filed by New York led to sweeping changes on the platform regarding “kid-friendly” content.\footnote{Jim Salter, The FTC’s 2020 COPPA rules have YouTube creators scared, ARS TECHNICA (Jan. 6, 2020), https://arstechnica.com/gaming/2020/01/the-ftcs-2020-coppa-rules-have-youtube-creators-scared/.}

Congress has also passed data protection law regarding banking and finance in the form of the Gramm-Leach-Bliley Act of 1999. Although the Act covers a wide swath of issues, it is notable for including data protections regarding “nonpublic personal information.”\footnote{15 U.S.C. § 6801 (2018).} It notably imposed on financial institutions a continuing obligation, with standards and enforcement being handled by the Bureau of Consumer Finance Protection, to “insure the security and confidentiality of customer records and information […] , protect against any anticipated threats or hazards to the security or integrity of such records, […] and to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.”\footnote{Id.}

\textbf{B. Proposed Data Privacy & Protection Bills in Illinois}

Without a single comprehensive law at the federal level that addresses data privacy and protection, several states like California have taken the initiative and passed comprehensive data protection bills of their own.\footnote{Noordyke, supra note 7.} Though these states form a distinct minority, more state legislatures are now considering date protection bills of their own to address the growing need for comprehensive legislation, including Illinois.\footnote{Id.} As of writing this, Illinois is considering three separate bills on data protection that are likely intended to synergize with each other, with all three bills granting enforcement power of its provisions to the Attorney-General of Illinois.

The first of these proposed bills is the Data Privacy Act.\footnote{S.B. 2263, 101st Gen. Assemb., 1st Sess. (Il. 2019).} The purpose of the bill is to protect the data of consumers by those who process and collect their data, who are defined as “controllers” for the purposes of this bill.\footnote{Id.} The bill clearly delineates the rights of consumers with respect to personal data collected by controllers, which includes the right to receive an answer from a controller to inquiries regarding their use of consumer data (such as selling personal data to data brokers), conditions for when personal data must be deleted by a controller upon request by a consumer, and other rights...
tied to data collection. The bill notably includes a home rule preemption clause that explicitly states “The regulation of data use and privacy is an exclusive power and function of the State.”

The second bill under consideration is the Data Transparency and Privacy Act. The bill is largely similar to the proposed Data Privacy Act with regards to the rights of consumers regarding their data, but whereas the Data Privacy Act broadly regulates what controllers can do with personal data, the Data Transparency and Privacy Act is targeted towards businesses. The general goal of the bill is to facilitate transparency between consumers and businesses regarding how their data is used and to safeguard that data from potential abuse. The Data Transparency and Privacy Act also includes a home rule preemption clause, further emphasizing the general desire for uniform data protection laws throughout the state.

The final bill under consideration is the Consumer Privacy Act. The bill is very similar to the Data Transparency and Privacy Act in regards to the subject matter and many details, but noticeably includes various disclosures businesses must make with respect to when and how they use consumer data. The bill also prohibits discrimination or retaliation on the part of businesses against consumers who exercise their rights with respect to data privacy and protection, such charging different prices or providing lower quality services. However, businesses may offer consumers financial incentives in exchange for permission to collect and sell their data provided that businesses do not use “financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.”

96 Id.
97 Id.
99 Id.
100 Id.
101 Id.
103 Id.
104 Id.
105 Id.
### APPENDIX H: LEGAL ASSISTANCE MODELS USING OTHER PROFESSIONALS OR LAYPEOPLE

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<tr>
<th>Program</th>
<th>Brief Description</th>
<th>Area of Law</th>
<th>Permissible Services</th>
<th>Training/Certification Required</th>
<th>Data/Studies</th>
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| Navigators in State Courts (e.g. JusticeCorps in IL)                   | Trained & supervised individuals without full legal training provide one-on-one assistance to self-represented litigants | Varies by program: Family, Housing, Debt Collection, Domestic Violence, Conservatorship, Elder Abuse | - Help litigants navigate court  
- Provide information and referrals to other sources  
- Help complete paperwork  
- Language assistance  
- (in some models) Accompany litigants to court for emotional support and answering of factual questions | - Information vs. advice  
- Layout & understanding of court system  
- Knowledge of referrals and other resources  
Training can occur via webinars, videos, role play, quizzes, and/or shadowing | Yes. Navigator programs enhance effectiveness of courts, build public trust in the legal system, improve access to justice for people without lawyers, and widen community understanding of the legal system. |
| NYC Court Navigators Program                                           | Trained & supervised individuals without full legal training provide one-on-one assistance to self-represented litigants either “for the day” or “for the duration” of the legal process | Housing & Civil Courts: Nonpayment & Debt Collection Proceedings, Housing, Consumer Debt | - Help litigants access & complete forms  
- Provide information  
- Attend settlement negotiations  
- Accompany litigants into the courtroom (can respond to judge if directly addressed) | - 3-hour training with role-play videos + additional training depending on the courthouse  
- Orientation to court, a manual, and copies of informational materials  
- “On the job” training with supervision | Yes. Litigants who received help from a Navigator were more likely to have their defenses recognized and addressed and experienced far fewer evictions (0) and hardships throughout the legal process than unassisted litigants. |
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| Lay Domestic Violence Advocates | Non-lawyers who educate DV victims about available legal protections and provide assistance through court proceedings | Domestic Violence | - Provide information about resources, shelters, emergency services, and legal protections  
- Help prepare petitions for orders of protection and other court proceedings  
- Ensure that victims meet eligibility requirements, are prepared for court, and show up on time  
- Can sometimes accompany victims to hearings, meetings, depositions, etc. | - Communication and socioemotional training for dealing with victims (DV advocates often affiliated with counseling programs, shelters, or courts)  
- Continuing education requirements and manuals/materials on dealing with victims | No. |
| Immigration Legal Assistance – Accreditation Programs | Immigration legal programs can include a mix of staffing beyond lawyers: DOJ fully-accredited representatives (F), DOJ partially-accredited representatives (P), and non-accredited staff (N) | Immigration Law | F:  
- Represent clients before all branches of DHS, Immigration Court, and the Board of Immigration Appeal (BIA)  
- Expected to have the skillset to fully represent a client in front of an immigration judge  
- Extensive training & experience in immigration law (mentorship)  
- Strong letter of rec from a mentor | Yes. Immigration programs can be very successful utilizing accredited representatives and other non-representative staff. |
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<th>Data/Studies</th>
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<tr>
<td>Legal Document Preparer Program – Arizona</td>
<td>Certified individuals can prepare or provide legal documents for self-represented litigants without attorney supervision.</td>
<td>Any legal matter</td>
<td>- Prepare &amp; provide legal documents (i.e. any document that can be used in court)</td>
<td>- Some law-related experience: Pursuant to AZ Supreme Court Rule 31, AZ Codes of Judicial Administration § 7-208 and § 7-201 - Pass certification exam ($50 fee) - Fill out Certification Application &amp; present to Legal Document Preparer Board for a decision</td>
<td>No, but the program has been in existence since 2003, and an AZ task force is recommending expanding their permissible services to allow them to speak in court when addressed by a judge, among other things.</td>
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<td>Program</td>
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<td>Permissible Services</td>
<td>Training/Certification Required</td>
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| Circuit Court of Cook County Mortgage Foreclosure Mediation Program | People facing foreclosure have access to free housing counseling, brief legal assistance, and community education through a central help line. Appropriate cases have access to mediation and pro bono legal representation. | Foreclosure | - Ensure homeowners & lenders understand their responsibilities through community outreach  
- Housing counseling | -                                                             | Yes. After it was created in 2010, the % of people showing up for court and participating in their cases went from about 10% up to 90%, and community outreach played a central role in that shift. In mediation proceedings, the overall satisfaction rate for all parties consistently landed in the 95% range. |
| IRS Enrolled Agents (EAs)                    | EAs can represent taxpayers before the IRS and are generally unrestricted as to which taxpayers they can represent, what types of matters they can handle, and which offices they can represent clients. | Tax: Collections, Audits, Appeals | - Advise, represent, and prepare tax returns for individuals, partnerships, corporations, estates, trusts, and any tax-reporting entities | - Pass a 3-part comprehensive IRS test or have experience as a former IRS employee  
- Complete 72 hours of continuing education courses every 3 years | No.                                                                                                                                                                                                                                                                                                      |
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<td>Social Security Administration Representatives</td>
<td>Claimants can appoint qualified individuals to represent them before the SSA while pursuing claims or other rights under Titles II, XVI, and XVIII of the Social Security Act</td>
<td>Social Security Law</td>
<td>- Get info from client’s Social Security file &amp; help obtain medical records</td>
<td>- Hold a bachelor’s degree or equivalent</td>
<td>No.</td>
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<td>- Attend interviews, conferences, or hearings</td>
<td>- Pass a written exam administered by the SSA</td>
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<td>- Request reconsideration, hearing, or Appeals Court review</td>
<td>- Have professional liability insurance</td>
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<td>- Help client and witnesses prepare for a hearing</td>
<td>- Complete continuing education courses</td>
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<td>CHA Rental Assistance Demonstration (RAD) Program Grievance Procedure Representatives</td>
<td>Head of Household can be represented by a non-attorney advocate during the process of raising grievances with the CHA or a property manager</td>
<td>Housing</td>
<td>- Represent HOH at informal hearing</td>
<td>- No formal training required by the CHA</td>
<td>No.</td>
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<td></td>
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<td>- Make statements on client’s behalf</td>
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<td></td>
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<td>- Fill out paperwork</td>
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APPENDIX I: DISSENT FROM JOHN THIES
June 22, 2020

BY EMAIL
E. Lynn Grayson, Esq.
Hon. Mary Anne Mason (Ret.)
Chairs, CBA/CBF Task Force on the Sustainable Practice of Law & Innovation

Re: Draft Task Force Report

Dear Lynn and Judge Mason:

Thank you both for the opportunity to comment on the referenced draft report.

First, I appreciate the committee’s interest in improving the sustainability of the practice of law and in advancing needed innovation in our profession. Both have been important priorities during my career as a bar leader, including within the work I have done in the area of legal aid, which depends very much on a viable legal profession.

Second, my comments as to certain of the proposed recommendations that I do not support do not detract from my appreciation for a number of the conclusions and recommendations raised elsewhere in the report, some of which I found to be timely, appropriate and helpful. This certainly includes the recommendations of the sub-committee on which I served concerning Limited Scope Representation. For example, we do indeed have a gap in access to justice and a need in our profession for expanded uses of technology and other innovations. There is no dispute there.

Another important priority of mine (certainly not unique to me) beyond sustainability and innovation, is attention to client protection. When we talk about changes to our ethics rules, this particular priority is paramount, and it figures greatly in how we should evaluate change that is intended to provide greater access to justice. To me, improving access to justice necessarily means expanding high quality – and ethical – legal service across a broader spectrum of the public. The underserved need quality legal service, not weak substitutes.
As a threshold matter, it should go without saying that radical changes in our ethics rules have broad consequences for the entire profession, including the portions which are operating productively, serving many clients and lawyers well. I say this as one who practices in a nine-person general practice firm who over the years has worked closely with lawyers in virtually every practice setting. As you know, there is significant diversity in these settings. Our ethics rules apply to all of us no matter what type of practice we have. When it comes to these rules, one size needs to fit all.

No one should want change that disrupts institutions and approaches that work well; and we especially do not want change that does this while NOT providing the desired outcomes that prompted the change in the first place. This is the big problem with operating out of the playbook — as some have done — of those whose main interest is the bottom line, without systems of ethics remotely similar to our own, with little care about the client interest or truly expanding access to justice. It is also a problem with changes similar to those which have been proven ineffective, like Limited License Legal Technician programs — one of which was just eliminated in the state of Washington after its Supreme Court concluded that LLLTs are not an effective way to meet legal needs, or which are rooted in dubious predicates, like the notion that lawyers could serve a broader client base and get more referrals if only they had more capital or could simply advertise more through the help of non-lawyers who demand a more substantial cut.

With this background, please consider the following additional comments on the draft report and recommendations. These comments generally have the concurrence of task force members Judge Robert Anderson (Ret.) and James Lestikow. In the case of Judge Anderson, he stands on his separate response as to the report of the Optimizing the Use of Other Legal Professional Committee. Otherwise, he agrees with all comments expressed herein.

Changing Rule 5.4 to permit greater lawyer collaboration, including non-lawyer ownership of law firms. We are strongly opposed to the recommendations that would permit greater influence by non-lawyers in the operation of law firms, or in the handling of particular client matters (e.g., through relaxing fee-splitting rules). As the recent experience of the American Bar Association House of Delegates shows, there is no appetite within that body for such radical change, for good reason. Such recommendations pose a tremendous threat to lawyer independence, and run the risk of damaging the viability of large and small firms alike. We do see the value of broader systems of ethical lead generation, and support the approach taken on this subject by the Illinois State Bar Association. The hallmark of this approach has been to provide practical guidance to lawyers who wish to participate in Internet based matching services while preserving the longstanding prohibition on fee sharing with nonlawyers. We believe this provides a viable market-based approach to expanding consumer education about available legal services and ready and convenient access to lawyers available to provide those services.
Recognizing a new Licensed Paralegal model. We express concern about this proposal because we believe that, appropriately, most lawyers would be very cautious about acting as such a paralegal’s supervisor if the paralegal is allowed to perform the responsibilities mentioned. We believe that these present significant malpractice and supervisory concerns and would likely be ineffective in practice. As for those situations where paralegals would not be supervised (not part of the current proposal), we strongly agree with the statement within the report of the “Optimizing the Use” committee that “[t]here has been scant data to support the proposition that the creation of a new independent categories of providers in some other jurisdictions have had a meaningful impact on addressing the access to justice issue.”

Adopting a clearer practice of law definition. While not opposed to reviewing the definition of the practice of law, we are concerned that any changes to the status quo may result in an increased threat to the client interest. There are certainly those outside our profession that would like to see the definition of the practice of law narrowed as much as possible such that their influence and control over the delivery of legal service may be expanded (to the benefit of their bottom lines, but the harm of clients and the legal profession). Accordingly, we believe that any review of this question should be systematic and involve input from all corners of our profession.

Establishing Approved (or Certified) Legal Technology Providers. Founded in part on the recommendations to eliminate the prohibition on fee sharing with nonlawyers is the proposed establishment of “Approved (or Certified) Legal Technology Providers.” Such Providers are envisioned to provide “one to many” legal products and services. This recommended concept has broad significance and has the potential to substantially alter the provision of legal services and the practice of law. Unfortunately, the concept is not well defined, including the recommendation that the details of regulating such providers be deferred to an unspecified board (presumably, although not expressly stated, echoing the “regulatory sandboxes” of Utah and Arizona). We are highly suspicious of this approach, particularly in the absence of more specific analysis and discussion. We believe such recommendations are premature for inclusion in the report.

Lastly, to the extent changes are not made to the report consistent with the above, Bob, Jim and I would appreciate revisions to incorporate a statement that committee member support was not unanimous, and in fact, some members of the task force were strongly opposed to the report’s findings and recommendations that could lead to excessive influence by outside interests in the practice of law, and which threaten lawyer independent judgment, and client interests.
Again, thank you for the opportunity to comment on the draft report. Please do not hesitate to contact me with any questions or comments.

Very truly yours,

WEBBER & THIES, PC

By: ________________________________

John E. Thies

JET/ejo
cc (by email):

Hon. Robert Anderson (Ret.)
James M. Lestikow, Esq.
Rob Glaves, Esq.
Jessica Bednarz, Esq.
APPENDIX J: FEEDBACK FROM THE PUBLIC COMMENT PERIOD

Virtual Town Hall Meeting

On August 18, 2020, the Task Force hosted a virtual town hall meeting via zoom to collect feedback on the report. Members of the profession and the public were invited to attend the hearing. In addition to attending the town hall meeting, interested attendees could also sign up to offer verbal feedback. A recording of the hearing can be found here.¹⁰⁶

Written Feedback

Members of the profession and the public also had the opportunity to submit written feedback from July 22, 2020 through August 21, 2020. All written feedback received is organized and included below by recommendation. Some feedback was submitted in memo or letter form via email and some feedback was submitted through the online application and thus the patchwork summary. While some of the letters and memos have been reformatted to fit within this report, none of the content has been altered.

Recommendation #1: Recognize a New Intermediary Entity Model to Help Lawyers Collaborate with Business and/or Administrative Services

Kimball R. Anderson, Partner at Winston & Strawn LLP

See Kimball Anderson’s feedback in his memo on page 152 below.

Attorneys Liability Assurance Society (ALAS)

See ALAS’s feedback in their memo on page 158 below.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

This recommendation is a great start. Given the depth and breadth of the need for legal services the one-size-fits-all approach to this aspect of regulation seems unduly restrictive. I like how this recommendation focuses on the client need and hence opportunity for lawyers and then designs regulation to support us in reaching more people with legal needs. Drawing on the expertise of others lets us do what we do best and leverage what others can bring to the table. My question is whether some mid and large firm lawyers don’t feel the same as the solo and small firm lawyers. Perhaps with some experience to guide us this could apply generally through the profession.

Illinois State Bar Association (ISBA)

See the ISBA’s feedback in their letter on page 168 below.

Institute for the Advancement of the American Legal System (IAALS)

¹⁰⁶ https://www.youtube.com/watch?v=L7PUBNYbWgl&feature=youtu.be
See IAALS’s feedback in their letter on page 175 below.

Art Lachman, Attorney at Law & Co-Chair of Association of Professional Responsibility Lawyers (APRL) Future of Lawyering Committee

See Art Lachman’s feedback in his letter on page 180 below.

Rohan Pavuluri, CEO at Upsolve

This is an excellent idea. Consumers across Illinois suffer because law firms are unable to attract individuals who have strong skills beyond practicing law -- this includes technology, marketing, and business skills. There must be a way to invite these individuals to participate in the success of the law firm.

There are countless other industries where a high degree of ethics matters to consumers -- medicine, accounting, investing, etc. These industries all permit non-practitioners to own equity or share revenue. It is unreasonable to think that the moment a non-lawyer owns equity in a law firm that the law firm is suddenly at high risk of compromising its integrity or ethics.

Indeed, in the 21st century, there are many reasons why rules against having non-lawyers own equity or share revenue may compromise a law firm’s commitment to its clients. Consider the importance of data privacy and security today and how important it is to attract people with this expertise to your organization. A CTO of a law firm would be able to exert more influence on data security practices over a firm if they were a part-owner.

Darren Perconte Principal Attorney at Perconte Law

It is clear that there is an access to justice issue, and a sustainability issue for lawyers and law firms. Intermediary entities that help connect potential clients to lawyers could help with both issues. However, private for-profit entities are not the answer to either problem. Across many industries, we have seen the issues created by for-profit entities entering a market and neither the consumer nor the businesses in the industry benefiting. Additionally, in regulated professions, we have seen many examples of these connecting businesses engaging in unethical behavior. Established organizations in the legal industry should build out robust services to connect potential clients and lawyers.

In the pocket chat for Recommendation #1, creating a service to match clients to lawyers was described as a win-win. That assumption forms the basis for radically changing the current regulatory rules, and inviting Silicon Valley and private equity into the legal relationship between client and attorney. If a client cannot find an attorney, but there are attorneys available to perform the legal services, then a service connecting the client to attorney is a win-win. Unless, that potential client cannot afford the attorney. Especially, if the potential client cannot afford the attorney due to the cost of the service and the attorney. That’s a lose-lose. If the attorney cannot afford to take on the potential client because the cost of the service prevents it from being profitable for the attorney, then it is a lose-lose.

A for-profit intermediary entity designed to connect lawyers to potential clients may succeed in connecting clients to attorneys, but it will definitely succeed at dominating the advertising market for attorneys. Once the for-profit entities become established, the massive amounts of funds they can throw at internet advertising will push all attorneys to the deep pages of Google searches. In order to obtain clients over the internet, attorneys will be forced to enter into deals with these intermediaries. That is when the intermediaries will really start to profit by keeping consumer rates the same and decreasing
the amount attorneys make by providing those services. Maybe initially these entities will be able to cut
rates by operating at a loss, but the various solo and small firms will not be able to compete in the
advertising arena, and will become beholden to these entities. That is extremely dangerous for
consumers and attorneys.

The Chicago Bar Foundation has presented the ride sharing companies as an example of an industry the
legal industry should look for inspiration. Uber and Lyft have connected many riders to drivers through
efficient apps. While doing so, these companies have generally reduced the costs of using a car service.
And how do these companies do that? By operating at massive losses. In 2019, Uber lost $8.5 billion. In
2018, Uber lost $1.8 billion. In 2017, Uber lost $2.2 billion. Lyft lost 2.6 billion in 2019, 911.3 million in
2018, and $1.1 billion in 2017. Those are not sustainable business models. Additionally, Uber and Lyft
drivers struggle to make minimum wage. That is not a sustainable path for practicing attorneys. The
proposed private entities would be Ubers for lawyers. So, they will either need to increase pricing to
survive, or they will fail. Consumers will not benefit from either outcome.

During the Covid-19 pandemic, there have been countless stories of how Grubhub, Postmates, Ube
Eats, and DoorDash are shortchanging restaurant owners, and costing consumers more than if they
ordered directly from the restaurants. Even with restaurants and consumers losing in the situation, Uber
Eats lost $232 million in the second quarter of this year (not including expenses). That is during the
pandemic with food deliver up across the nation. That is a connecting services that is a lose-lose-lose
situation.

Talkspace is a therapy-by-text company that connects therapists to potential clients. As the New York
Times recently reported, former employees claim that Talkspace has questionable marketing practices
and improperly mines the data of those they connect. Their accounts suggest that the needs of a
venture capital-backed start-up to grow quickly can sometimes be in conflict with the core values of
professional therapy, including strict confidentiality and patient welfare. Due to issues with the app and
problems connecting clients and therapists, Talkspace employees were tasked with writing fake positive
reviews. Additionally, Talkspace has been criticized for advertising to trigger people into needing their
services. Most importantly, confidential information was used in their market research. Talkspace uses
various methods to coerce the therapists to prioritize certain clients and punishes therapists financially
for not responding within certain time frames. It was not that long ago that Talkspace was a tech darling.
Now, they are a cautionary tale of when tech start-ups get involved in connecting clients to
professionals. Lawyers should not trick themselves into believing that just because we are lawyers, we
can better regulate big tech and private equity-backed start-ups in our industry.

The perils of for-profit entities getting involved in our industry should not be brushed aside as
protectionism. They are legitimate concerns, and we should not open the door to these issues until we
have tried other solutions. The legal industry has ethical, moral, and financial stakes in connecting
potential clients and attorneys at affordable and practice-sustaining rates. During the July 21 CLE for
Regulatory Reform to Better Serve the Profession & Public, the question was posed as to whether there
had been any consideration to using funds gained from lawyers trust accounts to establish an
intermediary entity. The answer provided was that it had not bee considered.

The Lawyers Trust Fund and the Lawyers Committee for Betting Housing have created a bot called
Rentervention to help tenants get the legal services they need. Rentervention helps consumers figure
out if they have a legal issue, and it connects them to resources and potentially a legal aid organization.
The Lawyers Trust Fund and similarly situated entities (Chicago Bar Association, Chicago Bar Foundation, Illinois State Bar Association, etc.) should work to create one or multiple services that connect lawyers to potential clients. These intermediary entities would avoid many of the thorny complications and dangers of involving for-profit entities in the process. There are many ways to construct a connecting service, and certainly it would require tweaks along the way. However, this kind of intermediary entity would be incentivized solely to connect lawyers to clients. It would only require sustainability instead of profitability. Operating through the legal community, it would be the responsibility of addressing the access to justice and lawyer sustainability issues where they belong - with the legal community. The Illinois justice system would be better off if the legal industry took the lead on solving these legal issues rather than punting the chance of coming up with viable solutions to big tech and private equity.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis Rendleman’s feedback in his memo on page 182 below.

Responsive Law

See Responsive Law’s feedback in their letter on page 189 below.

Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy Ricca’s feedback in her letter on page 192 below.

Lynda Shely, Ethics Lawyer at The Shely Firm PC

As a member of the National Advisory Council to the CBA/CBF Task Force, I was honored to participate in some of the discussions that went into the Report. I applaud the Task Force for addressing many issues related to the access to justice gap and sustainability of the profession in the recommendations in the Report - they are a start! My comments in support of the recommendations, with a suggestion that the proposals could go even farther, are my own and based upon over 25 years of advising law firms in ethics compliance issues, as well as assuring that legal consumers receive legal services from competent and accountable providers. My remarks focus on just three of the recommendations - #1 and #11 pertaining to sharing legal fees with nonlawyers and/or referral sources, and #6 regarding updating the rules that regulate lawyer advertising (comments shared regarding Recommendation #6 have been moved to that section below).

Sharing legal fees with nonlawyers in accordance with RPC 5.4: Recommendation #1 suggests new regulatory models for registration of intermediary entities that assist lawyers in marketing their availability, with commensurate amendments to Rule of Professional Conduct 5.4 that currently prohibits sharing any fees with nonlawyers. Recommendation #11 encourages further consideration of modifications to Rule 5.4. I encourage further review because regulation of referral entities is not necessary to legal consumers and Rule 5.4 needs to be retired.

Arizona currently is considering amendments to eliminate Rule 5.4 entirely, based upon the Arizona Supreme Court Task Force on the Delivery of Legal Services’s succinct conclusion that [. . .] ER 5.4 be eliminated because no modern compelling reason for maintaining the rule exists. (Petition R-20-0034 at 9).
Rule 5.4 is not necessary to assure that lawyers use their independent professional judgment in selecting and advising clients. The Rules of Professional Conduct regarding conflicts and competence still apply. Currently a lawyer (defined as those attempting to comply with their ethical obligations) must contort themselves to fit within the antiquated strictures of Rule 5.4 if they want to compensate a nonlawyer employee for exemplary work, or obtain financing to expand their practices without having to incur loans or lines of credit from banks. It is a fallacy that lawyers will be corrupted if they share legal fees with nonlawyers. There is no data evidencing that there is such a problem. Lawyers already manage the financial pressures to bring in more clients or bill more fees without running afoul of their obligations to represent clients competently, diligently, and objectively. Presuming that a nonlawyer employee/investor/referral source would insist that a lawyer violate their ethical obligations in order to generate more revenue is a wholly unfounded premise. In fact, the Law Society of England and Wales has not seen an increase in complaints about the quality or pricing of legal services since they instituted nonlawyer ownership several years ago. Nor has the District of Columbia seen nonlawyers creating significant ethics issues in law firms since DC amended its version of Rule 5.4 back in 1991 to permit nonlawyer ownership. The nonlawyer equity owner’s interest is the same as the lawyer’s - provide quality legal services and avoid bar complaints, malpractice claims, and fee disputes. Moreover, the reality is that law firms already share legal fees with nonlawyers in their firms every time they pay someone’s salary or make a payment on their line of credit because all revenue in a firm obviously is from legal fees.

Rule 5.4 is not necessary to assure that clients receive competent, affordable, and conflict-free legal advice. It creates an unnecessary restraint on lawyers that further inhibits the already struggling profession to remain competitive and relevant in the legal services market.

Regulating intermediary entities that provide accurate information about the availability of legal services is unnecessary. Such regulations reinforce an outdated paternalistic view of how consumers view legal advertising. Consumers know when they search online for a lawyer that they may be viewing a website that is going to refer them to lawyers who have paid to be listed or paid to receive referrals just like consumers know that if they search for a hotel room, a dentist, or a vet the websites they view may be referral sites. As long as the information about the lawyer is accurate, why should it matter if the lawyer pays a website (or a human) for every possible client sent to them? Lawyers are still responsible for the content of the advertisements. The lawyer still must be competent to provide the legal services and still must check for conflicts before accepting the client. Merely paying for a referral does not mean the lawyer must accept the prospective client or share information about the client with the referral source. There is no difference, ethically, between paying a nonprofit referral service, which lawyers can do right now in many states and paying a for profit website.

Referral services or intermediary organizations - whether for profit or nonprofit - should be encouraged to provide accurate information about the availability of legal services without imposing unnecessary regulatory obstacles. There is no evidence to indicate that consumers are harmed by for-profit referral services, nor is there any indication that such services need to be regulated, certified, or otherwise overseen by a government entity.

Rule 5.4 (and 7.2) are not necessary to protect legal consumers. They unreasonably inhibit lawyers from partnering with other professionals who could assist clients, and unnecessarily restrict lawyers from using innovations (the internet) to market their availability. Anticompetitive restraints on legal
marketing, such as Rules 5.4 and 7.2 do not protect consumers and they continue to hurt the profession. These Rules are inconsistent with the regulatory standard set forth in the Preamble to the Rules of Professional Conduct:

[12][. . .] The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.[. . .]

Rule 5.4 should be retired altogether.

The Stanford Center on the Legal Profession
See the Center’s comments on page 195 below.

Recommendation #2A: Modernize the Rules So that Lawyers Can More Actively Participate in the Development and Delivery of Technology-Based Products and Services

Attorneys Liability Assurance Society (ALAS)
See ALAS’s comments on page 158 below.

Marie A. Clear, Marie A. Clear, P.C.
While I do not believe the scope of this technology topic was intended to include my concern, below, I nonetheless want to bring it to the Task Force’s attention.

I am a residential real estate attorney, and the issue of fraudulent wiring instructions - scam artists inserting themselves in the midst of communications (usually between a buyer and a title company, but sometimes posing as the attorney) and providing fraudulent wiring instructions is costing the country billions of dollars in stolen funds every year.

A clear technological solution simply does not exist. For example, many companies are increasingly using "secure" emails with embedded links to deliver wiring instructions. However, such emails can easily be spoofed by criminals with just a little technological know-how, making the "real" secure email vs the scam secure email impossible to distinguish. And scammers are already use valid-appearing emails with embedded links as the main delivery method to deliver harmful code or software rules modifications to atty PCs that facilitate their crimes.

For example, it used to be the case in my practice that I had a VERY strict rule that no one I employ is permitted to click ANY email embedded link on our PCs. That kept us entirely safe from 99% of malicious code. But now with so many real estate related companies adopting embedded links in the misplaced belief that it makes us more secure, we simply have to click these links as part of our day to day business.

A knock-on problem relating to fraudulent wiring instructions is that I worry many malpractice insurance carriers have no idea whether an attorney is protected if they become embroiled in a fraudulent wiring situation with their client. At least ISBA Mutual was not clear about what constituted culpability on the atty's part, whether they would be covered, or what their response should be. I approached them with the question a year or two ago and they had no published detailed guidelines
addressing the issue at all.

So again, I'm quite sure your Task Force wasn't intending to address this specific issue, and it's likely an issue that will NOT be remedied by technology (since it lends itself to technological breach). Nor were you probably thinking about related insurance questions or even attorney ethical guidelines for best practices, but I wanted to put it out there in case your scope is broader than I think. But in the event the Task Force has the bandwidth down the road to look at this matter specifically.

However, if you are going to look at any type of attorney use of technology, please be sure to also consider what constitutes technological malpractice on the part of an attorney in connection with your tech subject.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

This recommendation may be among those which have the greatest potential to improve our ability to serve those who need what we offer. Technology is so pervasive today that it has recast how consumers of all sorts of services seek out solutions and expect to be served. We need to be present where they are and use means which are relevant and comfortable for them to deliver our services. This may mean adapting some of our approach to service delivery so that we continue to protect core values like confidentiality and privilege, but it is part of our obligation as professionals to figure that out, as opposed to expecting our clients to forego the benefits of technology.

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Institute for the Advancement of the American Legal System (IAALS)

See IAALS’s comments on page 175 below.

Art Lachman, Attorney at Law & Co-Chair of Association of Professional Responsibility Lawyers (APRL)
Future of Lawyering Committee

See Art’s comments on page 180 below.

Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

As lawyers, we need to be adaptive to the world of technology and use technology to help advance the legal profession and to allow for access to those who cannot afford to hire an attorney. This recommendation provides solid guidance on how to regulate this field. I would feel very comfortable allowing this recommendation to govern.

Rohan Pavuluri, CEO at Upsolve

This is an excellent idea. Lawyers must be able to provide technology services to increase access to our legal system.
Darren Perconte, Principal Attorney at Perconte Law

Law firms and solo attorneys should be allowed to provide one-to-many legal services outside the scope of their practice of law without having to become an "Approved Legal Technology Provider." Only once they provide specific one-on-one legal services would it be considered the practice of law. Law firms and solo attorneys would have to clearly explain that the one-to-many legal services is not legal advice and does not constitute representation.

Rule 5.4 - This would do nothing to increase consumer access to legal services or the sustainability of legal practices. There is not any data that shows that existing legal technology providers have increased access to legal services. The data out of England shows that alternative legal providers face the exact same pricing pressures as law firms, and charge as much as law firms for the same services. Essentially, this just shifts the potential for profitability from lawyers to less-regulated businesses.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Responsive Law

See Responsive Law’s comments on page 189 below.

Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy’s comments on page 192 below.

Barry C. Taylor, VP for Civil Rights and Systemic Litigation at Equip for Equality

Equip for Equality, a private non-profit organization that provides free legal services for people with disabilities, is supportive of Recommendation #2 seeking to enhance the availability of technology-based legal products and services and authorizing greater participation by lawyers in technology solutions. However, it is absolutely critical that any regulatory changes that involve technology ensure that technology that is either developed or utilized is accessible to people with disabilities, and more specifically accessible to people who are blind, including attorneys and members of the public who are blind. Technology has been incredibly helpful to provide access to people with disabilities, if technology, including websites, are programmed to be accessible for people who use screen reader software. Unfortunately, we have seen over and over technology being developed without considering accessibility for people with disabilities. For instance, the new on-line filing system for the Circuit Court of Cook County failed to ensure that its new system was accessible prior to being launched. Since we realized that the new system was inaccessible (based on a blind attorney in our office not being able to independently use it), we have been working with the court and the contracted developers on retrofitting the system to make it accessible. Addressing these issues after a system is launched is more costly and it delays equal access to technology. State and federal law require that technology be accessible to people with disabilities. Moreover, the World Wide Web Consortium (W3C) has developed Web Content Accessibility Guidelines (WCAG) to ensure that electronic accessibility is accessible. See https://www.w3.org/ Equip for Equality strongly recommends that any regulations addressing technology ensure that standards for accessibility are included. As lawyers, we must be
stewards of the law and only work with systems that are accessible to all. Please reach out to us if you have questions or need assistance.

**Recommendation #2B: Explicitly Authorize the Delivery of Technology-Based Legal Products and Services by Individuals or Entities and Appoint a Board to Develop an Appropriate Regulatory Mechanism Responsible for Registering and Vetting Approved Legal Technology Providers**

**Hon. Alison Conlon, Circuit Court of Cook County**

First, I want to commend the Chicago Bar Association, the Chicago Bar Foundation and its Task Force on the Sustainable Practice of Law & Innovation for their thorough and thoughtful work product and recommendations. It’s hard to imagine it arriving at a better time, given how all of us in the legal profession and courts have been forced to change and rethink our practices during the pandemic. That the Circuit Court of Cook County migrated from its prolific use of carbon paper to Zoom and emails in a matter of weeks is just one example of our ability to adapt, whether we like it or not. Let’s try to like it!

From the standpoint of the administration of justice, I am intrigued by the Task Force’s recommendations about enhancing the availability of technology-based products and services and authorizing greater participation by lawyers in technology solutions. Many self-represented litigants face legal problems with common attributes but do not know their legal rights. A “one-to-many” form of disseminating information about their rights seems not only promising, but efficient and necessary. Technology lends itself quite readily to “bundling” and disseminating legal information on a large scale in a way that a one-on-one attorney-client relationship cannot. Consider an alleged debtor in small claims court who assumes she has nothing to say in response to a complaint, who is able to learn through technology of the availability of a jury demand and a statute of limitations defense, if appropriate. The assertion of these rights can be case-determinative. Or consider a self-represented landlord who learns in advance about the new requirement to attach a copy of the eviction notice to his complaint, and therefore avoids having his case dismissed. This potential to inform people of their rights on a large scale through technology and an expanded personnel base is exciting for the law, legal profession and administration of justice.

**Dan Cotter, Attorney & Counselor at Howard and Howard Attorneys PLLC**

I applaud the Task Force for its work and am in agreement with this recommendation.

**Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada**

These providers can not only help fill a need in the market, but can be partners in how lawyers serve their clients. For those reasons, this is a great recommendation. We should focus on what they offer and how lawyers can work with them to expand the range of what we offer and how many people we can serve. For services these providers deliver directly, we should look at them as we look at firms: focus on the quality of the output rather than the form of the vehicle by which the service is delivered. So glad this recommendation is part of the report.

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.
Institute for the Advancement of the American Legal System (IAALS)
See IAALS’s comments on page 175 below.

Art Lachman, Attorney at Law & Co-Chair of Association of Professional Responsibility Lawyers (APRL)
Future of Lawyering Committee
See Art’s comments on page 180 below.

Rohan Pavuluri, CEO at Upsolve
This rule is well-intentioned. I propose two changes and voice one concern.

First, the definition of a Legal Technology Provider is overly broad. This will mean that there are big risks of existing platforms just leaving Illinois. DIY document generation/assembly tools are materially different from tools that provide personalized legal advice or legal strategies. This rule, as it’s written now, appears to apply to TurboTax (software used to generate IRS tax forms) and any online form-filling template. This broad definition could easily backfire. There are countless national platforms that provide form-filling tools. They may find it easier to just pull out of Illinois and continue to operate in 49 other states. Also, keep in mind that the Federal Trade Commission already regulates every Legal Technology Provider and that its regulatory purpose overlaps with many of the stated purposes of the proposed regulatory agency in this rule.

Second, this rule should only apply to for-profit Legal Technology Providers. There are several free online technology tools provided by LSC-funded legal aid nonprofits. Undertaking this regulatory process would be unnecessarily cumbersome and needlessly take up donor dollars for these nonprofits. If other states enact a similar rule, consider the nightmare that a free nonprofit tool in a federal area of the law must undergo. They would have to get 50 regulatory approval processes and 50 annual reports. And consider that the free tool is not generating any revenue to fund compliance with this burden. Like above, I’m concerned that this will stifle nonprofit innovation in Illinois, doing more harm to low-income consumers than good.

Finally, I’m concerned by the First Amendment constitutionality of this proposed rule and suggest a narrower scope to address it. A choose-your-own-adventure book and a choose-your-own-adventure software program are essentially identical. If First Amendment rights protect the former, they may apply to the latter. As a result, you should tread with extreme caution before adopting the broad definition of a Legal Technology Provider. You may limit the rule to focus on attorney-involvement within these technology platforms.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer
See Dennis’s comments on page 182 below.

Responsive Law
See Responsive Law’s comments on page 189 below.
Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy’s comments on page 192 below.

The Stanford Center on the Legal Profession

See the Center’s comments on page 195 below.

Recommendation #3A: Streamline Rules to Expand the Use of Limited Scope Court Appearances

Hon. Joel Chupack, Circuit Court of Cook County

As a judge in Eviction Court at the Daley Center, my experience with limited scope representation has left me questioning its benefit in this setting. During my tenure in Eviction Court (December, 2018 to April, 2019), limited scope appearances ("LSA") were typically used by private attorneys in conjunction with the filing of a jury demand. At the initial court date, the tenant (or counsel, who many times did not appear) would apprise the court of the filing of a jury demand. The court would then sign a transfer order and the case would be transferred to a randomly selected judge presiding over a jury call. The first court date on the jury call would be typically be one week after the transfer order was entered (the "jury intake" date). At jury intake, discovery and motion deadlines would be set.

The "scope" of the representation on these LSAs ended at jury intake. Typically, at jury intake, a discovery schedule would be set along with a date to file dispositive motions and/or the setting of a trial date. If a "deal" with the landlord could not be worked out at jury intake, tenant's attorney would withdraw his or her representation. The tenant would then be left is on his or her own for the remainder of the case.

This scenario presents many issues. Did the tenant truly understand the "scope" of the limited appearance? Even if the tenant understood it, is this how the LSA was intended to be used by the Illinois Supreme Court? Should a private attorney be able to file an appearance in a jury case and then withdraw the appearance if the case does not settle at jury intake?

On one occasion that I can remember, after the case was transferred, the tenant scheduled a motion back in my courtroom. The tenant said that she did not want a jury trial and now wanted me to hear the case. She told me that her attorney was not representing her anymore. I explained to her that she can waive the jury demand and have a bench trial before the jury judge, but the case cannot transferred back to me. I have seen a LSA used by a legal aid attorney, in which the scope was limited to the representation on a motion to quash. This was a proper and effective use of the LSA.

The CBF had a follow up conversation with Judge Chupack about his concerns during which he suggested we ask for an ethics opinion that clarifies that limited scope appearances are improper in situations where they are used to the detriment of the client. The ISBA may be able to provide such an opinion, and the CBF will reach out to them regarding this suggestion.
In my opinion, the use of a LSA by a private attorney, where the representation ends at jury intake, results (i) in confusion for the tenant, (ii) in the tenant being disadvantaged due to the intimidation of having to conduct a jury trial without representation or being forced to waive the jury demand, (iii) in more delay in the administration of the case due, and (iv) distrust of the judicial system.

The LSA should not be one where the tenant is left worse off by its use. Perhaps the court needs the authority to approve the withdrawal as part of its function to effectively administer cases. The proposed rules intentionally leaves the court out of the decision. Perhaps the proposed rules need to define what is a permissible limited scope in litigation and/or, in the alternative, define what is an impermissible limitation on representation.

Illinois State Bar Association (ISBA)
See the ISBA’s comments on page 168 below.

Institute for the Advancement of the American Legal System (IAALS)
See IAALS’s comments on page 175 below.

Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

What we have right now doesn’t work. Pro Se litigants are clogging up the court system and they need help that they cannot afford. This recommendation would likely alleviate this burden on the court. I particularly like the recommendation for education on limited scope for law students, attorneys, judges, and clerks - this will help with the training and make everyone more comfortable with doing this.

Rohan Pavuluri, CEO at Upsolve

This is a great idea. Countless areas of the law don't require a lawyer at every step of the process. Consumers should be allowed to make decisions for themselves about how much help they need and shouldn't be forced to pay fees they can't afford due to the existing regulatory framework.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer
See Dennis’s comments on page 182 below.

Recommendation #3B: Enhance Educational Programming for Law Students, Attorneys, Judges, and Court Staff

Illinois State Bar Association (ISBA)
See the ISBA's comments on page 168 below.

Rohan Pavuluri, CEO at Upsolve

This is an excellent idea. Consumers should be empowered to make their own choices about how much help they need. Many requirements around full-representation are both paternalistic and hurt law firm business, by not allowing law firms to capture a lower-income segment of the population.
Thomas Shannon, Partner at Shannon & Associates Ltd.

In light of changes brought about by the recent pandemic, Law Schools should be encouraged to explore offerings addressing the advantages of virtual law firms (as distinct from brick and mortar operations) and the related issues of fee sharing, jurisdictional regulations/requirements, "associations of attorneys" (as distinct from formal law firms) etc.

Recommendation #3C: Expand and Improve Data Collection on Limited Scope Representation

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Recommendation #3D: Consider Expansion of Limited Scope Representation in Federal Court

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Rohan Pavuluri, CEO at Upsolve

This is a great idea. In Chapter 7 bankruptcy, for example, most people don't need an attorney to show up to their 341 meeting with the trustee. This meeting lasts about 5 minutes and in the vast majority of 341 meetings, the lawyer doesn't say more than a few words. Attorneys should be able to charge to review the bankruptcy forms and then individuals should be able to file them on their own. This would dramatically increase both business for private attorneys and increase access to justice by reducing the cost of a bankruptcy.

Thomas Shannon, Partner at Shannon & Associates Ltd.

Consideration should be given to allowing limited scope representation on transactional as well as litigation matter. This would involve written agreements on risk sharing regarding the transaction and Client willingness to assume some level or risk which need not be addressed by Attorney.

Recommendation #4: Develop New/Amended Rules on Alternative Fees and Fee Petitions

Hon. Joel Chupack, Circuit Court of Cook County

It is unclear to me in reading the proposed Supreme Court Rule 300 whether (i) the written agreement needs to be attached to the Fee Petition, (ii) whether the court has the right to determine whether the written agreement is reasonable, and (iii) whether the court can require to see a ledger of hours incurred, in order to determine the reasonableness of the fee being charged? \(^{108}\)

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

\(^{108}\) The Task Force made changes to Recommendation #4 to address Judge Chupack’s questions.
Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

Alternative fee agreements should be binding and enforceable via a fee petition. These agreements are good alternative options for fees and more doable by some individuals. This recommendation would allow that so I'm in support of this recommendation.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

**Recommendation #5: Recognize a New Licensed Paralegal Model So that Lawyers Can Offer More Efficient and Affordable Services in High Volume Areas of Need**

*American Association for Paralegal and Legal Education*

See the Association's comments on page 156 below.

*Chicago Paralegal Association*

See the Association's comments on page 166 below.

*Melanie Blair, affiliation unknown*

I would really love to understand the reasoning as to why someone with a JD should be allowed to do all of these things that normally only a lawyer can do, under the supervision of someone else with JD, and the only difference between the two is that one JD took the bar exam and the other hasn't. What skills does the bar exam provide one JD with over the other? How does the bar exam show the necessary competence for one JD to supervise the other?

*Kathryn Conway, Partner at Power Rogers, LLP*

I suspect this recommendation will be somewhat controversial, but it appears there is a demand-supply problem that would be solved in these specific practice areas. Not only would this increase supply in high-volume practice areas, it would make representation more affordable for litigants and more feasible for small firms and sole practitioners.

*Teresa Gaglione, JD and Legal Specialist at Corporate Law Partners*

I am trying to understand the logic behind why someone can be licensed under Section (c)(1)(v) and counsel and advise clients and negotiate a settlement, under the supervision of an attorney. What makes them minimally competent?

The key distinguishing feature between an attorney and a licensed paralegal under section (c)(1)(v) is the bar exam. Under this proposal, a JD may represent and advise a client without having taken the bar exam, so long as they are supervised by an attorney. But, if the legal training provided by a JD, continuing CLEs, and supervision by an experienced training is not enough to ensure minimum competency of JDs looking to become attorneys, why is it sufficient to ensure minimum competency of a JD looking to become a licensed paralegal?

As one member of the committee asserted, "the reason attorneys have to attend law school and not
just apprentice with a licensed attorney is because this formal education is seen by the bar as the only way to ensure that lawyers have the competence to adequately represent individuals in a court of law." I agree.

The task force report does not rebut this statement that law school is the only way to ensure competence, but rather builds on it by acknowledging that is one way to ensure competency, but that an individual "can demonstrate aptitude and intelligence through service and experience."

I must ask, then, why this same logic does not apply to JDs trying to become lawyers. What distinguishes them?

My proposal is that, if a JD and supervision by an experienced attorney is sufficient to ensure minimum competency for a Licensed Paralegal, then it is sufficient to ensure minimum competency in attorneys.

I hope this proposal, or one in the very near future, reflects this standard for minimum competency for JDs looking to become attorneys. Thank you.

Illinois Paralegal Association

The Illinois Paralegal Association has been a leading voice for paralegals in Illinois since 1972. Our members take their role seriously, as evidenced by their attendance at continuing legal education seminars, their pro bono work, and their annual reaffirmation to following IPA’s Code of Ethics.

Our comments and recommendations to the Proposed Licensed Paralegal Rule 7XX are set forth below. We have a pdf copy of our response as well as a redline of the proposal we would like to submit in connection with this response. Please contact us to obtain this copy. You can reach me at president@ipaonline.org.

1. Title. The IPA recommends the proposed designation of Licensed Paralegal be modified to Limited Licensed Paralegal. The proposed change serves to underscore the limited nature of the legal work to be completed by trained and licensed non-lawyers. It also leaves the Licensed Paralegal title available for potential future use should a more expanded role of paralegals be considered in the future.

2. Education level. IPA recommends that all limited licensed paralegals will have completed, at minimum, an associate degree. Illinois has many excellent two year paralegal programs, which is not the case in all states. Paralegals in the greater Chicago area, in particular, have access to many excellent education sources, including two and four year paralegal studies programs and post-baccalaureate certificate programs.

3. Threshold experience level. The required number of hours of substantive legal work should be determined by education level achieved. IPA recommends a minimum requirement of 1,000 hours for individuals who have earned either a baccalaureate degree in any discipline, or a post-baccalaureate certificate in paralegal studies from an accredited college or university. For others, the substantive legal work requirement should consist of at least 2,000 hours.

4. Continuing education requirements. IPA is committed to continuing education and offers seminars to its members. We believe that the minimum requirement to maintain the limited licensed paralegal
designation should consist of a minimum, in each 24 month period, of 12 total hours, of which 2 to 4 hours shall be in professional ethics.

5. Supervision of Limited Licensed Paralegals. IPA feels strongly that limited licensed paralegals can contribute to the unmet legal needs of the community, however we remain committed to working under the supervision of attorneys. A supervising attorney must be available for consultation at all times.

The Illinois Paralegal Association supports the general recommendations of the Report and appreciates the recognition that paralegals and other paraprofessionals are afforded. IPA will lend its support to the Task Force in lobbying efforts with respect to the goals outlined in the Report. In particular, IPA believes its members are well suited to assist in developing certain court procedures to make them accessible to the average citizen. IPA has a working relationship with paralegal educators throughout the state and can use our connections to facilitate training programs for the licensing scheme. IPA traditionally holds annual education conferences through which additional training can be offered to further the education of licensed paralegals.

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

**Institute for the Advancement of the American Legal System (IAALS)**

See IAALS’s comments on page 175 below.

**Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law**

This will provide more cost effective options for the public so that more people can afford counsel.

**Thomas Shannon, Partner at Shannon & Associates Ltd.**

Law Schools should be encouraged to consider curriculum involving first year studies applicable toward eventual law degree; or toward MBA; or toward certificate degree (e.g. paralegal). Final decision not required until further during 3 year course of study. Counseling to be provided by practicing lawyers, MBA grads, and paralegals on practical and financial considerations relative to each career.

**Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer**

See Dennis’s comments on page 182 below.

**Responsive Law**

See Responsive Law’s comments on page 189 below.

**The Stanford Center on the Legal Profession**

See the Center’s comments on page 195 below.

**Recommendation #6: Streamline and Modernize the Rules Around Lawyer Advertising**

**Illinois State Bar Association (ISBA)**
See the ISBA’s comments on page 168 below.

Darren Perconte, Principal Attorney at Perconte Law

I agree that the rule on solicitation should be changed, rule 7.4 should be eliminated, and that lawyers should not have to identify advertising materials.

I do not see any reason why Rule 7.2 needs to be changed. I think that eliminating this language would open the door to “advertising companies” dominating sectors of the legal industry in monopolistic ways: setting consumer prices, and setting lawyer compensation. The massive amounts of funds they can throw at internet advertising will push all attorneys to the deep pages of Google searches. In order to obtain clients over the internet, attorneys will be forced to enter into deals with these advertising businesses. That is when the advertising businesses will really start to profit by setting consumer rates because they will be the only rates consumers will see, and decreasing the amount attorneys make by providing those services because attorneys in certain practice areas will not be able to get clients except through the advertising businesses.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Responsive Law

See Responsive Law’s comments on page 189 below.

John C. Sciacotta, Partner at Aronberg Goldgehn

Not critical.

Lynda Shely, Ethics Lawyer at The Shely Firm PC

The proposed amendments to the Rules, eliminating Rules 7.2, 7.3, and 7.4 and maintaining the consumer protection standard in Rule 7.1 (that all advertising must refrain from false and misleading communications) are a practical updating of the Rules. The Association of Professional Responsibility (APRL) 2014 survey of lawyer regulatory agencies found that the vast majority of complaints about lawyer advertising are filed by other lawyers, not consumers. Moreover, the Rule most often cited by regulators was Rule 7.1 - lawyers must refrain from false and misleading communications. That Rule is sufficient to establish the standard that lawyer advertising must be truthful and not create unjustified expectations.

I applaud the Chicago Bar and Bar Foundation Task Force for recommendations that are moving in the right direction to address both the access to justice gap and the need to help sustain the profession in a rapidly changing legal marketplace and would encourage regulators to consider even more updating of the Rules to retire Rule 5.4 altogether.

Recommendation #7: Recognize a New Community Justice Navigator Model to Build off the Success of Illinois JusticeCorps in the Courts

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.
Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

Yes - this would be amazing to replicate in the form of a computer-based counterpart to the Illinois JusticeCorps! Access to legal help is an urgent issue and many people don’t even know that they even have a legal issue. This model would help address those issues. This is such an important and wonderful recommendation!

Rohan Pavuluri, CEO at Upsolve

The current system of justice for who is allowed to provide legal assistance is deeply racist. UPL rules promote racial inequity and guarantee that black Americans don’t have equal opportunities and equal rights under the law.

First, consider which group of people disproportionately has access to three years and $100,000-plus of graduate school education. Due to today’s racial wealth gap, created by centuries of white supremacy and black oppression dating back to slavery, the net worth of a typical white family is nearly 10 times higher than that of a black family. It should come as no surprise that only 5% of lawyers are black.

Countless legal problems do not and should not require someone to pay more than $100,000 in fees to learn how to provide competent assistance. By essentially requiring people to go to law school to provide legal assistance, UPL rules guarantee that only a fraction of black people who could competently provide legal assistance are actually allowed to provide such help.

Second, consider which group of people disproportionately cannot afford the legal help they need. UPL rules guarantee that black people don’t have equal access to our justice system by limiting the supply of helpers available, which drives up the cost of legal assistance.

It’s not hard to imagine a system that exists, similar to nurse practitioners in medicine, where we train professionals to provide the same outcomes as lawyers in specific areas of poverty law. The process could include training modules for specific parts of poverty law that are routine and straightforward, followed by a test for each one.

We could start by training social workers, paralegals and law librarians who are already familiar with the law and serve lower-income communities. Areas of the law that present opportunity include uncontested divorce, consumer bankruptcy, immigration, social security disability, and consumer debt collection.

Opponents of UPL reform claim that we’ll compromise consumer protection if we allow nonlawyers to provide assistance. This line of defense lacks nuance.

To reform UPL doesn’t mean choosing between regulation and no regulation of the legal industry. It’s a choice between maintaining a status quo where black people are disproportionately excluded from both providing and receiving assistance and a system where we re-regulate the legal industry to make it more inclusive, increasing the supply of vetted, qualified helpers available. The false dichotomy of an all-or-nothing dialogue around UPL reform has failed black Americans who need access to affordable legal assistance.
Opponents also object on the grounds that allowing a new class of professionals to help low-income families access the justice system will create two tiers of justice, one for people who can afford a lawyer and one for those who can’t. This view fails to appreciate that it’s simply impossible to have a lawyer for every single person in America who needs one.

We need more lawyers to do pro bono work and more public funding for legal aid. We need more black lawyers too. But anyone who thinks the sole solution to the access to justice problem in America is more lawyers doesn’t understand the scope of the problem.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Recommendation #8: Create a Hub Where the Public Can Find Court Approved Sources for Information and Assistance

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

I think this is important and critical to advance access to justice. If the public doesn’t have access to this information and resources and they cannot afford counsel, then they will continue to be at a disadvantage as compared to those who can afford attorneys.

Juan Morado Jr., Partner at Benesch, Friedlander, Coplan & Aronoff LLP

I wholeheartedly support this proposal. Access to legal services is crucial for many, especially those without the resources to afford an attorney for "easier" questions. The only addition I would make it that it be required these intermediary entities be required to provide this information in multiple languages, as we are seeking to remove as many barriers as possible.

Dennis A. Rendleman

See Dennis’s comments on page 182 below.

Recommendation #9: Adopt a Clearer Practice of Law Definition with a Recognized Safe Harbor

Kimball R. Anderson, Partner at Winston & Strawn LLP

See all of Kimball Anderson’s comments on page 152 below.

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.
Rohan Pavuluri, CEO at Upsolve

I do not support the definition that’s proposed, but I think the idea of a definition is a good one. I fear that the current definition you’ve outlined for "practicing law" is too broad. It may lead to an outcome that’s the opposite of what’s intended.

Consider two examples:

A librarian follows a "choose your own adventure"-style handbook (written by an attorney) to provide assistance to someone about their eviction. They should not be considered to be providing legal advice.

Similarly, a social worker fills out a "mad-libs"-style template (again, the template is written by an attorney) for a litigant who is contesting a debt collection lawsuit. They should not be considered to be providing legal advice.

"Customized" assistance alone should not trigger "legal advice." "Specialized judgment" should be a part of what makes something "legal advice." It’s dangerous to say that personalization alone constitutes the practice of the law, given that there’s "mindless" customization that doesn’t require any "specialized judgment" but can still be very helpful to individuals. This type of personalized assistance shouldn't be considered legal advice.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Recommendation #10A: Undertake a Broader Plain Language Review of the Rules to Modernize Them With the Lightest Hand of Regulation Needed to Achieve the Court’s Regulatory Objectives

Jeffrey Bunn, Owner of The Mindful Law Coach & Consulting Group, LLC

Having read the Task Force Report, I understand that the primary focus of the Task Force has been outward-facing (i.e., the growing disconnect between the legal needs of the public and the lawyers who serve them), but I cannot help but observe that a comprehensive examination of the sustainability of the practice of law, might also include an inward-facing component (e.g., the growing disconnect in lawyers with themselves, as well as the growing disconnect between lawyers and their legal peers).

Respectfully, I would suggest that the inward-facing concern mentioned above could be easily addressed by simply referencing, and adopting, the Report of The National Task Force for Lawyer Well-Being.

Related to the above-stated concern (though admittedly beyond the stated scope of the current Task Force), I would respectfully suggest that the Chicago Bar Foundation-- perhaps in conjunction with the Chicago Bar Association and at the direction of an appropriate organ of the Illinois Supreme Court -- take up the question of whether Rule 1.1 of the Rules of Professional Conduct ("Competence") ought not be further amended to reference well-being as a matter directly impacting one’s professional competence.

A lawyer who is not well, in body and/or mind, may not be competent to serve either the community or individual clients, as a legal advisor or counselor, and I believe it would further the interests of both the
legal profession and the public it serves, to responsibly reference well-being as a component of competence, in the Comments to Rule 1.1.

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

This is just common sense. The CBF has done a great job doing this in the past and should continue to do this going forward so that people who are pro se can understand what to do. As with this entire report, this is a major access to justice issue.

**Recommendation #10B: LTF and ARDC Should Work Together to Amend Rule 1.15 to Accommodate the Court’s Plain Language Objectives**

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

**Recommendation #11: Convene a New Committee to Explore the Potential Benefits and Harm Associated with Eliminating the 5.4 Prohibition on Ownership of Law Firms by People Who Are Not Lawyers**

Howard Ankin, Owner of Ankin Law Office, LLC

I respectfully disagree that consumers do not know how to find lawyers. More aptly, the problem is consumers cannot find lawyers they can afford. Having a non-attorney have ownership in a law firm will not assist consumers and will instead drastically hurt the legal profession. I recommend two things: First, more judges and arbitrators. Consumers want more immediate satisfaction to their issues. The more immediate satisfaction, the less cost. Second, the parties should be entitled to agree to relax the rules of discovery or evidence for cost savings or submit to a relaxed rules of discovery or evidence Court calendar. If the parties agree to air out grievances with limited discovery this would drastically save attorney fees and the ability to "find" a lawyer. The CBA should advocate with the Court system to change its procedures to conform with modern day needs. Instead, recommendation 11 puts the change on the legal profession to its detriment. This is the wrong vantage point. In my childhood community the pharmacists all had the nicest houses. Today, my classmates who followed in their parents footsteps either work for Walgreens or CVS and are subject to its directives or otherwise have very little choice with their career. The third branch of government must have lawyers who are free and independent and especially economically independent to advocate properly. I am not a novice to lawyer marketing and advertising with my practice. Google already mandates how most lawyers advertise on-line. Instead of paying $50 a click, this proposal could lead to Google sharing in 50% of the fee. There is no dentist or physician happy with a couple of large corporations sapping their energy for what is felt as unfair compensation. The best and brightest in our society are not going to be physicians
and dentists. Following the failed model of other professionals who already resoundingly screamed from the rooftops how terrible their profession should teach lawyers a lesson. Lawyers do not have insurance policies for reimbursement for services and thus makes them different from other professionals. Lawyers should not turn on themselves. The best and the brightest are not going to work 10 to 15 hour days with no economic upside to obtain a reputation for success. Doctors are rewarded on providing procedures. Are lawyers going to have to win at all costs more than they do now to have a corporation pay them? The consumer is going to be drastically harmed when hedge funds, Walgreens, Google, AVVO, and the like control every aspect of a lawyer’s ability to advocate. We already know that the test model of what this proposal 11 does not work. The proliferation of the multi-state attorney firm is providing less than the caliber of legal services consumers demand. Lawyers are already upset feeling certain law firms control the market. Look at the Courthouse. Look at alternative dispute resolution. Enable laws which allow lawyers to independently provide justice for consumers cost effectively yet allow the lawyer to be paid for her time. Law firms selling out to hedge funds rolling up the industry like dentists is going to have the best and brightest go to business school, not law school. After you get past the satisfaction of being a lawyer the upside for hard work is the fantasy of achieving economic security. This is the lawyer motivator which provides great results for many consumers who have already 'found' a lawyer. The vantage point of changing the need to help consumers by making lawyers the stoogies of corporate bureaucrats is the antitheses of why most people want to be a lawyer. The advocacy consumers demand is not going to be achieved long term with this proposal. I implore you that this 11th suggestion is the beginning of the end and please do not proceed with it.

I am happy to speak with anyone about my comments in further detail. I do believe many of other proposals will have positive outcome for consumers and lawyers.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

Moving in the direction of liberalizing ownership has a lot of potential. While doing so in England and Australia has not solved all their access to justice problems, it can be another tool in the toolbox as we look for ways to do that. Bringing in both outside expertise, to help manage law firms or offer holistic solutions to clients, and outside investment, to help fund the development of new offerings or technological tools, could help many clients if proper regulation is in place. Let’s focus on regulation that protects the public in a way that covers traditional firms and new entities which may have owners who are not lawyers.

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Rohan Pavuluri, CEO at Upsolve

This is a great idea. Many other professions where it's critical that consumers have high-quality experiences have non-practitioner owners -- namely medicine.

Keep in mind that these firms with non-lawyer owners would still be regulated. And also keep in mind that capitalism, coupled with the ease of online reviews, incentivizes firms to provide a high-quality service to keep getting more clients.
Darren Perconte, Principal Attorney at Perconte Law

The available research on alternative business structures has shown that they charge at the same rates as traditional law firms due to facing similar market pressures. The Task Force Report mentions that in jurisdictions outside the US, there has not been an increase in lawyer discipline issues due to lawyers sharing fees with non-lawyers. However, the Task Force Report is silent on any benefit to consumers or increased access to legal services due to lawyers sharing fees with non-lawyers. On the July 21 CLE for Regulatory Reform to Better Serve the Profession & Public, when asked about the lack of evidence of increased access to legal services due to these changes, the answer was that there has not been enough time to acquire that data. It is hard to square the notion that the data is in regarding ethical issues, but we need far more time for access to justice issues. At this time, the obvious risks of eliminating ownership restrictions are too substantial to seriously consider doing so without strong evidence of the benefits. I am wary of big businesses and private equity using their capital in law firms to promote interests that are not in line with the interests of clients. Convening a committee feels premature, but maybe with an appropriately deliberate timeline, it could be beneficial.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy’s comments on page 192 below.

Responsive Law

See Responsive Law’s comments on page 189 below.

Lynda Shely, Ethics Lawyer at The Shely Law Firm PC

See Lynda’s comments under Recommendation #1 above.

The Stanford Center on the Legal Profession

See the Center’s comments on page 195 below.

General Comments

Association of Professional Responsibility Lawyers (“APRL”)

See the Associations comments on page 164 below.

Dan Cotter, Attorney & Counselor at Howard & Howard Attorneys PLLC

I applaud this Task Force for the thoughtful review of the current legal market for consumers and small businesses. As many members of the Task Force know, I strongly share those views and have reviewed the report. I believe that the recommendations are well thought out and many should be adopted. I know, from the House of Delegates at the ABA and from serving on other committees with The CBA and talking with lawyers in various areas of the state and nation, that some recommendations will be resisted and push back will ensue on some of the recommendations. That is to be expected- change is
always difficult and humans are resistant to it. Lawyers as a group worry about the elimination or replacement of need for them. But what is clear from the CBF’s unmet needs study and from my experience, including with the JEP, is that there are millions or individuals and small businesses for whom many professional services, including legal, are out of reach or inaccessible.

This Task Force Report thoughtfully seeks to explore how we can change the delivery and the services so that more needs may be met. To me, that is a win-win for all involved, including the lawyers. More clients who can pay some fees for limited or full services means that more legal needs can be met and that means a bigger pie, not smaller. I have seen many JEP lawyers thrive in a framework where clients can afford their services, and the JEP lawyers deliver high quality legal services, and make a decent living in doing so.

Again, I applaud the Task Force and thank its Co-Chairs and members for the thousands of hours and thoughtful work that went into the Report and, if needed in any way, I am more than willing to support it and help with its adoption.

Written in my individual capacity and not on behalf of Howard & Howard

J. Timothy Eaton, Partner at Taft, Stettinius & Hollister LLP

I write in support of the excellent Task Force Report of the CBA/ CBF Task Force on the Sustainable Practice of Law & Innovation. The recommendations are insightful and innovative and should achieve the twin goals of sustaining our legal profession while at the same time improving access to our justice system for low and moderate-income Illinois citizens. For years I have been involved in the mission of both making our legal practice more viable and enhancing the opportunity for more consumers to have legal services to meet their everyday needs. I have had the privilege of serving on the boards of both the Illinois Bar Foundation and the Chicago Bar Foundation and have witnessed firsthand the laudatory efforts both organizations have made to improve our profession and access to our legal system. As President of the Lawyers Trust Fund I also became aware of the strong commitment our Illinois Supreme Court has had, and continues to have, in fostering and funding legal services for those who do not have the financial means to obtain them. But even with the efforts of our major bar associations and our supreme court, there is so much more to be done. If anything, the need has become greater. The number of people not able to afford simple legal services has increased, and the number of self-represented litigants in our courts has seen a dramatic rise. This Task Force Report in my opinion provides many positive solutions to these issues and hopefully will enjoy the full support of all lawyers in this state.
What impressed me the most in serving as a member of the Task Force was the willingness of the Task Force members and leadership to consider new and bold approaches. Although I agree with all of the Task Force recommendations, I have read the comments to the report and I recognize that there can be honest disagreement about some of the recommendations. But we are lawyers and we resolve disputes. We do not simply withhold our support from innovative ideas because they are new and may have not been fully tested. No, as lawyers we roll up our sleeves, figure out our common ground and push for solutions where we can achieve a consensus. I recall when the Lawyers Trust Fund first introduced amendments to the supreme court rules to permit limited scope representation. There was opposition based primarily on an unfounded fear that it would take work away from lawyers who were providing full service representation for clients. In fact the opposite has occurred, and it has increased work for lawyers where the client may have otherwise have not been able to afford any legal services. Today, as is evident from comments to this report, there is unanimity in expanding limited scope representation rules. I know that every member of this task force is dedicated to protecting consumers, providing more work for lawyers, not less, and in the process not diluting in any way our professional obligations we have as lawyers. Our goal with these recommendations is to make our legal practice more robust within the parameters of our professional rules, and improve the access to our services by more legal consumers who need them.

I am convinced that there is more common ground than opposition to these recommendations. We cannot squander this opportunity to move forward with these recommendations because we may have some disagreement with a certain approach. We need to coalesce around those recommendations we fully support, and find a consensus on those recommendations where we differ. As a veteran of many bar associations, I know not much gets accomplished unless everyone is committed to achieving the same goals, are willing to compromise and be open minded. The stakes are too high both for our profession and our citizens if we do not move forward. I hope the Task Force Report will result in a robust dialogue on how to address the economic and legal needs of our profession and our citizens culminating in an improved framework of legal practice and access to justice. The cost will be too high if we fail.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

Well done! This report does a great job of learning from the work in other jurisdictions and focusing the discussion on how we can better serve those who need our services.

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Grant Kennedy, affiliation unknown

This is the ”deregulation” confusion. Yes if you want cheaper oil fract. If you are so smart to have solutions to a problem, see if you are smart enough to create solutions without taking away protection. Letting businesses own law firms is wrong, even if you tell them not to control they will. Your premises is a fraud.

Jennifer Nijman, Partner at Nijman Franzetti, LLP

My comments are more general as to the report, rather than as to specific recommendations. I support each of the recommendations. This Task Force had a broad make up and incorporated some big ideas - they each need to be given due consideration as we re-think how we practice law.
Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

John C. Sciacotta, Partner at Aronberg Goldgehn

First, I’d like to thanks you and the task force for its extraordinary efforts. I am thankful and appreciate these efforts.

I feel strongly that the time to has come for our profession to implement much needed changes that will assist our legal profession and the public at large. Lawyers dealing with consumer and other areas are struggling and the proposed rules will assist them and will also assist and benefit the public in being able to be educated and to receive the legal services needed.

I am in full & complete support of the recommendations and if anything else is needed, please advise.

Lynda Shely, Ethics Lawyer at The Shely Law Firm PC

I commend the Task Force for the diligent review and consideration of these issues.

Howard S. Suskin, Partner at Jenner & Block

I commend the Task Force, and particularly its Co-Chairs Judge Mason and Lynn Grayson, on their hard work and thoughtful perspectives on the various initiatives in the Report.
Kimball Anderson’s Feedback

To: CBA/CBF Task Force On Sustainable Practice of Law and Innovation

From: Kimball R. Anderson

Date: August 21, 2020


Thank you for this opportunity to comment on the draft Task Force Report dated July 22, 2020. I commend the Task Force for its initiative in improving access to justice in Illinois for those who might not otherwise be able to afford legal representation in the traditional sense. For the most part, the recommendations are well-conceived and, if adopted, will significantly improve access to justice in Illinois. Mindful of the hard work and good intentions of the Task Force, however, I respectfully suggest that the Task Force abandon two recommendations.

First, I do not believe that the Task Force’s recommendation regarding fee sharing with non-lawyers will promote the public interest. I believe that it will impair the independence of the legal profession. Accordingly, I agree with the comments on this proposed change submitted by the Attorneys’ Liability Assurance Society, Inc. (“ALAS”).

Second, I respectfully urge the Task Force to abandon its “PROPOSED ILLINOIS SUPREME COURT POLICY STATEMENT/RULE DEFINITION OF PRACTICE OF LAW/UNAUTHORIZED PRACTICE.” For reasons that I explain below, this proposed rule change is antithetical to the goal of improving access to justice in Illinois.

By way of background, I am a partner with the firm of Winston & Strawn LLP (Chicago office), where I have practiced law for 43 years. I served for many years as the General Counsel of the firm and as a member of the firm’s Executive Committee. As General Counsel, I was the chief ethics officer of the firm. For the past six years, in addition to my litigation practice, I have taught professional responsibility as an adjunct professor for the University of Illinois College of Law. I have also taught Illinois Constitutional Law as a guest lecturer for the University of Illinois College of Law. I also served for many years as a member of the Chicago Bar Foundation Board of Directors and, for two years, as the President of the CBF. I am a Fellow of the American College of Trial Lawyers and have litigated unauthorized practice of law (“UPL”) cases. As recognized by many public interest organizations and bar associations (including the CBA, ISBA, ABA, and American College of Trial Lawyers), I have championed access-to-justice causes throughout my career.

My comments regarding the proposed rule change reflect my own views. I am not writing on behalf of Winston & Strawn LLP, its clients, the University of Illinois College of Law, or any of the public interest organizations and professional associations that I have worked with over the years.

Although the draft Report says that the proposed rule change is intended to create a “safe harbor” that exempts certain activities from UPL enforcement, the proposed rule change does nothing of the sort. Instead, it effectively reserves to lawyers the exclusive right to represent persons and legal entities in many matters that state and federal courts, for good reasons, have held are not the exclusive province
of lawyers. I refer, for example, to administrative proceedings before county assessors, county boards of review, workers’ compensation panels, environmental enforcement agencies, and labor dispute agencies. In our federal administrative system, federal agencies have been left the sound discretion to set the standards for those who appear before them in representational capacities. So too should State of Illinois agencies be entrusted with the sound discretion to determine the required qualifications of those who appear in representational capacities before them. These agencies are the subject matters experts and are well-equipped to regulate persons who appear before them in representational capacities.

Article 6, Section 16, of the Illinois Constitution entrusts to the Supreme Court of Illinois the administration of the courts of our State. Thus, it is natural and proper that the Supreme Court set the standards for representing parties before the courts of the State. State agencies, in contrast, are created by the Illinois General Assembly which, pursuant to Article 4 of the Illinois Constitution, “has all powers not denied by the state or federal Constitution.” Miller, 1970 Constitution Annotated for Legislators (4th Ed.), at 25. Nothing in the Illinois or federal constitutions deny the Illinois General Assembly the power to prescribe the standards for representation before state agencies. Conversely, nothing in the Illinois Constitution specifically empowers the Supreme Court of Illinois to prescribe the standards for non-lawyer representation of parties with matters before state agencies created by the legislature. Pursuant to Article II, Section 1, of the Illinois Constitution, “[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.” To be sure, the Supreme Court of Illinois is empowered to regulate the conduct of lawyers who appear before state agencies. But it is not clear that the Supreme Court of Illinois properly can, or should, regulate the practice of non-lawyers appearing in representational capacities before agencies created by the Illinois General Assembly in and proceedings that are informal and subject to de novo review by courts.

Furthermore, the Task Force should be reminded that state and local bar associations are not immune from federal antitrust laws to the extent that they engage in concerted efforts to restrain trade or commerce, including the practice of law. Goldfarb v. Va. State Bar, 421 U.S. 773, 792 (1975) (fact that the practice of law was regulated by State Supreme Court did not shield bar association from liability under Section 1 of the Sherman Act). See also North Carolina State Board of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015) (agency that regulates the practice of dentistry not immune from antitrust laws).

Here, the Task Force’s proposed rule change restrains trade before Illinois state agencies in a way that benefits members of the Chicago Bar Association and Illinois State Bar Association, many of whom are Task Force members. To be sure, any professional licensing scheme restrains trade. The critical question, however, is whether such restraint passes muster under the Sherman Act’s rule of reason analysis. Such analysis will involve, among other things, a determination of whether less restrictive means exist for accomplishing the goals of assuring competent representation and protecting the public.

A total ban of non-lawyer representation activities before all state administrative proceedings, no matter how informal, may not survive scrutiny under a rule of reason analysis. In any event, no good reason exists for the Chicago Bar Association and Chicago Bar Foundation to test the boundaries of antitrust law.

Turning now from the legal questions surrounding the proposed rule change to its practical implications on access to justice in Illinois, I believe it indisputable that the proposed rule change will decrease access to justice rather than promote it. Set forth below are the Task Force’s proposed rule changes followed by my comments.

(a) It is the practice of law to:
   • Give legal advice that is customized to a specific situation or set of circumstances to a person or entity,
   • prepare or present arguments that involve interpretations or applications of the law or substantive legal rights and responsibilities,
   • Represent a person or entity in court or in other legal proceedings, or
   • Negotiate legal rights or responsibilities for a person or entity.

(b) It is not the practice of law:
   • To provide general information on court procedures and court rules, including court-approved forms,
   • To serve as a mediator, arbitrator, or neutral,
   • For court personnel, Illinois Justice Corps members, or court-recognized community justice navigators to provide assistance in accord with the Court’s Safe Harbor policy, or
   • For a person to self-represent

(c) Unless otherwise permitted by these Rules or by a federal administrative body with jurisdiction over a particular type of proceeding, it is the unauthorized practice of law to engage in the practice of law in Illinois without authorization from the Illinois Supreme Court, or for someone to represent to another person that they are a licensed Illinois lawyer when they are not.

For starters, subsection (a), in contrast to subsection (b), cannot be fairly characterized by the Task Force as a “safe harbor.” It is anything but a safe harbor. Subsection (a) broadly expands the definition of the practice of law beyond anything previously recognized under Illinois law. “Giving legal advice that is customized to a specific situation or circumstances” broadly captures routine and lawful activities of real estate brokers, insurance brokers, accountants, paralegals, real estate tax consultants, etc. The same is true for preparing or presenting arguments that involve the interpretation of law. That additionally sweeps in journalists, authors, and commentators on the law.

The next phrase—“represent a person or entity in court or in other legal proceedings”—leaves undefined “other legal proceedings.” Some bar associations, eager to please the economic interests of their members, surely will interpret “other legal proceedings” to include any and all administrative proceedings—even those that do not presently require legal representation, those that do not require adherence to any evidentiary rules, and those that are subject to de novo review by our courts. The result will be that a mom-and-pop lawn-care business, for example, that has incorporated the business to protect mom and pop from personal liability, and that wants representation in a real estate tax
assessment matter (or an environmental dispute, or a workers’ compensation dispute) now must hire a lawyer instead of some other lower-cost, and probably more knowledgeable, licensed professional. Moreover, under the Task Force’s prosed rule, that mom-and-pop corporation cannot even represent itself before state agencies because it is not a “person” allowed to self-represent under subsection (b). This is an unreasonable restraint of trade in favor of the bar association members that is not in the public interest and that does not promote greater access to justice.

The final phrase of subsection (a)—“Negotiate legal rights or responsibilities for a person or entity”—is equally problematic for the same reasons. This is not a safe harbor. It is a broad and vaguely worded attempt to capture, for the benefit of the members of the bar associations, the exclusive right to negotiate legal rights or responsibilities. In my example above, the mom-and-pop lawn-care business will be precluded from negotiating its own legal rights and responsibilities and will be precluded from retaining any licensed professional to negotiate on behalf of the business (e.g., accountant, nurse, doctor, real estate broker, tax advisor, workers’ compensation advisor, labor law negotiator, immigration counselor, etc.). This result would not be in the public interest and would not promote greater access to justice for the majority of citizens in our State who cannot always afford to hire a lawyer.

As for subsection (b), this represents a reasonable attempt to define a safe harbor. But any lawful safe harbor must include representation before state and federal administrative agencies consistent with the rules and regulations of the agency. The simple solution to the problem of ambiguity regarding UPL, as perceived by the Task Force, is to leave to the Supreme Court of Illinois the regulation of practice before the courts and to leave to the Illinois General Assembly and its agencies, the regulation of practices before administrative agencies. State and local bar associations, intentionally or unintentionally, should not urge unreasonable restraints of trade for the benefit of their members.

Thank you for this opportunity to comment of the draft Report and for the Task Force’s important contributions to improving equal access to justice in Illinois.
American Association for Paralegal and Legal Education’s (AAfPE) Feedback

American Association for Paralegal and Legal Education (AAfPE) Comments and Recommendations on the Chicago Bar Association and the Optimizing the Use of Other Professionals Committee’s Recommendation #5 to RECOGNIZE A NEW LICENSED PARALEGAL MODEL SO THAT LAWYERS CAN OFFER MORE EFFICIENT AND AFFORDABLE SERVICES IN HIGH VOLUME AREAS OF NEED

Submitted by Toni Marsh, Director of GW Paralegal Studies Program

The American Association for Paralegal and Legal Education (AAfPE), the nation’s largest and oldest continuously-operating organization dedicated to paralegal and legal studies education, supports and applauds the work of the committee and thoughtfulness of the proposal. AAfPE is uniquely qualified to support organizations seeking to understand and act upon educational opportunities and challenges for paralegals. AAfPE recognizes the access to justice crisis in the United States and asserts that although the issues surrounding it are complex and varied, better utilization of paralegals can remedy many of the issues.

Comments and Recommendations

The proposed rule mandates that Licensed Paralegals must have: an associate’s or baccalaureate degree in paralegal studies; or a baccalaureate degree in any discipline plus work experience; or a high school diploma plus work experience; or have received certification or accreditation from certain professional organizations; or have graduated from law school. There is no provision for those who have earned a baccalaureate degree in any discipline plus a post-baccalaureate certificate or master’s degree in a paralegal or legal studies program.

RECOMMENDATION: Include a baccalaureate degree in any discipline plus a post-baccalaureate certificate or master’s degree in a paralegal or legal studies program in the list of credentials a person must have to be eligible to obtain a license to provide services. Nearly a quarter of all AAfPE member programs nationwide and fully half of the Illinois programs offer these credentials. Students with post-baccalaureate certificates or master’s degrees have more education than those in paragraph (c) (I) (i).

SUGGESTED LANGUAGE: 7XX (c) (1) (xx) have an associate’s or baccalaureate degree and a certificate in paralegal education from an accredited institution.

RECOMMENDATION: References to education in a Paralegal Studies Program should be changed to a paralegal educational program.

COMMENT: Not all paralegal programs are titled paralegal studies. There are a variety of titles, including legal studies or simply paralegal.

The Committee proposes to gather data on [the program’s] utilization, effectiveness, and any problems that arise, and then later determine if these categories should be further restricted or expanded.

RECOMMENDATION: Metrics should be clearly defined to ensure the program measures the appropriate outcomes and accurately assesses whether it has achieved its goals. The Washington LLLT program ended in large part because the Court used metrics that were unrelated to the program’s mission: the cost of the program rather than costs saved by the program, and the number of participants rather than numbers served.
RECOMMENDATION: Metrics should be relevant to the program’s mission to increase lawyer efficiency and service affordability in high volume areas of unmet need.

The Committee proposes limiting services to those occurring before a matter goes to trial.

RECOMMENDATION: Services should be limited by the type and complexity of the cases; not by procedural stage. For example, while limitations on a contested divorce are reasonable, a Licensed Paralegal would be fully qualified to represent a party through the conclusion of an uncontested divorce. Under the proposed rule, a Licensed Paralegal can represent a party until the time of trial, at which time the paralegal would be forced to withdraw, leaving the party unrepresented at a crucial time. The party may opt to move forward pro se rather than hire an attorney at the last minute. In this situation, the attorney would enter just before trial with limited understanding and connection to the client. The attorney would be forced to redo much of the work to prepare for trial. This would result in higher costs and less effective representation and may cause parties not to employ Licensed Paralegals at all.

RECOMMENDATION: Should a limitation be placed on trial representation, a less restrictive and more supportive approach would be to: have a court-appointed staff attorney sit second chair to the paralegal at trial; OR require non-binding arbitration with all paralegal-represented cases, to allow the client to decide how to proceed after arbitration; AND require notice of limitations to representation in all contracts for representation.

The Committee would require malpractice insurance of lawyers and law firms that employ Licensed Paralegals although such insurance is not required for Illinois lawyers in general. The committee’s reason is that its proposal would implement an untested new concept that potentially carries some added risk to clients [and] protection of the public should be paramount.

RECOMMENDATION: Lawyers and law firms that employ Licensed Paralegals should be subject to the same malpractice insurance rules as all Illinois attorneys. The factors that drove the state of Illinois to forego requiring malpractice insurance of all Illinois lawyers -- that all lawyers are subject to discipline if they do not provide competent services, including services provided with the assistance of a paralegal -- apply here. Further, the committee’s initial suggestion that all Illinois lawyers are not required to carry such insurance, it is illogical to require this sub-category of lawyers to do so should stand. To require additional insurance of this sub-category of practitioners would penalize them financially for trying an innovative model and may suppress participation.

The program limits Licensed Paralegal practice to family law, evictions, and consumer debt matters below a certain threshold.

RECOMMENDATION: As the program grows, consider including all civil small claims cases.
Attorneys Liability Assurance Society’s (ALAS) feedback

August 20, 2020

VIA PUBLIC COMMENT FORUM

To: CBA/CBF Task Force on the Sustainable Practice of Law & Innovation

Re: CBA/CBF Task Force on the Sustainable Practice of Law & Innovation’s Request for Comment on Proposed Amendments to Rule 5.4 of the Illinois Rules of Professional Conduct

Attorneys Liability Assurance Society (ALAS) responds to the request of the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation (Task Force) for comments on its proposed amendments to Rule 5.4 of the Illinois Rules of Professional Conduct (Rule 5.4).

I. Introduction

ALAS is a Chicago based mutual insurance company that insures 217 law firms, including more than 66,000 lawyers in 49 states, the District of Columbia, and 30 foreign countries, and is the leading provider of professional liability insurance for large law firms in the United States. We insure 52 member firms with offices in Illinois with 4,842 total lawyers practicing in the state. In its 40+ years in business, ALAS has handled more than 16,000 claims and has developed substantial knowledge and experience concerning situations that give rise to legal malpractice claims. By virtue of the extensive loss prevention services it provides to its members, ALAS has a unique understanding of problems confronting lawyers and law firms today.

Lawyers from ALAS were actively involved in the American Law Institute’s development of the Restatement Third, The Law Governing Lawyers and in the American Bar Association’s (ABA) 2002 revision of the Model Rules of Professional Conduct. ALAS is also involved with other professional and bar associations that have defined the ethical and professional duties of lawyers and is mindful of the need to enhance access to justice for middle- and low-income individuals. ALAS applauds the Task Force for its efforts to improve the sustainability of the legal profession and increase access to justice for all.

The Task Force’s recent initiative to amend or explore elimination of certain rules governing the manner in which lawyers and law firms function seeks to create a more sustainable legal profession and a better and more accessible justice system, while protecting consumers of legal services from harm. Although some of the proposed recommendations appear to further those objectives, the proposed revisions to Rule 5.4 (Recommendations 1, 2A, 2B, and 11) do not promote these stated goals. Instead, the proposed revisions threaten to undermine the core values of the U.S. legal system and compromise client confidentiality and the attorney-client privilege without reliable evidence that the changes will increase access to justice. Accordingly, ALAS opposes Recommendations 1, 2A, 2B, and 11, which: (1) propose revisions to Rule 5.4; (2) advocate for the establishment of an intermediary entity model to allow fee sharing with non-lawyers; (3) establishes a new category of legal services providers called Approved Legal Technology Providers to partner with and share fees with law firms; and (4) recommends convening a committee to evaluate whether to eliminate Rule 5.4’s prohibition on non-lawyer ownership of law firms.
II. History of Select Rule 5.4 Proposed Revisions

The reasons that led other authorities to reject revising or eliminating Rule 5.4 apply equally in Illinois. The ABA has debated this very issue multiple times since the early 1980s. Each time, the ABA has ultimately rejected proposals to revise Model Rule 5.4, because such a change threatened the core values of the legal profession. For example, between 1977 and 1983, the Commission on Evaluation of Professional Standards (Kutak Commission) considered the issue of lawyers partnering with non-lawyers and proposed a draft Model Rule 5.4 allowing such conduct. The ABA House of Delegates rejected the proposal and instead adopted a version of Model Rule 5.4 that is substantially the same as the current version of the rule.[1] In 2000, the ABA House of Delegates again considered and rejected a proposal for fee sharing with non-lawyers and non-lawyer ownership, and instead adopted a recommendation stating that fee sharing of legal fees with non-lawyers and the ownership and control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession.[2] We share the ABA’s view in this regard.[3] Most recently, in 2019, the ABA Center for Innovation released a resolution that would have again encouraged variations to Rule 5.4 as a way to address the access to justice problem. However, in the wake of strong opposition from multiple state bar presidents, the ABA House of Delegates adopted a version of the proposal that explicitly disclaimed any recommendation regarding changes to Rule 5.4.[4]

In March 2017, the United States Court of Appeals for the Second Circuit upheld the dismissal of a complaint by two related New York law firms alleging that New York’s version of Model Rule 5.4 infringed their First Amendment rights to petition and of association.[5] In that case, the plaintiffs alleged that New York Rule 5.4 improperly prohibited the law firms from accepting non-lawyer investment, which they claimed would enable the firms to improve the quality of the legal services offered, reduce fees, and expand their ability to serve needy clients.[6] In affirming the lower court’s decision dismissing the complaint, the Second Circuit held that New York Rule 5.4 serves New York’s well established interest in regulating attorney conduct and in maintaining ethical behavior and independence among members of the legal profession.[7]

The District of Columbia is the only jurisdiction in the United States that permits fee sharing with non-lawyers and non-lawyer ownership in law firms. D.C. Rule 5.4(a)(4) states: [s]haring of fees is permitted in a partnership or other form of organization which meets the requirements of paragraph (b). D.C. Rule 5.4 (b) provides:

[a] lawyer may practice in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual non-lawyer who performs professional services which assist the organization in providing legal services to clients, but only if: (1) the partnership or organization has as its sole purpose providing legal services to clients; (2) all persons having such managerial authority or holding a financial interest undertake to abide by the [D.C. Bar] Rules of Professional Conduct; (3) the lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the non-lawyer participants to the same extent as if non-lawyer participants were lawyers under Rule 5.1; [and] (4) the foregoing conditions are set forth in writing.[8]

Even though D.C. has allowed fee sharing with non-lawyers and non-lawyer investment in law firms since the 1980s, very few firms have done so, thereby making it difficult to assess the benefits of the D.C. rule.[9] We have also been unable to identify any D.C. law firm that has utilized D.C.’s Rule 5.4 to
improve legal access to middle- or lower-income individuals.

III. Rule 5.4 Should Not Be Revised

Rule 5.4 serves critical public-policy interests. The rule ensures that lawyers will protect client interests and uphold the principles of the profession, including lawyer independence. These core values will be threatened if the financial interests of non-lawyers, who have no ethical duty to the law firms’ clients, overshadow the best interest of clients.[10] Indeed, given that profit is the principal goal in most business ventures, there is substantial risk that non lawyer investors, Approved Legal Technology Providers, or intermediary entities will focus only on the bottom line at the expense of client interests and the quality of services. Potential consequences of this focus include a decrease both in the quality of law-related services and pro bono work.[11]

Based on ALAS’s extensive experience, we know that building and maintaining an effective risk management program in a law firm takes considerable resources. It is also a matter of culture and professionalism that puts ethical practice and client concerns above profit. We are very concerned that allowing fee sharing with non-lawyers and non-lawyer ownership will erode the culture and professionalism of law firms and result in a practice that is less protective of clients.

For example, consider what might happen if private equity investors were permitted to have an ownership stake in law firms. It is not unrealistic to envision those investors taking dividends out of the firm, cutting costs expended on risk management and quality control, and taking other steps to realize profits. These actions might benefit the investors financially, but they would undermine the firm’s lawyers’ professional obligations to their clients.[12] These concerns apply equally to firms that share fees with or co-own intermediary entities or Approved Legal Technology Providers.

These are not the only risks associated with fee sharing and non-lawyer ownership of law firms. The attorney-client privilege and client confidentiality are long-standing principles at the heart of every lawyer’s relationship with every client. See Illinois Rule of Professional Conduct 1.6. It is unrealistic to think that non-lawyer investors and other business partners will not want data on clients that is both confidential and privileged. Revealing such data will breach the lawyer’s duty of confidentiality (absent client consent) and likely waive the privilege.[13] In light of these concerns, the proposed revisions to Rule 5.4 do not achieve the Task Force’s goal of maintaining consumer protection.[14]

Nor will the proposed revisions of Rule 5.4 promote the Task Force’s stated purpose of access to justice. ALAS supports efforts to increase access to legal representation for all middle- and low-income individuals, but we have found no reliable evidence that fee sharing with non-lawyers or non-lawyer investment in law firms furthers that goal.

In fact, it was this lack of evidence that led Ontario, Canada, to decline a recommendation to allow non lawyers to become majority owners in firms.[15] That decision was premised on an Ontario-commissioned 2014 study by Jasminka Kalajdzic that sought to determine whether alternative business structures (ABS) had improved access to justice in England and Australia, two jurisdictions that allow non-lawyer ownership.[16] Ms. Kalajdzic’s study concluded that there is no empirical data to support the argument that non-lawyer ownership has improved access to justice. [17]

This lack of evidence was again manifest in the ABA Commission on the Future of Legal Services 2016
Report on the Future of Legal Services in the United States (Legal Services Report), which documented the commission’s findings stemming from a two-year study focused on access to legal services. [18] Here too, there was little reported evidence that ABS has had any material impact on improving access to legal services. [19] Similarly, in England, where non-lawyers have been allowed to own interests in law firms since 2011, the lack of access to justice persists for most of the low- and middle-income population.[20] According to a 2019 Solicitors Regulation Authority survey, 68% of those surveyed stated they cannot afford the cost of legal services, and 79% believe that it needs to be easier for people to access legal guidance.[21]

Instead of increasing access to justice, Australia and England have seen growth in a single practice area - personal injury cases - since allowing non-lawyer ownership of law firms.[22] Other areas where such access is desperately needed, such as family law; property and landlord/tenant law; and criminal law, have not seen the same growth.[23] Indeed, the rate of self-representation in family law matters in Australia was more than 50% in 2014.[24] This is entirely consistent with the conclusions of a 2014 study conducted by Nick Robinson, a fellow at the Program on the Legal Profession at Harvard Law School, which found that non-lawyer investment is likely to be attracted to legal sectors, like personal injury, where expected returns are high and that are relatively easy to commoditize, but where there may not be as much of an access need because of the long-standing practices like conditional or contingency fees. [25] This provides further evidence that allowing non-lawyer ownership of law firms will not serve the Task Force’s stated purpose of access to justice.

In addition, the proposed revisions are not limited to entities that provide legal services to middle- or low-income individuals or other under-served populations. Furthering that purpose would be better served by rule changes tailored to that objective.

Because the Task Force’s stated objectives, namely access to justice and consumer protection, will not be served by the proposed revisions to Rule 5.4, and there is a risk that the proposed changes will erode attorney independence and client service, ALAS opposes the Task Force’s proposals concerning this rule.

IV. Conclusion

ALAS thanks the Task Force for its consideration of these comments and recommendations. They do not necessarily reflect the views of all ALAS member firms. The Task Force has permission to reference these comments as being made by a major American legal malpractice insurer.

Mary Beth Robinson
Senior Vice President of Loss Prevention

Givonna St. Clair Long
Senior Loss Prevention Counsel


[6] Id. at 181.

[7] Id. at 191.

[8] D.C. Rules of Professional Conduct 5.4 (2017). D.C. is currently considering revisions to its version of Rule 5.4 to further loosen the restrictions on non-lawyer ownership of law firms.


[14] ALAS understands that the Task Force also proposes a revision to the Rules of Evidence to clarify that communications to and through an intermediary entity for the purpose of obtaining legal services are privileged. This, however, does not address the lawyer’s duty of confidentiality. Nor does it address the danger that the privilege could be waived if the intermediary entity shares attorney-client communications with third parties.


[17] Id. at 1, 10-11, 14.


[19] Id. at 42.


[21] Id.


[23] Id.

[24] Id.

[25] Id.
Association of Professional Responsibility Lawyers’ (ARPRL) Feedback

Date: August 19, 2020

Comment on the July 22, 2020 CBA/CBF Task Force Report on the Sustainable Practice of Law & Innovation

Now in its thirtieth year, the Association of Professional Responsibility Lawyers (“APRL”) is the premier international organization for professional responsibility lawyers and legal ethicists. APRL now has more than 400 members, largely comprised of lawyers whose practice revolves around the law of lawyering.

Specifically, APRL’s membership includes lawyers who represent lawyers, law firms, in-house legal counsel, and judges in matters of legal ethics and professional responsibility. APRL’s membership also includes academics, judges, corporate counsel, risk management attorneys, and government lawyers.

Throughout its thirty year history, APRL has taken public positions on the rules governing lawyers, as well as professional discipline regulations, legal malpractice statutes and principles, and other developments in professional responsibility matters. For example, in 2015 and 2016, APRL issued landmark reports proposing reforms regarding lawyer advertising and solicitation rules, which have formed the basis of rule amendments and amendment proposals in several states and at the American Bar Association. APRL holds twice-yearly conferences on ethics topics, and submits public statements, reports, and amicus curiae briefs in pending state and federal litigation and rule amendment proceedings.

In 2018, APRL formed an internal committee called the Future of Lawyering Committee (the “FOL”), which has been tasked with examining various future of lawyering initiatives, making proposals where appropriate, and otherwise engaging the organized bar, the judiciary, the public, and other stakeholders on issues of legal regulatory reform. The FOL’s overarching task was to consider comprehensive regulatory reform for improving legal services delivery and for easing overly restrictive ethics rules that inhibit legal help for middle- and low-income Americans.

APRL’s FOL Committee submits this statement in support of the July 22, 2020 CBA/CBF Task Force Report on the Sustainable Practice of Law & Innovation (the “Task Force Report”). APRL is not offering comment as to the details of the specific regulatory and ethics rules changes being proposed by the Task Force Report, but submits this response to make clear that it supports bold action as a significant step in facilitating a crucial discussion about improving access to legal services.

APRL’s FOL Committee applauds the Chicago Bar Association, the Chicago Bar Foundation, and the Task Force that issued the Task Force Report on their collective acknowledgment of the judiciary’s primary role in regulating legal services delivery in the U.S., and their recognition that the rules and regulations that are in place in every U.S. jurisdiction simply are not working in light of technological developments in our 21st Century world. Not only is access to legal services largely inadequate and too expensive for a large segment of the population, but also the rules in place unnecessarily restrict innovation.

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Footnote 1: It is worth noting that many APRL members were deeply involved in the Task Force and the Task Force Report, including APRL Past Presidents Arthur Lachman and Lynda Shely, current APRL Secretary Trisha Rich, and many other APRL members, including Bob
The Task Force Report proposal seeks methods to correct these inequities. We agree with the Task Force’s conclusion that the reforms such as those recommended in the Task Force Report will make for a better and more sustainable legal profession, a better and more accessible justice system, and improved access to legal help for consumers and small business markets. We applaud the Task Force’s work, and note that if anything, it is more restrained and conservative than proposed reforms that the FOL Committee has supported generally in the past, including the Utah proposal that was recently adopted and enacted by the Utah Supreme Court.

In short, APRL’s FOL Committee believes the Task Force’s recommendations are helpful and timely, and we support the spirit that underlies these efforts. Illinois has an opportunity to be a leader in legal regulatory reform, which will contribute to APRL’s efforts, as well as efforts all over the country to implement necessary reforms that will improve the legal system for all participants. We urge the Illinois Supreme Court to take that opportunity.

The Task Force Report is a thoughtful attempt to strike an appropriate balance in broadening the availability of legal services to the public while maintaining the appropriate level of protection to consumers based on real risks and real outcomes. We note that, importantly, the Task Force report is for reregulation, not deregulation. APRL’s FOL Committee believes that the Task Force’s work will inform APRL’s continued efforts to develop a comprehensive regulatory reform proposal that can serve as a roadmap for adoption in multiple jurisdictions on a national or regional basis and that will apply broadly to lawyers and other individuals and entities who can and should be part of the solution. APRL’s FOL Committee commends the Task Force’s willingness to take action in attempting to improve access to affordable legal help for everyone and allowing us to learn from its experience.

The Chicago Paralegal Association is the leading professional association in Chicago dedicated to elevating the standards and ethics of all Illinois paralegals.

CPA strongly disagrees with the Committee’s comment that there is little evidence that there is a shortage of providers of legal services in most communities.

According to the Illinois Equal Justice Foundation (IEJF), Illinoisans need access to legal help now more than ever. Civil legal problems have spiked in the wake of the COVID-19 outbreak, especially for people already struggling to make ends meet and communities of color. Illinois Legal Aid Online (ILAO) reports a 40% increase in use of its unemployment tools and 84% increase in use of its emergency food stamp resources. https://iejf.org/press-room/news-releases/illinoisans-need-civil-legal-help-now-more-than-ever/.

Bob Glaves, Jayne Reardon, Mary Robinson, Allison Wood, Wendy Muchman, William Hornsby, Tracy Kepler, and Josh King. These APRL members volunteered their time and considerable expertise in legal regulatory issues to provide what we believe is a bold and thoughtful end product.
Chicago Paralegal Association’s Feedback

Chicago Paralegal Association’s position statement in opposition to the current version of Recommendation #5: Recognize a New Licensed Paralegal Model so that Lawyers Can Offer More Efficient and Affordable Services in High Volume Areas of Need

CPA applauds the work of the Committee in realizing that better utilization of paralegals can help address and support access to justice efforts.

Pursuant to 5 ILCS 70 Section 1.35, "[P]aralegal means a person who is qualified through education, training, or work experience and is employed by a lawyer, law office, governmental agency, or other entity to work under the direction of an attorney in a capacity that involves the performance of substantive legal work that usually requires a sufficient knowledge of legal concepts and would be performed by the attorney in the absence of the paralegal.

CPA was disappointed see the suggestion of a new paralegal category and the many restrictions and barriers created in Recommendation #5 by the Optimizing the Use of Other Legal Professionals Committee in the report of the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation.

CPA is a strong advocate of elevating the standards and credentials of paralegals to expand access to justice, but it is our opinion that the Task Force’s Recommendation #5 misses the mark by creating an unnecessary Licensed Paralegal category, and adding layers of unnecessary rules and regulations. This category is simply not needed to support access to justice efforts.

The Recommendation purports to authorize Licensed Paralegals to provide a broader range of client services, however all services would still be performed under the direction and supervision of a licensed attorney.

Licensed Paralegals would be subject to discipline and withdrawal of their license by the Attorney Registration and Disciplinary Commission, however any and all acts performed would still be performed under the direction and supervision of a licensed attorney.

Licensed Paralegals would only perform allowed services in limited areas such as where there is documented high unmet need.

The Recommendation further mandates that any lawyer or law firm who employs this category of paralegal would be required to carry malpractice insurance to cover the acts of the paralegal, which would be performed under the direction and supervision of a licensed attorney.

Paralegals already work under the direction and supervision of licensed Illinois lawyers, and Illinois lawyers are not required to carry malpractice insurance to employ any paralegal.

Having certified paralegals available to provide limited legal services directly to the public would facilitate improved access to the legal system, and expand the pool of providers able to serve consumers with
legal services.

Paralegal certification is a process in which applicants who satisfy strict requirements, including completion of an approved educational program, passage of a qualifying exam (which includes ethics) or documented work experience, are certified. Certified paralegals have the demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer. Certification is distinct from a certificate of completion, which generally is awarded upon successful completion of a paralegal educational program.

While paralegals in Illinois are not currently required to be certified, they do follow rules of professional conduct and ethics as set forth by the state, the American Bar Association, and the national paralegal associations, which require members to adhere to standards and a code of ethics.

Our national paralegal organizations have already defined the education and work experience just to qualify to sit for a certification exam.

In fact, according to the website of NALA The Paralegal Association:

NALA is the only National Commission for Certifying Agencies (NCCA) accredited paralegal certification program. NALA’s Certified Paralegal program has been recognized both nationally and internationally for over 40 years! Our CP credential has been acknowledged by the American Bar Association as a mark of high professional achievement, and more than 47 other paralegal organizations and numerous bar associations also acknowledge the credential as the paralegal standard.

Further refinement and modification of this Recommendation should, at a minimum, be assisted by review and comment from paralegals, certified paralegals, paralegal associations, and paralegal educators.

We do agree with the Committee that allowing paralegals to appear in court for routine status hearings or preliminary court appearances, and to assume an expanded role in the areas of family law, evictions, and small consumer debt matters, would allow the lawyer to focus their attention on the more complex aspects of a case. This would also have a meaningful impact on addressing the access to justice issue, and protect the public, since this expanded paralegal role would still be under the direction and supervision of a licensed attorney.

Board of Directors of the Chicago Paralegal Association
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Illinois State Bar Association’s (ISBA) Feedback

August 20, 2020

E. Lynn Grayson Nijman Franzetti, LLP
10 S. LaSalle St., Suite 3600
Chicago, IL 60603

Hon. Mary Anne Mason (Ret.) JAMS
71 S. Wacker Dr., Suite 2400
Chicago, IL 60606

Re: Illinois State Bar Association Comments on the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation

Dear Co-Chairs Grayson and Mason:

On behalf of the 35,000 member Illinois State Bar Association, I am pleased to provide comments to the recently published CBA/CBF Task Force on the Sustainable Practice of Law & Innovation Report (the "Report") and to thank you for this opportunity.

The ISBA appreciates the well-intended work of the Task Force that produced the Report. For many years, the ISBA has actively monitored, and when considered appropriate taken a leadership role in the national debate within the organized bar on "re-regulating" the legal profession. The ISBA understands that these issues are important but also recognizes that they are complex and not susceptible to easy solutions. The ISBA shares the Task Force's goals of working toward a more sustainable legal profession, a better and more accessible justice system, and improved system of access to legal help for low- and moderate-income consumers and small businesses – the express focus of the Report. However, the ISBA does not support the overwhelming majority of the recommendations set forth in the Report. The ISBA considers the recommendations to be flawed in many respects and, if adopted, will be ultimately harmful to the public and the profession.

I. General Comments
   A. Absence of Data Supporting the Recommendations
The Report’s premise to solving the identified problem of low- and middle-income consumers and small businesses accessing legal services is based on lowering the cost of those services. It is contended that lower cost can be achieved by many forms whether it is "one-to-many" technology platforms, "licensed paralegals" providing legal advice and services, or simply redefining the practice of law to exclude certain legal services such that they can be offered by nonlawyers. However, the Report provides no data that demonstrates in any way lowering the cost of legal services through these, or any other means, results in an improvement in access to justice by low- and middle-income consumers and small businesses. Conversely, recent studies tend to indicate that positive impacts on improving access to justice by these types of reforms are elusive.

As an example, the State of Washington in June 2020 ended its "Limited License Legal Technology Program" based on overall cost and the small number of participants. That program’s impact on access to justice had been earlier identified as providing no improvement in access to justice. Donaldson, Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice, 42 Seattle University Law Review 1 (2018).

Other US jurisdictions have had similar reforms in place for many years without any demonstrable improvements in low- and moderate-income individual or small business access to justice. Arizona has had "Certified Legal Document Preparers" since 2003, but no data is available that shows it has had any positive impact on access to justice (and given Arizona’s current efforts to re-regulate the legal marketplace it would appear that certified legal document preparers have not had a measurable beneficial impact). Also, Washington D.C. has allowed nonlawyer participation in the ownership of law firms for many years, and yet no data is available that demonstrates low or moderate income consumers or small businesses in DC have had greater access to legal services or are using legal services at an increased rate.

Studies that rely on data from the UK where nontraditional forms of legal practice were introduced in 2007 also point toward a lack of any improvement in access to justice or a reduction in self-represented litigants. Robinson, When Lawyers Don’t Get All the Profits, 29 Geo. J. Legal Ethics 1 (2016). Additionally, the UK Legal Services Board has reported that: "Research evidence suggests more people are handling legal issues alone and fewer are obtaining professional advice; however, the proportion of those who do nothing when faced with a legal issue appears unchanged." Evaluation: Changes in the legal services market 2006/07 – 2014/15 –Summary, LSB, July 2016.

Similarly, the ABA’s Center for Innovation as recently as February 2020, has commented "there is not yet sufficient evidence to endorse any particular [Legal Services Provider]" and that "it is also clear that there is not yet enough data to know what 'model' approach of this subject [regulatory reform] should be or what effect ABS will have on addressing the access to justice crisis." ABA Center for Innovation, et al., Report to the House of Delegates (February 2020).

In addition, cost alone may not be the determinative factor in consumers employing lawyers or seeking out legal services (both expressed goals of the Report). As such, recommendations that are focused solely on lowering the cost of legal services may likely have no measurable positive effect on increased use of legal services. Reluctance to use legal services is more closely linked to consumer attitudes about the legal system. As noted above, the UK reports an increase in consumers handling legal problems on their own. The reasons vary but include consumer perceptions that the legal matter is straightforward, that lawyers are not required, that there is nothing that can be done to help, or that self-help technology is adequate to resolve the issue. These trends are also seen in the US
as demonstrated by the growing number of self-represented litigants. In addition, the 2018 Clio "Legal Trends Report" indicates that 26% of consumers prefer to handle legal matters on their own. An earlier study from the American Bar Foundation also reported that 46% of people faced with a civil justice problem handled it on their own. "Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study," Rebecca Sandefur, ABF (August 2014). This growing number of consumers who "do it on their own" will not see any benefit from, nor likely embrace the services of, the Report's recommendations.

The conspicuous absence of any meaningful data or support for the recommendations strongly suggest such fundamental and sweeping changes to the legal services marketplace are premature and unwarranted.

B. Lack of Meaningful Detail and Overbroad Recommendations

The Report lacks important detail on many of its recommendations. During the discussions by ISBA groups and the Board of Governors, many comments focused on a lack of detail with respect to the specific recommendations. Even with respect to those recommendations that the ISBA could potentially support in concept, the absence of detail and comprehensive discussion presented problems in assessing the merit of the proposals.

C. Public Harm

The impact on the public is critically important in any discussion of legal marketplace reform. In addition to the data referenced above that tends to demonstrate that the public may not seek out new forms of legal services made available by the recommended reforms, serious questions remain about the ability of these new nonlawyer entities to deliver competent and useful legal services to low and moderate consumers and small businesses. The "one-to-many" technology models envisioned by the recommendations will certainly not provide the quality of services associated with individualized lawyer advice. Whether the "just good enough" model of legal services is appropriate is an open question. Just as predatory lenders are not a substitute for funding legal aid for low-income individuals, legal advice generated by a chatbot created in a joint venture between an attorney and a tech company does not give middle-class families and small businesses access to justice. Finally, it is also important to recognize that the exclusion of lawyers from the delivery of legal services also eliminates all the client protections lawyers are compelled – for good reason - to provide clients as required by the Rules of Professional Conduct.

D. Professional Harm

The recommendations intended to increase competition with lawyers (and presumably lower cost) presents problems for an association that represents lawyers. Particularly solo and small firm lawyers. Nevertheless, we are not myopic on this point. We understand that lawyers have a higher calling and professional obligation to clients and the public rather than to their own pecuniary gain or self-interest. The ISBA understands that in some practice areas and situations, lawyers may not be negatively impacted by nonlawyer competition or technology derived one-to-many legal solutions. In fact, there are many examples of lawyer support for legal services that might be considered to be against their self-interest. However, the breadth and generality of the Report does not allow the ISBA to make the necessary analysis to reach those conclusions about the recommended regulatory reform or identify where such reforms may be appropriate. In the end, the ISBA has a responsibility to defend,
the role of a strong, vibrant, and independent legal profession. When the provision of legal services becomes solely a matter of "who can provide legal services at the lowest cost," the ability of the profession to attract the best and brightest will be adversely affected. That in turn will have long term impacts not only on the profession but potentially on the law’s development, the respect for the law, the preservation of legal rights, the availability of truly independent advice to those in need, and the legal profession as a model of civility and justice.

E. Recommendation Omissions

The focus of the Report recommendations and the responsibility for solving the identified issues associated with low- and moderate-income consumers are almost exclusively addressed to lawyers and the means by which lawyers provide legal services to consumers. However, the Report also raises serious concerns about an "antiquated" court system. Nevertheless, the Report is silent on many reforms other jurisdictions are employing to make their court systems more consumer friendly and navigable. Often these reforms are targeted in specific areas and make use of new and innovative technologies. The ISBA believes these areas should be explored in a much more depth and detail as they may go a long way in furthering the goals of the Report.

II. Specific CBA/CBF Recommendations

Notwithstanding the very brief 30-day time period allowed to submit comments on the Report and its recommendations, the ISBA promptly sought input from more than 25 of its substantive member groups in order to get the perspective of its membership and the practicing bar. In view of the significance of the Report recommendations, those groups met on short notice and voted the time and energy to provide meaningful comments to ISBA leadership. In turn, the Board of Governor met on two separate occasions and fully considered the group comments. The comments, and Board discussion, reflected a clear and unique unanimity of opinion on many of the Report recommendations. The ISBA is pleased to provide its comments on the specific Report recommendations noted below (using the same numbering system as in the Report).

Recommendation #1: "Recognize a New Intermediary Entity Model to Help Connect Lawyers to Legal Consumers." The ISBA supports the concept of regulating "matching services." However, the ISBA does not support the CBA/CBF recommendation. In contrast, the ISBA in concept is supportive of the more comprehensive regulatory proposal of the ARDC with respect to Intermediary Connecting Services and continues to work with the ARDC on an acceptable regulatory program. 

Recommendation #2A: "Modernize the Rules So that Lawyers Can More Actively Participate in the Development and Delivery of Technology-Based Products and Services." This recommendation envisions nonlawyer ownership of legal practices and the delivery of legal services to the public by nonlawyers. For the reasons stated above in Section I, the ISBA does not support this recommendation.

Recommendation #28: "Explicitly Authorize the Delivery of Technology-Based Legal Products and Services by Individuals or Entities and Appoint a Board to Develop an Appropriate Regulatory Mechanism Responsible for Registering and Vetting Approved Legal Technology Providers." For the reasons stated above in section I, the ISBA does not support this recommendation.

Recommendation #3A: "Streamline Rules to Expand the Use of Limited Scope Court Appearances." The ISBA supports this concept. As you may know, on February 4, 2020 the ISBA submitted a similar
proposal to the Court to amend S. Ct. Rule 13 to make withdrawal from a limited scope representation automatic upon completion of the representation. The proposal is still pending with the Court. The ISBA would be happy to work with the CBA/CBF to accomplish this recommendation.

**Recommendation #3B:** "Enhance Educational Programming for Law Students, Attorneys, Judges, and Court Staff." The ISBA supports this concept.

**Recommendation #3C:** "Expand and Improve Data Collection on Limited Scope Representation." The ISBA supports this concept. The collection of detailed data on this, and other types of court appearances and representations, such as self-represented litigants, would be very helpful in analyzing the need for potentially more precise regulatory reforms.

**Recommendation #3D:** "Consider Expansion of Limited Scope Representation in Federal Court." The ISBA supports this concept but notes it typically does not routinely pursue rule changes in the federal courts.

**Recommendation #4:** "Develop New/Amended Rules on Alternative Fees and Fee Petitions." The ISBA takes no position on this recommendation at this time. While the use of alternative fee arrangements has demonstrated benefits for both lawyers and consumers, and should be given effect by the courts, particular fee arrangements should not be expressly preferred over others in the IRPC Comments. In addition, the impact of this recommendation on existing attorney fee law is unknown.

**Recommendation #5:** "Recognize a New Licensed Paralegal Model So that Lawyers Can Offer More Efficient and Affordable Services in High Volume Areas of Need." The ISBA does not support this recommendation. The ISBA recognizes the Report’s acknowledgment that "there is scant data to support the proposition that the creation of new independent categories of providers in some jurisdictions have had a meaningful impact on access to justice." However, the recommendation itself, focused on supervised providers within a law practice, provides insufficient detail for it to be fully assessed. Based on the information provided, important details about a number of features of the recommendation are absent including supervisory requirements, applicable areas of practice, the scope of available services, the impact on lowering cost of legal services, and the likely negative impact on new lawyers. We believe there is serious doubt as to the practicality and efficacy of the proposal as drafted.

**Recommendation #6:** "Streamline and Modernize the Rules Around Lawyer Advertising." The ISBA does not support this recommendation. The ISBA finds the Report’s commentary that the IRPC advertising rules are "confusing, unnecessary, duplicative, overly prescriptive," and have a "chilling effect" on lawyers making their services known entirely conclusory and without support. In addition, to the extent there is any impediment in the ability of consumers to find lawyers because of a defect in the current advertising rules it is likely de minimis. According to the 2019 Clio Trends Report, 59% of consumers find lawyers through referrals from family or friends, 35% use a lawyer’s website or an online search engine, and only approximately 6% rely on advertisements.

**Recommendation #7:** "Recognize a New Community Justice Navigator Model to Build Off the Success of Illinois JusticeCorps in the Courts." The ISBA does not support this recommendation. Like the proposal with respect to licensed paralegals, too many questions about a number of aspects of the recommendation remain including training requirements, the nature of sponsoring organizations, liability, and avoiding the unauthorized practice of law. Several ISBA groups specifically wanted a
description of the perceived successes of the JusticeCorps, and noted that if it was successful, a new "navigator" program could possibly be incorporated into the existing program.

**Recommendation #8:** "Create a Hub Where the Public Can Find Court Approved Sources for Information and Assistance." The ISBA does not support this recommendation. The recommendation provides insufficient detail to be fully assessed. Of particular concern are proposal features that would "vet" and "approve" information included on such an information Hub. In addition, there appears to be no recognition of the vast amount of legal information already online and available in the legal marketplace.

**Recommendation #9:** "Adopt a Clearer Practice of Law Definition with a Recognized Safe Harbor." The ISBA does not support this recommendation. Determining what constitutes the practice of law is a matter of public protection and ensuring the integrity of the legal system. E.g. *Downtown Disposal Services v. Chicago*, 2012 IL 112040. The Illinois Supreme Court has also repeatedly held that there is no mechanistic formula to define what is and what is not the practice of law. Id. The flexibility of this "case by case" approach is sound and necessary in order to address changes in the law and individual factual situations. Development of a static definition of the practice of law would likely only be a vehicle for nonlawyer special interests to obtain authorization to provide their particular version of legal services without regulation. The well-established purposes behind the law surrounding the unauthorized practice of law would be undermined. In addition, crafting a static definition of the practice of law that is meaningful is likely a very complicated task, and as the Report itself discusses, efforts by other organizations to do so (the ABA) have failed in the past.

**Recommendation #10A:** "Undertake a Broader Plain Language Review of the Rules to Modernize Them With the Lightest Hand of Regulation Needed to Achieve the Court's Regulatory Objectives." The ISBA does not support this recommendation. The recommendation provides insufficient detail for it to be fully assessed, especially the meaning of phrase "the lightest hand of regulation needed." In addition, there is value to the legal profession in ensuring consistency with the ABA Model Rules of Professional Conduct wherever possible and that deviations from the ABA Model Rules, as perhaps contemplated in the recommendation, should be undertaken only with the substantial and well-reasoned justification.

**Recommendation #10B:** "LTF and ARDC Should Work Together to Amend Rule 1.15 to Accommodate the Court's Plain Language Initiatives." The ISBA takes no position on this recommendation. However, some ISBA groups provided commentary that the current IRPC 1.15 is not a model of clarity.

**Recommendation #11:** "Convene a New Committee to Explore the Potential Benefits and Harm Associated with Eliminating the 5.4 Prohibition on Ownership of Law Firms by People Who are Not Lawyers." The ISBA does not support this recommendation. As you may know, the ISBA strongly believes that IRPC 5.4 represents and protects certain core values of the profession, among others preserving the independence of a lawyer's judgment on behalf of clients. This has been a longstanding position of the ISBA clearly supported by the vast majority of members of the profession across the country as evidenced by the significant resistance the ABA's Center for Innovation experienced at the ABA's 2020 Midyear meeting in Austin when the subject of revisions to Rule 5.4 was considered. Of course, the ISBA is not blind to the ongoing debate surrounding Rule 5.4 and the calls for change, often made or supported by those who would stand to gain by the elimination of Rule 5.4. Nevertheless, in the absence of any process by which the outcome is not prejudiced or pre-ordained, any formalized discussions on this subject remain problematic.
The ISBA again thanks the CBA/CBF for the opportunity to provide comments on the Report. There is no question that the Report recommendations envision sweeping and fundamental change to the legal marketplace in Illinois, which may significantly affect the ISBA membership but also the administration of justice in Illinois. The ISBA looks forward to continued opportunities to comment on and discuss them as may be appropriate.

Very truly yours,

Dennis J. Orsey
President, Illinois State Bar Association

cc: Rob Glaves (CBF)
    Jessica Bednarz (CBF)
    Hon. Robert Anderson (Ret.)
    James M. Lestikow
Comment on the Task Force Report (the “Report”) by the Chicago Bar Association/Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation (the “Task Force”)

We write on behalf of IAALS, the Institute for the Advancement of the American Legal System at the University of Denver. We are generally in support of the Recommendations in the Task Force Report (the “Report”) by the Chicago Bar Association/Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation (the “Task Force”), which embody what we view as the correct policy to shift our industry in the right direction toward greater affordability and accessibility of legal services, while at the same time providing lawyers with greater opportunity to expand their clientele. We believe, though, that many current recommendations do not go far enough to make the impact needed to address these problems. Consequently, we urge the Task Force to exercise its leadership by making amendments to its Recommendations to more fully close the access to justice gap that is not only deteriorating the public’s trust in the legal system, but that is also perpetuating racial injustice.

We Support the Wider Use of Limited Scope Representation

IAALS supports the Recommendation on improving the rules for limited scope representation. More than 70% of civil and family cases include at least one self-represented party, with the primary driver of self-representation being the inability to afford a lawyer. An increase in limited scope representation in both state and federal court will increase the number of litigants that can afford help from a lawyer, and lawyers who practice limited scope representation will benefit as well with a larger pool of potential clients that can afford their services.¹

We strongly support the amendments to Supreme Court Rule 13 that will make use of standardized, plain language forms for entering and terminating limited scope appearance, in addition to objections to

¹ IAALS has extensively studied this issue in the context of family law, an area where most people in the United States will encounter the civil justice system and where many people must navigate the system alone. Our support for these recommendations is based on our expertise in this issue. See NATHANIEL KNOWLTON, BETTER ACCESS THROUGH UNBUNDLING: FROM IDEATION TO IMPLEMENTATION (Aug. 2018), https://iaals.du.edu/sites/default/files/documents/publications/better_access_through_unbundling.pdf and our various guides on and toolkits on our Unbundling Legal Services project page, https://iaals.du.edu/projects/unbundling-legal-services#tab=guides-toolkits.
motions to withdraw. We also support the amendment to Supreme Court Rule 13 to automatically terminate representation at the time of filing or presenting the motion to withdraw. This will clear up some of the ambiguity that likely keeps lawyers from participating in limited representation. That being said, in order for limited scope representation to take hold, the support and guidance of judicial leadership is essential.

We also support the amendments to Supreme Court Rules 793 and 794 that aim to expand access to educational programming on limited scope representation in law school, the new lawyer Basic Skills Course, and in CLE courses. In addition to some of the ethical/malpractice concerns some lawyers have on limited scope representation, which the amendments above help to alleviate, a large factor in its limited use is a lack of knowledge and understanding. One cannot use what one does not know exists. If lawyers learn about limited scope representation as early as law school, and are provided resources to increase that knowledge throughout their career, there is a greater likelihood they will adopt a limited scope model into their practice. The more it is taught and normalized, the more it will be utilized.

**We Support in Part the Creation of a New Licensed Paralegal Model**

IAALS supports the Recommendation of authorizing Licensed Paralegals to provide a broader range of services beyond those currently permitted for traditional paralegals. The expansion of both the duties and areas of law allowed for Licensed Paralegals can be extremely beneficial to consumers, especially as this pandemic has caused and will continue to cause for the next few years an increase in the areas of consumer debt, family law, and evictions. We believe that the greater the number of professionals able to aid in these matters, the better.

This is the right step toward the ultimate goal of increased access to justice; however, the requirement that Licensed Paralegals must practice under the supervision of a lawyer ensures that the recommendation’s impact on the problem of access to affordable legal services will be limited, if there is any at all. This requirement will impede the achievement of access to justice by forcing a duplication of efforts, creating time commitment issues, and increasing the likelihood of little to no change in the overall cost of legal services. It is not feasible for a lawyer to review all the work of a Licensed Paralegal, in addition to his/her own work, while in the meantime also significantly lowering the cost to the consumer. But if Licensed Paralegals are allowed to work independently, they can set their own rates and create much needed competition in the legal marketplace. That is why we strongly recommend the removal of the requirement that Licensed Paralegals must practice under the supervision of a lawyer.

This Task Force notes that there is little data to support the view that creating a new independent category of providers will have a meaningful impact on addressing the issue of access to justice. What is clear is that the few examples within the United States have either been far too restrictive and difficult to attain licensure (e.g., Washington LLLT), making them unable to actually expand the delivery of affordable legal services, or are too new to truly measure their success (e.g., Utah LPP). That does not mean that we do not have useful data on the matter. For instance, one need go no further than Ontario, Canada, which offers a successful model for independent paralegal services. Over ten years ago, the legal regulator there supported the adaptation of paralegals as independent legal service providers, allowing them to represent clients in a number of areas of law (e.g., small claims up to $35,000 and less serious criminal matters) by giving them legal advice, drafting documents, and negotiating on the client’s behalf. The data shows us that not only is the program robust in its ability to expand affordable legal
services, with well over 8,000 independent paralegals currently offering assistance, but that the program made legal services more accessible without lowering the quality of service.

We Support in Part the Creation of a New Intermediary Entity Model to Connect Lawyers with Consumers

IAALS supports the Recommendation to amend Rule 5.4 to allow lawyers the ability to collaborate with other professional disciplines in order to better connect with more clients. However, this Recommendation can and should go further by amending Rule 5.4 to allow other professionals to have an ownership stake in law firms.

As we have written in comments to task forces in Arizona and Washington, D.C., Rule 5.4 purports to project the independent judgment of lawyers by prohibiting lawyers from sharing legal fees with others, prohibiting others from having any financial interest in law firms, and prohibiting lawyers from forming partnerships with anyone other than a lawyer if any of the partnership’s activities consist of the practice of law. But these business practices are linked to independent professional judgment by the thinnest of unsupported assumptions. In fact, IAALS has not identified any evidence that these business practices inherently compromise the independent judgment of lawyers, and certainly not in any way that requires their categorical prohibition. And, when the rule was originally drafted, there was no evidence that the corporations then supplying lawyers to clients were harming the public. Today, lawyers currently work within corporations, insurance companies, and accounting firms and have been doing so for years. There is no evidence that this arrangement destroys these attorneys’ independent judgment. Absent the need for Rule 5.4 to protect the independent judgment of a lawyer—protection amply afforded elsewhere in the rules—the lack of any real evidence behind Rule 5.4 is alarming, given that the rule’s economic restrictions have had severe consequences for lawyers and for people in need of legal services.

The reality that lawyers must wear many different hats in order to run their firm invariably takes their focus away from actually helping their clients. One report suggests that some solo and small firm practitioners earn just 1.6 hours in billable work per day, after factoring in the number of billable hours that never make it to an invoice and the amounts forfeited by unpaid bills.2 Allowing lawyers to partner with business, marketing, technology, and other professional disciplines can help them to expand their business while focusing on their clients, but forbidding nonlawyer ownership unnecessarily leaves out successful partnership options created in other professions. These partnerships range from a solo lawyer bringing in a spouse as part-owner to run the business side of the firm, to a law firm bringing in an investment company to provide the necessary capital to grow. Other professions have shown that these partnerships can be successful to growing a company without sacrificing their integrity, and there is no reason to assume the legal profession will be any different.

On the other hand, there is ample evidence to suggest that when restrictions over business practices such as those found in Rule 5.4 are eliminated, these changes could lead to more innovation in the delivery of legal services, more available services for those who need them, and better quality services in general.

Research from England and Wales on alternative business structures (ABS) operating under the Solicitors Regulation Authority (SRA), where lawyers and other professionals share ownership, suggests that overall innovation among legal services providers, including innovation that reduces the cost of delivery legal services, is higher than among traditional providers. ABSs are three times as likely to make use of technology compared to other providers. Specifically, ABSs are twice as likely as other providers to use any of the following ten emerging technologies: interactive websites, live chat or virtual assistants, cloud or similar data storage mechanisms, ID-checking tools, custom-built smart device apps, technology assisted review (TAR), automated document assembly (ADA), robotic process automation (RPA), predictive technology, and smart contracts/distributed ledger technology (DLT).

The beneficial impacts of technology on the quality of services is widely recognized, and technology has also been shown to reduce the costs of legal services delivery. Along with ABS entities, larger organizations and newer providers operating under the SRA were also more likely to innovate in a way that would result in more efficiency (reduced costs/increased profitability).

We consider this Task Force as one of the pioneering groups leading the way for better solutions in a time of crisis. In the United States, Utah and Arizona have shown we can create different models of regulatory frameworks to monitor organizations like ABSs. The demands of the time require nothing short of such bold action. That is why we urge the Task Force to take this recommendation further.

**We Support in Part the Enhancement of Available Technology-Based Legal Services**

IAALS supports the Recommendation to enhance the availability of technology-based legal products and services by certifying and authorizing an “Approved Legal Technology Provider” designation.

While this is another important step in the right direction, to have the impact this recommendation needs to address our current crisis in access to affordable legal services, the certification should be open to any individual or entity that comes forward with a product or service that meets the criteria set forth by the Committee.

3 TECHNOLOGY AND INNOVATION IN LEGAL SERVICES – MAIN REPORT: AN ANALYSIS OF A SURVEY OF

LEGAL SERVICE PROVIDERS, LEGAL SERVICES BOARD 1, 11 (November 2018),


4 Id. at 43.
As the Task Force notes, one cause of the gulf between legal needs and the utilization of legal services is lawyers’ monopoly on the practice of law. IAALS firmly supports the idea that an increase in technology-based solutions can greatly enhance the affordability and accessibility of legal help to consumers who otherwise would be forced to go without. However, access and affordability can be enhanced even greater by expanding beyond this narrow classification of Approved Legal Technology Providers and allowing anyone to become an approved legal provider so long as they provide an innovative product or service that meets the Committee’s criteria. Opening the legal market would force entities to either innovate to create the best, most affordable product for the consumer, or risk the consumer going elsewhere, which would ultimately increase innovation in the legal field.

**Make Change that Will Truly Make a Difference**

In these unprecedented times, our legal system needs unprecedented solutions. This Proposal has the potential to positively affect the legal industry by removing some of the barriers that stand in the way of consumers receiving the help they need. But we are living in a time where failing to receive the legal help needed will cause more than just an inconvenience. An exceptional amount of people are facing homelessness, wage garnishment, and domestic violence all while their access to legal help is becoming further from their grasp. It is essential that this Task Force be a leader to other jurisdictions and propose bolder, wider-sweeping reforms to the legal profession that consumers desperately need and that lawyers can greatly benefit from.

Thank you for your dedication toward improving the legal industry for the betterment of everyone.

Zachariah J. DeMeola

Director of Legal Education & the Legal Profession

Natalie Knowlton

Director of Special Projects

Michael Houlberg

Manager
Art Lachman’s Feedback

Mr. Glaves & Ms. Bednarz,

I am submitting comments in my personal capacity regarding the Report of the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation, dated July 22, 2020, on which I was privileged to serve as a member of the National Advisory Council. I am a practitioner of legal ethics and law firm risk management in the Seattle area, and I serve as Co-Chair of the APRL Future of Lawyering (FOL) Committee. I wholeheartedly agree with comments separately submitted by the FOL Committee generally supporting the Task Force’s proposals of significant regulatory and rule changes that will no doubt improve access to legal services by the consuming public in Illinois if adopted. I am writing separately because I think the Task Force should take the opportunity at this time to go even further in its reform recommendations.

The Task Force has no doubt “gone big” in some of its proposals. For example, the proposed changes to the advertising and solicitation ethics rules follow the lead of APRL and several other states in reducing the chilling effect of these regulations and recognizing that lawyers’ ability to talk honestly and in a non-coercive way with consumers of legal services about their legal needs is a good thing, not a bad thing. Creating a new delivery mechanism for competent licensed paralegals is also a positive step in my view. And several of the other innovations proposed, including limited scope representations, alternative legal fees, a new community justice navigator model, and a hub for accessible legal resources are creative ideas for improving legal services delivery.

But some of the proposals for regulatory change do not go far enough in my view, and I’m concerned that nibbling around the edges on some issues, and deferring action on others, will substantially reduce the benefits that could otherwise be achieved in enacting reform. On this score, I will focus on the proposal’s lawyer referral and technology innovations, as well as potential changes to ethics rules regarding nonlawyer fee sharing and investment in law firms (Rule 5.4), and make three main points.

First, the incremental approach of creating new exceptions to the general prohibitions against fee sharing with nonlawyers in proposed Rule 5.4 is the wrong one in my view. This approach ignores the fact that these rule restrictions dating back over a century were not enacted based on evidence of actual consumer harm, and are covered sufficiently by other ethics rules in any event (on this issue, you might want to review a piece I wrote for the ABA’s national ethics conference last year on the history and purported bases for the Rule 5.4 restrictions, which can be found here). As a practical matter, this “exception” approach to Rule 5.4 may well lock Illinois regulatory reform in this area into one that forecloses the possibility later of considering removing altogether unnecessarily restrictive prohibitions (not to mention potentially necessitating the piecemeal creation of new boards or bureaucracies when innovations occur in the future).

Second, with regard to encouraging innovation in legal services delivery by lawyers, it’s not only about technology as the Task Force’s proposed change to Rule 5.4 seems to suggest. A critical component of regulatory reform is how lawyers can work together with people possessing relevant skills who are not licensed lawyers, and without running afoul of unauthorized practice of law restrictions. I know from my own experience in advising and representing lawyers here in Washington state that Rule 5.4 unduly chills lawyers’ ability to collaborate with other professionals to provide holistic services for clients efficiently and at a reasonable price. In short, enacting changes in Rule 5.4 regarding the delivery of legal services by lawyers to technology innovation, while necessary, is insufficient in my view.
Third, the time is now on Rule 5.4, and study of further changes to the rule should not be deferred for consideration by another committee. Models now exist for more broad reform in the area of multidisciplinary practice, including the potential use of a regulatory sandbox as just enacted in Utah and under consideration in Arizona. And our recent experiences with COVID-19 and racial injustice issues have highlighted in glaring terms the urgency for improving legal services delivery now. If it means taking another three to six months for the Task Force to create a more comprehensive proposal that takes into account all relevant issues and considerations, striking while the iron is hot seems like the best course in my opinion.

I have appreciated the opportunity to assist with the Task Force’s effort, and I look forward to working with you further as needed to get meaningful reform adopted in Illinois and the rest of the country. Thank you again for allowing me to be involved in your effort, and please feel free to call or write me if you have any questions.

Sincerely,

Art Lachman
Attorney at Law
Lake Forest Park, Washington
Co-Chair, APRL Future of Lawyering Committee
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Dennis Rendleman’s Feedback

To: CBA/CBF Task Force
Fr: Dennis A Rendleman
Date: 14 August 2020
Re: CBA/CBF Task Force on the Sustainable Practice of Law & Innovation Report

The opinions expressed herein are my personal opinions and do not reflect opinions or positions of any entity.

Background

Throughout my legal career I have monitored, analyzed, and opinion on the practice of law. As counsel at ISBA from 1981-2003, I worked with, among others, Committees on Professional Responsibility, Unauthorized Practice of Law, Delivery of Legal Services, and the Illinois Pro Bono Center. I served on various iterations of the Illinois Equal Justice project. While an Assistant Professor of Legal Studies and Pre-Law Director at University of Illinois Springfield, I also served from 2004-2012 as a member of the Supreme Court Committee on Professional Responsibility. Following the end of my term, and in conjunction with my position at ABA Center for Professional Responsibility, I have served as an informal advisor to the Committee. During my ten years at ABA, I have served as counsel to Committees on Professionalism and Specialization and, for eight years, Ethics Counsel to the Standing Committee on Ethics and Professional Responsibility. I have also been in private practice advising on legal and judicial ethics and professional responsibility and admission and disciplinary matters. I am a new member of the ISBA Committee on Professional Conduct. This recitation is to establish my bonafides for commenting on the Task Force Report. A portion of my thinking on this matter can be found in a column I did for the ABA “There Are Other Ways”


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Overview:

Fundamentally the concept of a broad Approved Legal Technology Provider is too expansive and insufficiently defined. Throughout the Report, it is contemplated that an Approved Legal Technology Provider can employ lawyers to provide legal services. While lawyer collaboration and business affiliation with third-parties is reasonable, ownership of entities providing legal services through employment of lawyers is “a bridge too far”. Rather than a sandbox, it has the potential for being a kitty litter box.

But more seriously, the majority of the recommendations treat the symptom and not the underlying disease. The disease is an anarchic civil dispute resolution system in the courts.

Rather, a more rational – but also more difficult – approach is to make substantive structural changes in the legal system. Why does every divorce have to go before a judge? Why not an expansion of the mediation systems that exist for dissolution matters and convert it to a meaningful arbitration system.

For example, the Workers’ Compensation administrative adjudicative process though imperfect, could be a starting point.
Other civil disputes would be amenable to a system similar to the British Columbia Civil Resolution System. That system has proven that it works for the Canadian equivalent of landlord/tenant matters and the civil areas cited above. A similar system would save money for consumers and time for judges. 

https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/legislation-policy/legislation-updates/civil-resolution-tribunal.

There are consumer matters, where evidence is showing individuals come to court pro se, that could be addressed in a less adversarial and more efficient dispute resolution system. Not every dispute needs to require a physical trip(s) to the courthouse. How often have you visited the courthouse on “collections day,” when there are people who had to take off work to stand in line to talk to the creditor’s lawyer and get some agreement for payment. That needn’t be done physically. How often do we see lines of people with minor traffic violations in line in court to resolve a deal with the State’s Attorney who hasn’t seen the file until the carts are wheeled into the courtroom? What other adaptations have been made during the Covid Pandemic that can serve as models for alternative resolution models?

Nor does every dispute need each party represented by counsel or non-lawyers in the more informal, less adversarial dispute resolution system. Lawyers trained to mediate, arbitrate and memorialize final agreements into binding orders saves time and expense for everyone.

But, it has to be done in a manner that balances the power between the parties equitably. For example, mandatory arbitration clauses in consumer and employment contracts are inherently unfair and unbalanced. Despite the misbegotten U.S. Supreme Court rulings in cases such as DirectTV Inc. v. Imburgia, 577 U.S. __, (2015), and Epic Systems Corp v. Lewis, 584 US __(2018), illustrate the disturbing trend of allowing corporations to force individuals into expensive private arbitration processes weighted heavily in favor of the corporations.

On the other hand, an area where the Report (see, Recommendation #11) does not go far enough is third-party investment in law firms. This does not mean that non-lawyer ownership of entities providing legal services should continue to be prohibited, but other models exist. While the UK allows non-lawyer ownership, other countries have more reasonable approaches. As I note in my column “There Are Other Ways”

The experience from Australia, Canada and the United Kingdom has been mixed. Perhaps most intriguing is the European approach where, in various jurisdictions, there is a limit to the percentage of ownership/investment that can come from non-lawyers. For example, “Europe permits alternative business structures on a more limited scale with 49 % of Scotland, 33% of Italy, 25 % of Spain and 10% of Denmark requiring lawyers to have primary control of legal firms.”


It is contradictory to allow “Approved Legal Technology Providers” without changes to Rule 5.4. While the notion that lawyers participate in more legal technology by ownership is reasonable, it is not reasonable to allow third-party non-lawyer ownership that may have lawyer employees or “advisors”. Moreover, the experience with third-party litigation funding has demonstrated that outside “investment” in litigation can be done without interference with a lawyer/client relationship and lawyer independent professional judgment.
Recommendation #1: Recognize a new intermediary entity model to help connect lawyers to legal consumers.

Comment: The rhetoric of this recommendation is amorphous. This is presumably “the sandbox”. Courts generally are not good at developing abstract programs without specific examples presented.

While claiming that the Illinois Rules of Professional Conduct (“Illinois Rules” or “the Rules”) contain “artificial business model limitations”, it fails to identify what alternative business models are contemplated. It also fails to explain what type of “larger entities and networks” with which lawyers should “collaborate” despite claiming that they exist. This omission is disingenuous. While accurately stating that “[l]awyers can and should be at the center of these innovations and solutions but need more flexibility to responsibly collaborate with other professionals to do so”, there is little elaboration of how and what aspects of “[o]ther professions like the medical, dental, accounting, and financial services sectors offer guidance on what a better functioning market would look like while also protecting the public and ensuring professional independence.”

As to the specific proposed amendments to Rule 5.4, the structure presented is technically convoluted. The Rule begins with existing Rule 5.4 (a) and its four numbered paragraphs. But it then adds new number (5) with four subsections and number (6) with subparagraphs that omit an (a). Finally, there is a proposed Rule 5.4(e), but there is nothing between 5.4(a) and 5.4(e). Moreover, new 5.4(e) refers to a Section (d) of the Rule that does not seem to exist.

Substantively, the proposed amendments to Rule 5.4 are problematic. New 5.4(a)(5) refers, but does not define what an “intermediary entity” actually is. There are a range of entities that could fit this category. For example, a classic “runner”, that would appear to violate 705 ILCS 210/ Legal Business Solicitation Act, is one situation that could comply as an intermediary. Alternatively, American Bar Association Ethics Opinion 465 illustrates methods and issues that can arise in certain types of such “intermediary entity”

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_465.authcheckdam.pdf

The propose new Comments [3] and [4] are generally constructive. However, Comment [4] is problematic in its first sentence: “The traditional limitations on fee sharing and practicing law as part of an entity owned or controlled by persons who are not lawyers do not have the same impact in the case of technology based legal products and services.” This sentence would seem to imply that fee sharing and the practice of law by some technology providers would be allowed. That is significantly different that allowing a lawyer or law firm to utilize marketing and administrative support services from a third-party.

Rather than glittering generalities, it is best to look to past examples. Consider situations that have resulted in ISBA Opinions. For example, ISBA Advisory Opinion on Professional Conduct 14-01 (outlining how credit cards may be accepted for fee payments), 06-02 (lawyer use of marketing firm and non-lawyer screening of clients), 832 (prohibiting in person solicitation by lawyer or third party), demonstrate methods that work under the current rule and would be further authorized by the new rule.
Some “sandbox” schemes from the past have been disapproved, such as ISBA Op. 88-88 (improper for a paraprofessional employed by client to use lawyer’s office for client business), ISBA Op. 90-35 (improper for lawyer to participate with a non-for-profit organization that gathers member information for lawyer to draft wills for return to NFP organization), ISBA Op. 94-11 (improper to firm to participate in cellular telephone service offering legal advice), and ISBA Op. 97-03 (“management services organization that provides services, including legal, is improper and lawyer participation in aiding the organization in legal services is improper). These factual situations of lawyer and third-party illustrate problems.

Some situations would seem to be possible collaborations that could be approved, but are seemingly unaddressed in the proposed amendments. For example: ISBA Opinions 84-14 (lawyer who is also Realtor), ISBA Op. 89-1 (lawyer may not serve as business broker representing both buyer and seller), ISBA Op. 90-19 (lawyer assisting financial planner in providing joint services), ISBA Op. 91-10 (lawyer actively participates with financial planning company’s delivery of legal services), ISBA Op. 98-03 (patent law firm may not serve as matchmaker between inventor and product promoters).

Recommendations for proposed Supreme Court Rules 801 are as over broad as are the proposed Rule 5.4 amendments. Two categories of entities seem to be contemplated under the definition of “intermediary entity.” First, and most reasonable, is “an entity that connects potential clients with lawyers.” More problematic is the extension to include undefined “other business and administrative services supporting lawyers’ practices.” As the above noted ISBA ethics opinions illustrate, the mind of the non-lawyer entrepreneur seeking to profit from the delivery of legal services is boundless. More specific definition should be used to provide guidance as to what is and what is not acceptable.

Recommendation #2: Enhancing the availability of technology-based legal products and services and authorizing greater participation by lawyers in technology solutions.

Comment: This recommendation is meritorious, but the devil is in the details. One example of a positive use of technology is found in the British Columbia Civil Resolution Tribunal (CRT). [https://civilresolutionbc.ca/](https://civilresolutionbc.ca/) Simply put, the CRT resolves: Motor vehicle injury disputes up to $50,000; Small claims disputes up to $5,000; Strata property (condominium) disputes of any amount; and Societies and cooperative associations disputes of any amount. The latter two categories are real property disputes under British Columbia’s laws. However, they could be equally applicable to Landlord/Tenant law in Illinois. The online dispute resolution systems functions through an administrator reviewing applications for compliance with system rules, the parties then negotiate online (a resolution is binding). If the parties cannot resolve the dispute, and approved facilitator can assist. If no resolution is achieved, then a lawyer steps in to review and arrive at a resolution.

This is a specific example of how to implement a technologically-based program. In British Columbia, the program is run by the state government. It is not a commercial, for profit, endeavor that is contemplated by the Task Force Report. Nor does it create a new interest group of “Approved Legal Technology Providers” that has a vested financial interest.

The fundamental flaw in the Task Force Report is the creation of a competing—not complimentary—commercial for profit interest group. Basic studies of bureaucratic/commercial demonstrate that once an organization is established, it has two intrinsic inexorable characteristics—self-preservation and expansion. Creation of Approved Legal Technology Providers with independent authority separate from lawyers is a recipe for institutional contradiction to the management of the administration of justice.
More realistic is the recommendation that would authorize lawyers to serve as owners—but not employees of—the Approved Legal Technology Providers and to develop law-related services also known as ancillary business activities.

**Recommendation #2A: Modernize the Rules so that lawyers can more actively participate in the development and delivery of technology-based products and services.**

This recommendation is very positive to the extent it keeps lawyers in charge and not commercial non-lawyer profit seeking entities. Inclusion of the Approved Legal Technology Providers in these amendments is too expansive, while expanding lawyer’s ability to develop, own, and have ultimate responsibility would be acceptable. The approach to non-lawyer interest in these entities should be mirrored by the ability of non-lawyers to financially participate in law firms as noted above in the Overview.

**Recommendation #2B: Explicitly authorize the delivery of technology-based legal products and services by individual or entities and appoint a board to develop an appropriate regulatory mechanism responsible for registering and vetting approved legal technology providers.**

This recommendation fails to provide distinction between licensing paralegals and approving technology providers. The definition is problematic:

“Approved Legal Technology Providers” would be defined as individuals or entities that offer electronically accessible systems which generate legal advice, identify legal strategies, and/or generate documents intended to be legally binding through collection of factual information, goals, and preferences from consumers residing or doing business in Illinois.

This brings to mind the litigation ISBA pursued regarding the pseudo-technology entity We The People that purported to provide legal forms while not practicing law, but sending the completed forms to employed lawyers out of state for review. This definition would authorize that and variations thereof.

Moreover, rather than actually address what these entities might be, the Task Force pushes the specifics off to the Supreme Court. This is disingenuous.

**Recommendation #3: Improve the Rules for Limited Scope Representation and #3A, #3B, #3C, and #3D**

This is a valid recommendation (without expressly approving the specific proposed rule amendments) but should also explicitly include mandatory education and direction to the courts in processing such limited representation. As noted in the Report, anecdotal evidence indicates that a problem with implementation is individual judges. Further, trying to take on the federal court system while our state court systems has not solved the problem may be presumptuous.

**Recommendation #4: Develop new/amended rules on alternative fees and fee petitions.**

Without endorsing specific language, this is a positive recommendation requiring greater research and evaluation.

**Recommendation #5: Recognize a new licensed paralegal model so that lawyers can offer more efficient and affordable services in high volume areas of need.**
Wisely, the Report does not recommend licensure of independent paralegal practice. It has not been successful in other jurisdictions. However, a model that would be more akin to a physician’s assistant or a form of lawyer “prescription” telling the paralegal what forms/actions are required are possible approaches.

It is noteworthy that the explanation for this recommendation notes:

Some aspects of the practice of law in high-demand (and often high-volume) proceedings do not require significant legal analysis and judgment. Lawyers spend considerable amounts of time in simple status hearings, or preparing routine pleadings and documents. This is especially true in the types of cases -- family law, evictions, and small consumer debt matters - where this proposed rule would authorize Licensed Paralegals to assume an expanded role.

This illustrates the point made earlier that the proposal is a band aid. Rather than adding another player to the existing structure, the systems for resolving these disputes should be reformed and made more usable by the consumer without the need for that third-party non-lawyer advocate.

Of further concern is that such a licensed paralegal program will serve as the camel’s nose in the court tent for independent practice.

Recommendation #6: Streamline and modernize the rules around lawyer advertising.

The amendments by the ABA to the Model Rules of Professional Conduct were the result of significant study and input. See, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/ Rules 7.1, 7.2, and 7.3. This is a reasonable starting place rather than jumping into the more radical Virginia or Arizona versions.

Recommendation #7: Recognize a new community justice navigator model to build off the success of Illinois Justicecorps in the courts.

The court navigator is a good start. Thirty years ago, through the Illinois Pro Bono Center, a program was contemplated that would utilize the State library system to provide computer kiosk and librarian support for consumer education and assistance. In most downstate counties, the local library is near the county courthouse. This model is worth pursuing. One imperfect model is the Arizona experiment with courthouse kiosks. That process required additional direct support either in person or telephone/online.

Recommendation #8: Create a hub where the public can find court approved sources for information and assistance.

I am unclear what differentiates Recommendations #7 and #8. They should be part of an integrated public access system for courts and dispute resolution programs and funded as a part of the court system..

Recommendation #9: Adopt a clearer practice of law definition with a recognized safe harbor.

And

Recommendation #10A: Undertake a broader plain language review of the Rules to modernize the Rules with the lightest had of regulation needed to achieve the Court’s regulatory objectives.
These two recommendations are proposing much the same thing—deregulation of the practice of law. This should only be considered in connection with revision of the court system and adding more consumer-friendly administrative dispute resolution. No “safe harbor” can exist without reform of the broader dispute resolution system. Simply trying to define UPL within the current system is a fool’s errand opening the door for non-lawyer practice. The proposed Rule in the Report is impractical as a whole, but should be addressed for specific areas of law.

Recommendation #10B: LTF and ARDC should work together to amend Rule 1.15 to accommodate the court’s plain language initiatives.

The Report is correct that Rule 1.15 is in “need of review, modernization, modification, and editing.” However, the process should include more than just LTF and ARDC. Bar association participation must be included.

Recommendation #11: Convene a new committee to explore the potential benefits and harm associated with eliminating the 5.4 prohibition on ownership of law firms by people who are not lawyers.

The concept of non-lawyer ownership simply opens the door for the Big Four (or however many) accounting/consulting firms to subsume the practice of law. The assets and marketing ability of these entities exceeds that of the top 100 or more law firms combined. Rather, to repeat my earlier quotation:

[t]he European approach where, in various jurisdictions, there is a limit to the percentage of ownership/investment that can come from non-lawyers. For example, “Europe permits alternative business structures on a more limited scale with 49% of Scotland, 33% of Italy, 25% of Spain and 10% of Denmark requiring lawyers to have primary control of legal firms.”

Finally, while there is insufficient time at this point to analyze the ARDC report, to address John Thies’ letter of dissent. To coin a phrase, I concur in part and dissent in part. In particular, the emphasis on client protection must be paramount and requires improvement in the Client Security Fund system and greater standards for mandatory professional liability insurance in matters where client assets and financial interests are involved. The current system of ARDC disclosure is insufficient.

However, as noted above, I disagree with the disinclination to revise Rule 5.4.

Obviously, the limited time made available for reviewing the Report does not allow the further research necessary to fully analyze the specific proposed rule amendments.

Thank you.
Responsive Law’s Feedback

Comments on: CBA/CBF Task Force Report
August 21, 2020
Tom Gordon Executive Director, Responsive Law
Submitted to the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation
Responsive Law thanks the Task Force for the opportunity to present these comments on its Report. Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. While some of the Task Force’s recommendations would greatly benefit consumers, others would do little to help them, and some would make their situation worse.

The Good: Streamlining Lawyer Advertising Rules
Consumers face multiple barriers in finding legal help. Often the first barrier they face is recognizing that the problem they’re trying to solve has a legal component.

The Task Force, citing Rebecca Sandefur’s groundbreaking study, has acknowledged this barrier. It has also drawn the appropriate conclusion—that “[t]he ability for lawyers to advertise to raise awareness and stimulate the market is a crucial part of helping people recognize they have legal problems with potential legal solutions.”

The proposed changes to the lawyer advertising rules would simplify them to essentially a prohibition on false or misleading statements and a prohibition on coercion and harassment. This is the essence of consumer protection in lawyer advertising. The rest of the lawyer advertising rules are, at best, a labyrinthine morass of outdated attempts to codify how these principles apply to specific situations.

Streamlining the rules would allow lawyers to spend more energy on reaching consumers in innovative ways and less energy on parsing (for example) whether one needs to place the words “Advertising Material” on a firm website. And consumers would welcome access to previously prohibited information such as a lawyer’s areas of expertise.

The Bad: The Task Force Moved Too Timidly with Respect to Restrictions on Law Firm Ownership
A few years ago, when I was in Chicago for a family trip, my wife and I needed a babysitter for our then-toddler. We used an online platform to find a babysitter, whom we left alone with our daughter for the evening. It’s likely that a portion of the money we paid the sitter went to the platform, but we didn’t worry for a moment that she would put the company’s interests ahead of the safety of our daughter. If we’re not concerned about corporate pressure on teenage babysitters watching our children, then why should we believe that lawyers—who have been trained in legal ethics and are required by rules of
professional conduct to act in their clients' interest—would crumble under the corporate pressure applied by their employer?

The prohibition on fee splitting and non-lawyer ownership serves no consumer protection purpose that is not already accomplished by the other rules that protect a lawyer's professional independence. But it does stifle innovation by requiring lawyers to provide artisanal services in every case, when people often are searching for a mass-market service.

Just this week, the Utah Supreme Court has agreed to implement a regulatory sandbox where innovative companies with non-lawyer ownership will be able to provide services to consumers, with the Court using data from the sandbox to determine how to best adapt regulation of such providers. The Arizona Supreme Court is on the verge of eliminating Rule 5.4 altogether. At a minimum, the Task Force should have recommended that a committee study how to regulate in the absence of Rule 5.4, rather than whether to do so.

The Bad: The Licensed Paralegal Model Would Create A New Licensing Scheme Without Any Consumer Benefit

We dispute the Task Force's premise that allowing more professionals to provide services won't increase access and affordability of those services. This is a simple matter of supply and demand. The cost of legal help is high in large part because there are not enough providers to meet all of the public's legal needs. This is especially true in the areas where most people need help, such as landlord-tenant, family law, and consumer debt. Allowing independent legal providers without a J.D. to provide services in these areas could greatly reduce the cost of those services.

Unfortunately, the proposal to create a licensed paralegal model would provide only a minuscule boost to the supply of legal assistance. Requiring these professionals to work under a lawyer's supervision will have at best a small impact on the cost of these services. Consumers could benefit far more by having access to independent legal service providers, without having to pay for lawyer to supervise them.

We recommend that the Task Force amend its recommendation to allow professional paralegals meeting the proposed licensing requirements to operate independently of lawyer supervision, with an insurance requirement for the individual service provider sufficient to protect consumers.

The Ugly: The Proposals for Regulation of Intermediate Entities and Legal Technology Providers Would Make It More Difficult to Use Such Providers

Better use of technology is an important component of increasing access to legal help. However, the Task Force's proposals in this area miss the mark in improving access to legal help through technology.

We appreciate the Task Force's goal of maintaining lawyers' independent judgment in its proposal regarding intermediate entities that connect lawyers with consumers. In particular, we strongly support the proposed Evidence Rule 503, which would ensure that communication with intermediate entities about obtaining legal representation is privileged. We also approve of the proposed Rule 5.4(a)(5), allowing lawyers to share fees with registered intermediate entities as long as they don't engage in behavior that could harm consumers, such as interfering with the lawyer’s professional independence of judgment.
There are, unfortunately, two problems with the proposed rule regarding intermediate entities. First, the proposed Legal Technology Regulation Board could potentially consist of a majority of lawyers. Proposed Rule 800 recommends that there be representation by lawyers representing various types of users of legal services. However, the Board would be more representative—and less likely to run afoul of antitrust law under the U.S. Supreme Court’s decision in North Carolina Dental Examiners v. FTC—if it were composed primarily of those users themselves. We urge the Task Force to change this proposed rule to prohibit a lawyer majority. The rule should also require that, where feasible, membership on the Board should include low- and middle-income individuals and representatives of small companies, rather than lawyers who have those groups as clients. Making these changes would ensure sufficient representation of consumer interest on the Board.

More importantly, the language of Proposed Rule 801 appears to require registration of all intermediate entities, whether or not they share fees with lawyers. Many business models for attorney-client matching services currently operate legally without registration, and without evidence of consumer harm. Requiring registration for these providers would increase the costs of such services, which would then be passed on to consumers.

Additionally, it is not within the power of the Illinois Supreme Court to regulate a business merely because it provides services to lawyers. We urge the Task Force to revise this rule so that registration is only required for companies that share fees with lawyers.

Proposed Rule 802, governing Approved Legal Technology Providers has a nearly identical problem to Proposed Rule 801. Section (a) states, “No individual or entity may offer access to services and products through such systems unless approved and registered under this Rule.” The “systems” covered by the rule include anything from advanced artificial intelligence to a simple fill-in-the-blanks PDF document. The latter is clearly permissible under current interpretation of unauthorized practice restrictions, and even the former is, at a minimum, in a legal gray area.

Given the evolving (and often murky) case law regarding UPL, and the desire to provide additional protection to consumers, we urge the Task Force to convert this section to a UPL safe harbor, by changing the last sentence of section (a) to read, “No individual or entity offering access to services and products through such systems shall be considered to be engaging in the unauthorized practice of law if approved and registered under this Rule.”

Conclusion

The Task Force has made some promising recommendations, but has also made some flawed recommendations that need to be fixed so that they don’t constrain access to legal help rather than increase it. We urge the Task Force to make those changes to meet its goal of making legal services more affordable and accessible.
Lucy Ricca's Feedback

I am a member of the Utah Implementation Task Force, a Fellow at the Stanford Center on the Legal Profession, and the Special Project Advisor for the IAALS Unlocking Legal Regulation Project.

I commend the Task Force on a well-written and thoughtful report. It is evident how much careful and hard work went into the report. Overall, I support the objectives and direction of the report. I make this comment to urge the Task Force, and the Illinois Supreme Court, to think both more boldly and more simply about reforming the market for legal services in the state. In particular, I urge the Task Force to take on the challenge of rolling back Rule 5.4 and opening up the practice of law to nonlawyers.

As the Task Force report lays out so eloquently, the American legal services market is not working for the majority of people. Although there are many variables impacting this this state of affairs, the dysfunction of our legal services market is the result of excessively restrictive regulation. The two fundamental restraints are: (1) Rule 5.4’s limitations on who may own or fund legal services and how business models may be structured, and (2) the limitation of the “practice of law” (everything a lawyer could possibly do) to lawyers. Although couched in ethical terms around the protection of the public, these two rules are economic restrictions on the legal services market. We lawyers believe these rules are needed to protect the public from harm caused by nonlawyers because we are taught that from the start of our legal education. As the work of Professors Rebecca Sandefur, Deborah Rhode, Gillian Hadfield and others has shown us, there is no evidence that either of these rules protect the public from harm. In fact, the overwhelming evidence is the opposite, as shown by the vast numbers of Americans unable to understand, afford, or access legal help. We have protected the public right out of the system and, along the way, painted lawyers into a corner, unable to access the financial or human capital needed to truly innovate and serve their clients.

Fixing our American legal services market requires far-reaching and bold reform. It requires changing the lens with which we view legal help from a provider-centric perspective to a consumer-centric perspective. It means turning away from assumptions about potential harm and looking at the actual evidence of harm in front of us. And it means truly putting the public before lawyers. Changes at the edges, modifications to the rules, creations of carve-outs...these things will not get us to where we need to be. This is why I urge the Task Force to take a hard look at the long and complicated list of proposals and try to distill it down to the fundamentals: How might we open the market to allow more providers, more services, more innovation, and more engagements while protecting consumers from actual harm?

This is the question that drives the Utah Supreme Court and galvanized its approval of regulatory reform in that State. The Court both enacted significant reforms to Rule 5.4, including permitting fee sharing and nonlawyer investment and ownership, and established a new regulatory body (Office of Legal Services Innovation) to assess and oversee new entities and services seeking to operate under the new rules in the “regulatory sandbox”.
This is not deregulation. Taking advantage of the relaxed restrictions requires submitting to a new regulator and supplying detailed data on consumer experience. The sandbox is a carefully controlled, limited pilot program to license legal service entities to practice law, permit lawyers to work with and for those entities, and enable policymakers to study and learn about what works and what doesn’t. Entities that would fall into any one of the recommendation categories outlined in the Chicago Task Force report, entities that would fall across multiple categories, and (perhaps most importantly) entities and services that we cannot even imagine yet - all can enter into the sandbox and be assessed under the same regulatory principles of empiricism and risk.

Here’s how the sandbox works: entities wanting to provide legal services must apply and provide detailed information on their proposed services. They must undergo a rigorous process of review conducted by a team of lawyers and other experts on the legal services market. The review is focused on understanding the risks involved in what is being proposed - what are the potential risks to the consumer, how can we measure whether they are occurring or not, and how can we mitigate them? If the risks are too great, the application is denied. In Utah, we are planning to use reporting requirements, expert audits, and secret shopper tests to further protect consumers. Let me note - lawyers are not subject to anything like these regulatory requirements under the current system. The beginning, middle, and end of the sandbox approach is driven by consumers - increasing consumer access and choice and protecting consumers from harm.

Further, the Utah model does not build in assumptions around quality or appropriateness of a business model or legal service. We know that not every legal need requires a lawyer. We know that many lawyers provide less than stellar legal assistance. We cannot start from the assumption that any service that is not a lawyer is inherently limited, less-than, or harmful.

We have seen a great deal of interest from entities and providers in Utah and beyond. Under the Court’s leadership, we were able to begin accepting and reviewing applications to enter the sandbox during the public comment period. We also received several informal presentations from potential applicants. We have received 16 applications. We have heard from many lawyers and others who have innovative ideas on how to serve individuals with modest incomes and small businesses. We have seen presentations around a variety of services including (speaking at a general level): technology platforms and remote assistance for those seeking unemployment or other benefits, including (potentially) Covid-relief benefits and entities focused on enabling lawyers’ to serve more clients in rural areas and work with other professionals in the family law, estate planning, housing, and expungement spaces. We are hearing from nonprofit organizations interested in furthering their impact through technology platforms and nonlawyer advocates.

As I have engaged with these reforms and worked on the Utah sandbox, the overwhelming theme that has emerged is: opportunity. These reforms - if done correctly - will increase the opportunity for regular people to get legal help. They will also increase the opportunity for lawyers to provide that help in new ways to new people. But to recognize this opportunity, the
reforms have to directly address the true economic obstacles to innovation and access and remove them - not just for legal technology providers or intermediary models but across all potential service sectors. I urge the Task Force to take on Rule 5.4 and the unauthorized practice of law directly and boldly and consider recommending adoption of the Utah regulatory sandbox and risk-based regulator model.

Thank you, Lucy Ricca

Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession

Special Project Advisor, IAALS Unlocking Legal Regulation Project
The Stanford Center on the Legal Profession’s Feedback

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August 21, 2020

Dear Members of the Task Force on the Sustainable Practice of Law & Innovation:

I write to provide feedback on your terrific report and recommendations. Our general reaction is that your recommendations are exactly right directionally, but should go much faster and further than they currently do in order to benefit lawyers and the public.

In what follows, I will provide some quick background on our Center, some general thoughts on this issue of regulatory reform in legal services (some of which is already reflected in your report), and some more specific thoughts on the recommendations.

Stanford CLP. The Stanford Center on the Legal Profession is devoted to the study of precisely the kinds of questions that the Task Force has tackled: how should lawyers be regulated in order to preserve the profession’s core values while increasing access to justice. Our faculty director, Professor Deborah Rhode, has taught legal ethics at Stanford Law School for more than 30 years, was the founding president of the International Association of Legal Ethics, is the nation’s most frequently cited scholar on legal ethics, and has won multiple awards for her scholarship on regulation of the legal profession and access to justice.

Traditional Business Model is Obstacle to Access. The principal obstacle to increasing access to legal assistance is the business model in which legal services have conventionally been available to ordinary individual consumers and small businesses. That model relies largely on one-on-one lawyering, through traditional solo and small firm practices, generally billed on an hourly basis, supplemented by online assistance. The model forgoes the cost-reducing benefits of scale, branding, technology, and the ordinary efficiencies that would come from having lawyers specialize in legal functions, while others (software engineers, financial analysts, business managers, marketing experts, etc.) specialize in all the other functions.
Why has the traditional model of legal service delivery not achieved greater efficiencies and lower costs? The American approach to professional regulation is not the only answer, but it is clearly a major contributing factor. That approach is expressed primarily in the expansive rules on unauthorized practice of law and the restrictions on the corporate practice of law and fee sharing. These rules make the markets for legal services among the most, if not the most, intrusively regulated in the modern American economy. Even the practice of medicine is far more openly organized, particularly since the advent of health maintenance organizations.

The legal profession can be stronger -- and consumers of legal services can be better served -- if we make it easier for new “one to many” business models to emerge through greater use of technology, and partnerships with and service from allied professionals. One theme of these comments is that the Task Force report -- in its current iteration -- does not go far enough to make this happen.

Covid-19 Implications. The one big thing that has changed since the Task Force begun this work, of course, is the Covid-19 crisis, which has increased legal needs significantly. We have already seen in Illinois and nationwide the effect of the justice gap: Large businesses with lawyers and connections at banks were able to get access to the PPP loans, while smaller businesses -- many of them minority-owned -- were left out. Hundreds of thousands of individuals in Illinois face justice problems related to housing, employment, debt, and more. Jim Sandman, the current chair of the American Bar Association’s Task Force on Legal Needs Arising Out of the 2020 Pandemic and former president of the Legal Services Corporation, has suggested that the “current Covid-19 pandemic makes this a particularly appropriate time to move ahead with regulatory reform.”

Task Force Recommendations: Below are comments on three of the recommendations: (a) Intermediary-Entity Model (Recc 1); (b) the Licensed Paralegal proposal (Recc 5); and (c) the Technology-Provider proposal (Recc 2) and Rule 5.4 more generally (Recc 11).

Intermediary-Entity Model (Recc 1)

We think that this proposal is a sensible one that can readily be enacted as soon as possible. Clarifying that such relationships do not violate Rule 5.4 is a significant step to addressing the untapped market for legal services for the benefit for both lawyers and consumers. Our only concern is twofold: Registration with the basic information the report describes makes sense. But for example, we agree that the ARDC model is overly complicated and burdensome, and there is a risk that a new regulatory mechanism will introduce additional requirements. Related, to the extent this creates an exception to Rule 5.4, a superior approach would be to simply repeal Rule 5.4 altogether, as Arizona is on the verge of doing, or create a broader if time-limited and consumer-focused pilot program (or “sandbox”) as Utah is doing.

Licensed Paralegal (Recc 5)

This is also an important proposal that we support directionally, but hope it can be strengthened before sending to the Illinois Supreme Court. In its current form, this proposal relies too much on the traditional model of a paralegal operating under the direct supervision of a lawyer. This keeps the cost of legal services unnecessarily high, harming the consumer. While we believe that future models of legal services provision should place lawyers at the center, with other legal professionals playing important roles, licensed paraprofessionals need to be able to exercise independent judgment in order for providers to scale sufficiently to meet the vast consumer need. This proposal would also be stronger if it was combined with repeal of Rule 5.4 (or a “sandbox” to experiment with loosening such restrictions) so that providers could bring in the capital or expertise needed for such scale.
In explaining why the Task Force rejected the LLLT or Legal Document Preparer model, the Report says “The cost of services is driven primarily by the cost of operations – office space, technology, licensing, personnel, etc. There has been scant data to support the proposition that the creation of new independent categories of providers in some other jurisdictions have had a meaningful impact on addressing the access to justice issue.” This is both contradictory and misleading.

It is contradictory because one of the reasons these licensed providers benefit consumers is that they can charge less than lawyers for basic services – so the cost of “personnel” is lower. This is in part because they do not need to invest seven years of expensive higher education, and so can charge less and still get a good return on their investment in training. Moreover, one of the reasons the LLLT program in Washington has not been even more impactful is because the State Bar imposed overly onerous (and therefore) training requirements. Better calibrated training requirements for the job will mean lower debt for the providers, and the ability to charge less. Along similar lines, comment 4 to the proposed rule argues “The Committee reasons that the inaccessibility of legal services is not due to a provider pool that is too small.” But this is a straw man; no one is making an argument to the contrary.

Or consider the medical analogy. A health care provider like Kaiser Permanente can provide affordable medical care to families in part because it uses nurse practitioners and physician assistants to provide basic medical services while reserving higher-paid doctors for more complicated problems and procedures. As Utah Supreme Court Justice Deno Himonas has said, the legal system essentially forces the equivalent of a thoracic surgeon to draw blood. And as a forthcoming white paper from our Center explains, there is considerable evidence that the creation of nurse practitioners – resisted initially by doctors – has increased access to medical care and lowered cost.

And the quoted passage is misleading because the reference to “scant data” implies that studies have shown no effect on access to justice. There simply are no large-scale studies – likely in part because there have not been enough providers for enough time, and perhaps also because no one has funded such a study. But there is preliminary evidence that these providers have had a positive impact, and if the Task Force is interested in revisiting this issue, we would be happy to help look at that evidence.

To take one important example, consider the award-winning Hello Divorce model from the family lawyer Erin Levine in California, currently expanding to other states. The average cost of divorce in Illinois is $13,800 per person, and up to $30,000 if children are involved. Levine has used Legal Document Preparers and technology to help people going through divorce in California for an average of $1500 through her Hello Divorce platform. She was recently hiring LLLTs in Washington in order to expand in that state, helping consumers there. I suspect that the many satisfied Hello Divorce users – nurses, teachers, retail workers -- would strongly disagree with the claim that Legal Document Preparers have not had a “meaningful impact” on access to justice even if they have not yet served enough consumers to bring the average cost of divorce in California (or number of unrepresented litigants) down significantly.

Technology Provider and Rule 5.4 generally (Reccs 2, 11)

This is an excellent proposal that will accelerate the launch of “one to many” products and services that will benefit consumers. Our one suggestion is similar to that offered above regarding intermediaries. Rather than simply creating a category of “Intermediary Entities” and another for “Legal Technology Providers,” with more exceptions to Rule 5.4 to come in the future, a better course would be to do as Utah has done: charge a new Office of Legal Services Innovation with receiving and authorizing applications from nontraditional legal service providers of all kinds to operate in a consumer-focused pilot program or “sandbox.” Utah has received several applications already, almost all of the proposals from lawyers. Many, if not most, do involve the use of technology.

Reforming Rule 5.4 Is Critical. Before closing, it is worth pausing on the importance of repealing or significantly revising Rule 5.4 more generally. In our view, the current prohibitions on fee sharing and outside investment by nonlawyers contribute to the lack of affordable choices for many individuals and organizations. Without the ability to enlist management and technology experts as full partners or investors, legal service providers are not able to benefit from the best expertise in how to reach and serve potential consumers. Countries that allow lay investment in or ownership of legal service providers consistently rank ahead of the United States in access to and affordability of legal services. Moreover, there is no evidence to support the claims of ethical problems that opponents of reform often invoke.

The experience of the UK and Australia is particularly instructive. England and Wales have allowed nonlawyer ownership and investment since 2011, and research from the Solicitors Regulation Authority finds no evidence that these models result in adverse effects on consumers. Rather, the research indicates increased choice and competition, improved services to consumers, reduced prices, and increased innovation in the provision of legal services. Australia has also successfully allowed such ownership and investment, which has helped enable the development of widely accessible law firms serving consumers in a breadth and scope not available in the U.S.

Some worry that if multidisciplinary practices and non-lawyer investment were allowed, lawyers’ independent professional judgment would be compromised. But the experience in the United Kingdom is that alternative business structures have thus far dealt better with complaints and had no more disciplinary sanctions than traditional lawyer-owned practices. Indeed, regulating legal service providers as entities can help improve practices that mitigate the risk of ethical violations. And of course, the existing ethical rules around conflicts of interest, confidentiality, and other issues would still apply to individual lawyers.

Critics often claim that allowing nonlawyer ownership and investment would somehow introduce the “profit motive” to the legal services market. But private-sector lawyers are already driven by their desire to maximize their own profits while providing ethical service. Reforming Rule 5.4 to permit full participation by other profit-seeking entities would not appreciably increase the risk of misconduct if appropriate regulatory safeguards are in place. A regulatory sandbox, for example, is a proven way to monitor potential problems and devise appropriate rules without risk to the public.
Thank you again for the tremendous contribution of the task force to people in Illinois, and to the national conversation on these important issues.

Sincerely,

Jason Solomon
Task Force on the Delivery of Legal Services

October 4, 2019 Report and Recommendations
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EXECUTIVE SUMMARY

Creation and Charge of Task Force

On November 21, 2018, then Chief Justice Scott Bales issued Administrative Order No. 2018-111, which established the Task Force on Delivery of Legal Services. The administrative order outlined the purpose of the task force as follows:

a) Restyle, update, and reorganize Rule 31(d) of the Arizona Rules of Supreme Court to simplify and clarify its provisions.

b) Review the Legal Document Preparers program and related Arizona Code of Judicial Administration requirements and, if warranted, recommend revisions to the existing rules and code sections that would improve access to and quality of legal services and information provided by legal document preparers.

c) Examine and recommend whether nonlawyers, with specific qualifications, should be allowed to provide limited legal services, including representing individuals in civil proceedings in limited jurisdiction courts, and administrative hearings not otherwise allowed by Rule 31(d), and family court.

d) Review Supreme Court Rule 42, ER 1.2 related to scope of representation and determine if changes to this and other rules would encourage broader use of limited scope representation by individuals needing legal services.

e) Recommend whether Supreme Court rules should be modified to allow for co-ownership by lawyers and nonlawyers in entities providing legal services.

f) In the Chair’s discretion, consider and recommend other rule or code changes or pilot projects on the foregoing topics concerning the delivery of legal services.

The administrative order further directed the task force to submit a report and recommendations to the Arizona Judicial Council (AJC) by October 1, 2019. The report that follows consists of the task force’s recommendations for the AJC’s review and consideration.

The Task Force Process

Members of the task force represented a wide variety of perspectives on the delivery of legal services. From January through September 2019, the task force met monthly, discussing the issues outlined by Administrative Order 2018-111 and its charge. The task force received
presentations on various innovative approaches employed nationally and internationally to deliver legal services. The task force also heard from speakers about the changing legal marketplace and the impact of those changes on the cost of legal services and on the legal profession itself. Information about how local, national, and international community leaders are examining, exploring, and implementing innovative ways of delivering legal services was a regular part of information shared and discussed at monthly meetings.

Due to the number and complexity of topics the task force was charged with addressing and the limited time it had to explore those topics, task force members divided into two workgroups.¹ Workgroups met in breakout sessions during monthly task force meetings as well as in meetings held separately as needed. Workgroups invited subject matter experts, legal practitioners, and other stakeholders to give presentations and to testify on various topics. Each task force meeting included presentations by the workgroups, along with questions from and feedback by all task force members about workgroup efforts. Task force meetings were attended by the public and stakeholders who were encouraged to comment on the recommendations generated by the workgroups. This approach facilitated input from different perspectives, accounted for potential overlap among workgroups, ensured workgroups were not working in isolation, and recognized that members of the public and local stakeholders had a substantial interest in and knowledge about the topics being explored that would facilitate developing meaningful final recommendations.

¹ A workgroup co-led by Don Bivens and Stacy Butler addressed items (a) through (c) and a workgroup led by Judge Maria Elena Cruz addressed items (d) through (f) of the task force’s charge.
Abbreviated Recommendations

1. Eliminate Arizona’s Rules of Professional Conduct (ER) 5.4 and 5.7 and amend ERs 1.0 through 5.3 to remove the explicit barrier to lawyers and nonlawyers co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public. In anticipation of these rule changes, the Supreme Court should immediately convene a group to explore regulation of legal entities in which nonlawyers have a financial interest.

2. Modify ERs 7.1 through 7.5 (the “Advertising Rules”) to incorporate many of the 2018 ABA Advertising Rule amendments and to align the rules with the recommendation to amend ERs 1.0 through 5.3 and eliminate ERs 5.4 and 5.7.

3. Promote education and information on what unbundled legal services are to the bench, bar, and public to encourage expanded understanding and utilization of unbundled legal services.

4. Revise Rule 38(d), Arizona Rules of Supreme Court, to clarify when a law student at an accredited law school or recent law school graduate may practice law under the supervision of a lawyer admitted to practice in Arizona, what legal services the law student or law graduate may provide, and the duties and obligations of the supervising lawyer.

5. Revise Rule 31(d), Arizona Rules of Supreme Court, by re-styling the rule into four separate rules, making the rule easier to navigate and understand.

6. Develop, via a future steering committee, a tier of nonlawyer legal service providers, qualified by education, training, and examination, to provide limited legal services to clients, including representation in court and at administrative proceedings.

7. Initiate, by administrative order, the Licensed Legal Advocate Pilot program developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College
8. Initiate, by administrative order, the DVLAP Document Preparer Pilot program as proposed by the Arizona Foundation for Legal Services and Education (the “Bar Foundation”) to create exceptions to the requirements of the Legal Document Preparer program and allow domestic violence lay advocates to prepare legal documents for victims of domestic violence receiving services through the Bar Foundation’s Domestic Violence Legal Assistance Program (DVLAP).

9. Make the following changes to improve access to and the quality of legal services provided by certified Legal Document Preparers:
   
   a. Amend ACJA § 7-208 to allow LDPs to speak in court when addressed by a judge.
   
   b. Amend ACJA § 7-208 to further define permissible and prohibited activities of LDPs.
   
   c. The Arizona Supreme Court should pursue a campaign of educating the bench, members of the bar, and the public regarding what a legal document preparer is, what they can do, and what they are prohibited from doing.
   
   d. Amend ACJA § 7-208 to remove the restrictions prohibiting legal document preparers from assisting clients who are represented by counsel.
   
   e. Recommend increased access to LDP training, especially online, particularly for LDPs in rural areas.
   
   f. Amend the ACJA and any other rules governing the investigation of and seeking of legal sanctions for engaging in unauthorized practice of law when the actions in
question involve a person acting in a manner that a legal document preparer would act if certified.

10. Advance and encourage local courts to establish positions and programs where nonlawyers located within the court are available to provide direct person-to-person legal information to self-represented litigants about court processes and available self-help services.
REPORT AND RECOMMENDTIONS

I. Background

The American Bar Association Commission on the Future of Legal Services found that “[d]espite sustained efforts to expand the public access to legal services, significant unmet needs persist” and that “[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need.” In 2017, the Legal Services Corporation released a report, finding that 86% of civil legal matters reported by low-income Americans in the prior year received no or inadequate legal help. Relevant to the task force’s work, the Commission found that as of the last census, 63 million people met the financial qualifications for legal aid, but funding for the Legal Services Corporation is inadequate. In fact, in some jurisdictions more than 80% of civil litigants are in poverty and unrepresented. Importantly, one study has shown that “well over 100 million Americans [are] living with civil justice problems many involving what the American Bar Association has termed ‘basic human needs,’” including

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3 Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans (2017), available at https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf; National Center for State Courts, Nonlawyer Legal Assistant Roles Efficacy, Design, and Implementation, 1 (2015) (Research on unmet civil legal needs suggest that around 80% of such need does not make it into a court. At the same time, legal aid organizations are able to satisfy less than half of those that request legal help.).

4 Commission on the Future of Legal Services, supra note 2, at p. 12.

5 Id.
matters such as housing (evictions and mortgage foreclosure), child custody proceedings, and debt collection.\textsuperscript{6}

One reason for the current “justice gap” is that the costs of hiring lawyers has increased since the 1970s, and many individual litigants have been forced to forego using professional legal services and either represent themselves or ignore their legal problems.\textsuperscript{7} Professor William D. Henderson, Indiana University Maurer School of Law, has noted the alarming decline in legal representation for what he calls the “PeopleLaw sector,” observing that law firms have gradually shifted the core of their client base from individuals to entities. Indeed, while total receipts of United States law firms from 2007 to 2012 rose by $21 billion, receipts from representing individuals declined by almost $7 billion. Correspondingly, the percentage of revenue generated by representing individuals fell 4.8% during that time period.\textsuperscript{8} And according to a report issued by the National Center for State Courts, 76\% of 900,000 civil cases examined from July 1, 2012 through June 30, 2013 involved at least one self-represented party.\textsuperscript{9}

Small firm lawyers, who primarily serve the PeopleLaw sector, are struggling to earn a living, which curtails their abilities to represent people unable to pay adequate amounts for legal services.\textsuperscript{10} According to the 2017 Clio Legal Trends Report, the average small firm lawyer bills

\begin{itemize}
\item \textsuperscript{6} \textit{Id.} (quoting Rebecca L. Sandefur, What We Know and Need to Know About the Legal Needs of the Public, 67 S.C. L. Rev. 433, 466 (2016)).
\item \textsuperscript{8} \textit{Id.} at i.
\item \textsuperscript{10} \textit{See} Henderson, \textit{supra} note 7 at p. 14-15.
\end{itemize}
$260 per hour, performs 2.3 hours billable work a day, bills 1.9 hours of that work, and collects 86% of invoiced fees.\textsuperscript{11} As a result, the average small firm lawyer earns $422 per day before paying overhead costs. These lawyers are spending roughly the same amount of time looking for legal work and running their business as they are performing legal work for clients.\textsuperscript{12} Professor Henderson suggests that this lagging legal productivity may result in part from ethical rules that restrict ownership of law forms to lawyers because “ethics rules are the primary mechanism for regulating the market for legal services.”\textsuperscript{13} Also, a growing mismatch between the cost of litigation and amounts in controversy has made many cases unattractive to lawyers and clients alike.\textsuperscript{14}

Courts across the nation strive to give litigants greater access to civil justice. Much of that focus, in the past decade, has been on providing clear information to self-represented litigants about court processes and procedures. But despite these efforts, the justice gap has grown between those who can afford to pay for legal services and those who cannot do so. Clearly, merely assisting litigants to navigate the justice system alone is insufficient to ensure that Arizonans have meaningful access to our courts to resolve legal issues. And although subsidized and free legal


\textsuperscript{12} \textit{Id.}

\textsuperscript{13} Henderson, \textit{supra} note 7, at p. 21 (citing Larry E. Ribstein, \textit{Ethical Rules, Agency Costs, and law Firm Structures}, 84 Va. L. Rev. 1707 (1998) (noting that “[e]thical rules are a form of professional self-regulation enforced by civil liability or professional discipline.”)).

services, including low bono and pro bono legal services, are a key part to solving this access to justice gap, they are insufficient. “U.S. lawyers would have to increase their pro bono efforts . . . to over nine hundred hours each to provide some measure of assistance to all households with civil legal needs.”

Considering the large market for legal services left unserved by lawyers, technology-based and artificial intelligence platforms have stepped in to serve clients. Online entities assist customers to form businesses, register trademarks, and draft wills and other legal forms.

Arizona has long explored new ways of delivering legal services. Since 2003, the Arizona Supreme Court has authorized the certification of Legal Document Preparers (“LDPs”), and the State Bar of Arizona recently implemented a web-based “Find A Lawyer” program, connecting those with legal needs to lawyers willing to do the work pro bono or at an affordable cost. Arizona courts have also worked to expand and clarify ways in which court staff can provide legal information to self-represented parties. Arizona, like other states, has also recently turned to technology to help bridge the justice gap. Examples include implementing a virtual resource center through the award-winning webpage AZCourtHelp.org with legal information sheets and legal information videos, pilot online dispute resolution programs, and the design of an online program (AZPoint.org) to streamline drafting, filing, serving, and transmitting orders of protection.

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16 https://azbar.legalserviceslink.com/

It is against this backdrop and Arizona’s many years of efforts to advance access to justice that the task force was established and carried out its work. The task force developed 10 recommendations in relation to the six topics it was charged with analyzing. The following pages summarize those recommendations and the impetus and rationale behind them.

II. Recommendations.

Recommendation 1: Eliminate Arizona’s ERs 5.4 and 5.7 and amend ERs 1.0 through 5.3 to remove the explicit barrier to lawyers and nonlawyers co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public.


Ethical rules have been called out as contributing to the justice gap as demonstrated by Professor Henderson’s *Legal Marketplace Landscape Report.* Henderson’s watershed report and the work of the Association of Professional Responsibility Lawyers (APRL) make clear that Arizona’s ethical rules should be amended given that lawyers are increasingly providing services in a manner other than through traditional legal partnerships or professional corporations. E.R. 5.4, which generally prohibits lawyers from sharing fees with nonlawyers and prohibits nonlawyers from having any financial interest in law firms, has been identified as a barrier to innovation in the delivery of legal services.

Arizona is not alone in considering significant and innovative changes to the ethical rules that restrict ownership of any business that engages in the practice of law to lawyers alone. In June 2019 the Board of Trustees of the State Bar of California voted to seek public comment on broad concepts for changing California’s ethical rules that would allow limited alternative business

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These concepts include loosening rules on passive investment and allowing nonlawyers to partner with lawyers in the formation of businesses that provide legal services. Utah is similarly considering a two-year pilot “sandbox” program that would allow the formation of alternative business structures and regulate those businesses through an independent regulatory body overseen by the Utah Supreme Court. In addition, Washington D.C. has allowed limited alternative business structures for several decades\(^\text{20}\) and the American Bar Association (“ABA”) Commission on the Future of Legal Services has also considered proposals to eliminate model ethical rule 5.4.\(^\text{21}\)

Task force members not only heard from Professor Henderson but spoke with representatives from the Washington D.C. Bar about the effect of D.C.’s 5.4 rule changes, heard from ethics experts locally, and attended a summit hosted by the Institute for the Advancement of the American Legal System ("IAALS"), that focused on regulatory changes related to the practice of law. The task force received information about past and present efforts of national organizations like the ABA and APRL to consider and propose rule changes that would allow for the creation of alternative legal business structures. To assist it, the workgroup assigned to examine whether to permit nonlawyer ownership of firms invited two Arizona ethics lawyers to join in forming proposals.\(^\text{22}\) A sentiment that resounded within the workgroup was that lawyers have the ethical


\(^{20}\) Rule 5.4, D.C. Rules of Professional Conduct.

\(^{21}\) Commission on the Future of Legal Services, supra note 2, at p. 66.

\(^{22}\) Patricia A. Sallen, a legal ethics consultant and lawyer based in Phoenix, Arizona, whose work has included serving as Director of Special Services and Ethics with the Arizona State Bar,
obligation to assure legal services are available to the public, and that if the rules of professional conduct stand in the way of making those services available, then the rules should be changed, albeit in a way that continues to protect the public.

Before deciding to recommend eliminating ER 5.4, the task force considered and rejected two other proposals offered by the workgroup. First, similar to Washington D.C.’s approach, the task force considered amending Rule 5.4 to allow the formation of alternative business structures.23 The goal of this proposal was to open business possibilities and allow passive investment in legal services businesses. Important aspects of this proposal included disclosing to the public and clients that the businesses involved nonlawyer partners or investors, registering with the State Bar, and reinforcing the ethical rules that address lawyer independence and conflicts of interest. Major hurdles faced by the workgroup in attempting to merely amend ER 5.4 and other ethical rules addressing the independence of lawyers and protection of the public included how to regulate nonlawyers, the impossibility of identifying all possible businesses arrangements that might be formed and considering the effect of such rule changes on multi-jurisdiction law practices.

Second, the task force explored recommending a pilot “sandbox” program in which ER 5.4 would be waived for entities that applied for and were granted permission to operate as multi-discipline legal service providers. This proposal was rooted in the idea that entrepreneurial lawyers and nonlawyers would pilot a range of different business forms, which would permit the Supreme

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23 Commission on the Future of Legal Services, supra note 2, at p. 42.
Court to determine how ER 5.4 should be amended and eliminate the guesswork involved in the first proposal. Hurdles to this proposal included identifying who would decide applications for waivers of the ethical rules and whether the limited duration of a pilot project would deter business formation because of the risk that the businesses would have to close if the pilot program did not result in permanent rule changes.

The task force ultimately concluded that no compelling reason exists for maintaining ER 5.4 because its twin goals of protecting a lawyer’s independent professional judgment and protecting the public are reflected in other ethical rules which can be strengthened. The task force therefore voted to file a rule petition to eliminate ERs 5.4 and 5.7 and modify ERs 1.0 through 5.3 to ensure lawyer independence and public protection. Considering these changes, the task force also recommends eliminating ER 5.7.

After significant discussion, the task force relatedly recommends that the Supreme Court convene a group to explore entity regulation for firms in which nonlawyers have an ownership interest. Currently, Arizona’s rules of professional responsibility apply only to lawyers. But entity regulation is not a unique concept. The United Kingdom regulates legal entities, and the Utah Work Group on Regulatory Reform recently made a proposal regarding the issue. Utah proposes developing a new regulatory body for legal services. As the Utah Supreme Court moves forward with revising the rules of practice, it will simultaneously pursue creation of a new regulator, operating under the supervision and direction of the Supreme Court, for the provision of legal services. Utah anticipates some form of an independent, non-profit regulator with delegated regulatory authority over some or all legal services.24

Entity regulation should be explored as an additional tool to ensure lawyer independence, client confidentiality, and consumer protection. Given the limited time afforded the task force for its work, it did not explore in detail the advisability of legal entity regulation or what such regulation would entail. Task force members considered, however, whether entity regulation should, at least, (1) require a lawyer with a financial interest or managerial authority in a legal entity to be responsible for nonlawyer owners to the same extent as if the nonlawyers were lawyers, (2) require informed written consent from clients acknowledging both a nonlawyer’s financial interest or managerial authority in the entity and the entity’s commitment to the lawyer’s independence of professional judgment, and (3) designate one person in the entity to be responsible for the nonlawyers’ compliance with any regulations.

The proposed amendments are summarized below and are detailed in Appendix 1 accompanying this report.

B. Summary of Proposed Elimination of ERs 5.4 and 5.7 and Amendments to ERs 1.0 through 5.3.

The proposed amendments to Arizona’s ERs 1.0 through 5.3 would remove the requirement restricting the ownership of any business that engages in the practice of law exclusively to lawyers. This recommendation is centered in the elimination of ER 5.4 and re-defining the term “firm” in ER 1.0(c). Proposed changes to the ethical rules also ensure that the concepts of a lawyer’s independent professional judgment and protection of the public are emphasized in the remaining ethical rules. Several proposed amendments eliminate comments to the rules, incorporating any substantive comments into the rules themselves, deleting comments that are duplicative or unnecessary, and amending remaining comments to be more concise and instructive. All proposed rule changes are designed to ensure that the ethical rules governing conflicts, obligations to the client, professional independence of lawyers, and maintaining the
overarching goal of protecting the public that have traditionally been the core values of the rules of professional conduct remain, regardless whether services are provided by a business that involves a partnership between lawyers and nonlawyers, involve passive investment in a purely legal services business, or provides both legal and nonlegal services.

**ER 5.4 Professional Independence of a Lawyer**

ER 5.4, which prohibits sharing fees with nonlawyers and forming partnerships with nonlawyers if any part of the partnership’s activities include the practice of law, is “directed mainly against entrepreneurial relationships with nonlawyers” and aimed at “protecting a lawyer’s independence in exercising professional judgment on the client’s behalf free from control by nonlawyers.” The ABA Model Rule 5.4 and its predecessor rules as far back as the 1928 Canons of Professional Ethics, “originated in legislation aimed at forbidding lawyers from being employed by corporations to provide services to members of the public.” The prohibition was not rooted in protecting the public but in economic protectionism. There was “no evidence that the corporations then supplying lawyers to clients were harming the public, and the transparent motivation behind the legislation was to protect lawyers’ businesses.” In evaluating the need to continue ER 5.4, the task force considered whether the rule serves a modern purpose and concluded it no longer serves any purpose, and in fact may impede the legal profession’s ability to innovate to fill the access-to-civil-justice gap.

ER 5.4’s negative effect was evident during the great recession, when many lawyers expressed interest in partnering with nonlawyers to be a “one-stop shop” for consumers who

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27 Id.
wanted to refinance home loans, stop foreclosures, or participate in short sales. Typically, lawyers endeavored to create partnerships with mortgage brokers and real estate agents to help consumers. But ER 5.4’s bar to partnering with a nonlawyer to provide legal services prohibited lawyers from forming these relationships. And yet creating single entities to offer all those services may have served consumer-clients’ best interests.

The legal profession cannot continue to pretend that lawyers operate in a vacuum, surrounded and aided only by other lawyers or that lawyers practice law in a hierarchy in which only lawyers should be owners. Nonlawyers are instrumental in helping lawyers deliver legal services, and they bring valuable skills to the table.

Eliminating ER 5.4 would allow, for example:

- A nonlawyer to have an ownership interest in a partnership in which a lawyer provides legal services to others outside the entity;
- A nonlawyer partner in a firm to provide nonlegal services to clients of the entity;
- A nonlawyer to serve as a firm’s chief financial officer or chief technology officer; and
- A lawyer to pay nonlawyer personnel a percentage of fees earned by the law firm on a particular case.

Eliminating ER 5.4 will not remove protection afforded a lawyer’s professional independence and the public. ER 1.8(f), for example, already directs that third-party payers such as insurance companies cannot interfere with a lawyer’s independent professional judgment or the client-lawyer relationship.

**ER 1.0 Terminology**

The proposed amendments include a new definition of “firm” to account for ownership interests in legal businesses by nonlawyers. The amendments include broadening the definition of “screened” to clarify that reasonably adequate procedures to screen both lawyers and nonlawyers
with ownership interests must be undertaken, and the amended definition provides direction on what constitutes “reasonably adequate procedures.”

In addition, proposed amendments to ER 1.0 incorporate concepts from existing comments to the rule and other rules that the task force determined were important enough to be part of the rule’s text. Amendments also define previously undefined phrases in rules that are necessary to address the new concept of nonlawyers having an ownership interest in firms and those nonlawyers providing nonlegal services to firm clients.

**ER 1.5 Fees**

The proposed amendments to ER 1.5 are rooted in ensuring that the language of the rule reflects the change to the definition of “firm” in ER 1.0(c) and reflects the elimination of ER 5.4’s prohibition of a business providing legal services to be owned by lawyers and nonlawyers alike. The proposed rule also incorporates language from current comments to clearly provide that the rule applies to firms dividing a single billing to a client and firms jointly working on a matter. The rule further requires that division of responsibility must be reasonable.

**ER 1.6 Confidentiality**

The amendment to ER 1.6 requires that a lawyer make reasonable efforts to prevent inadvertent or unauthorized disclosure of confidential information about a client, even if the services the firm provides to the client are purely nonlegal. The task force recognized that by eliminating ER 5.4 and allowing lawyers and nonlawyers to partner together to form businesses that might provide both legal and nonlegal services, it remains imperative to protect clients and the confidentiality of representations. Therefore, the amendment to ER 1.6 preserves that protection and clarifies that regardless whether a client is receiving legal services from a lawyer or receiving nonlegal services from a nonlawyer, the traditional protections of the client’s information apply to all aspects of the business.
ER 1.7 Conflict of Interest: Current Clients

There are no proposed amendments to ER 1.7. However, the concept of personal-interest conflicts addressed in comment 10 to the rule were imported into the new definition in ER 1.0(o), and amendments to ERs 1.8, 1.10, and 5.3 address other conflict-related issues. This permits elimination of comment 10 while adding these essential concepts into the text of the ethical rules.

ER 1.8 Conflict of Interest: Current Clients: Specific Rules

An amendment to this rule adds subsection (m), which states that when lawyers refer clients for nonlegal services provided either by the lawyer or nonlawyers in the firm or refer clients to a separate entity in which the lawyer has a financial interest, they must comply with ERs 1.7 and 1.8(a). This addition takes content from comment 3 and moves it into the rule’s text. In addition, comments 1, 2, and 3 are deleted because relevant parts of comments 1 and 3 are made part of a new definition of “business transaction” in ER 1.0(n) and comment 2 merely restates ER 1.8(a) and is therefore redundant. In addition, the personal-interest conflicts issue addressed in comments to ER 1.7 are included in a new provision to ER 1.8.

ER 1.10 Imputation of Conflicts of Interest: General Rule

ER 1.10(a) is amended to address nonlawyers. With the elimination of ER 5.4, nonlawyers will be able to play significant roles in firms, including having ownership interests. Therefore, the rules should explicitly address imputation of their conflicts. Amendments to the comments include deleting comments 1 through 4. Comment 1, which discusses a “firm,” is no longer needed in light of the expanded definition of “firm” in ER 1.0(c). Comments 2 and 3 summarize the concepts of imputation, with one important exception that addresses conflicts if a lawyer owns all or part of an opposing party. That exception was expanded to include nonlawyers and was added to the rule’s text as subsection (f), which provides that a conflict is imputed to the entire firm if a lawyer or nonlawyer owns all or part of an opposing party. Comment 4 contains important concepts the task
force determined should be part of the rule itself. New subsection (g) therefore allows disqualified nonlawyers to be screened from matters without imputing the conflict to the firm, unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm. Similarly, new subsection (h) allows lawyers to be screened if they are disqualified because of events or conduct that occurred before they became licensed lawyers, unless the lawyer is an owner, shareholder, partner, officer, or director of the firm.

**ER 1.17 Sale of Law Practice or Firm**

Current subsections (a) and (b) are removed considering the elimination of ER 5.4, which, in turn, rendered many comments to the rule unnecessary. Several new subsections were added to move important information from remaining comments into the rule’s text. Subsection (a)(1) now requires the seller to disclose the purchaser’s identity. Subsection (c) states that the purchaser cannot increase fees to clients to finance the sale, and the purchaser must honor existing arrangements between the seller and clients regarding fees and scope of work. New subsection (d) requires the seller to give notice to clients before allowing a purchaser to access detailed client information. New subsection (e) requires the seller to ensure that a purchaser is qualified and new subsection (f) advises that if courts must approve substitution, the matter cannot be included in the sale until obtaining that approval. Finally, new subsection (g) makes the rule inapplicable to transfers of legal representation unrelated to a sale of the firm. No comments are necessary for the proposed rule.

**ER 5.1 Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors**

Amendments to this rule were made in part because a lawyer may hold an ownership interest in a firm in a variety of ways. The rule is no longer limited to a “partner” and instead a broader reference to “ownership interests” was added to the title because of the change in the definition of “firm” in ER 1.0(c) and the elimination of ER 5.4. As with several other ERs
discussed here, the task force determined that comments to this rule addressed important concepts that should be part of the rule. The definition of “internal policies and procedures” was moved from the comment to subsection (b). Subsection (c) now states that whether a lawyer has supervisory duties over lawyers may vary depending on the circumstances. And, subsection (d) now provides guidance on what constitutes reasonable remedial action. No comments are necessary for the proposed rule.

**ER 5.3 Responsibilities Regarding Nonlawyers**

The task force determined that the rule should refer to both nonlawyers in the firm and nonlawyer assistants, who can be inside or outside the firm, and therefore a change to the title was made to identify the scope of the rule. As with ER 5.1(a), ER 5.3(a) now instructs that lawyers and firms must ensure lawyers and nonlawyers alike undertake reasonable measures to conform to the Rules of Professional Conduct. The remaining amendments move important information from the comments to the rule itself. A definition of “reasonable measures” was added to subsection (b), while direction on what constitutes a direct supervisor’s “reasonable efforts” was added in subsection (c)(1). New subsection (c)(3) requires that lawyers give directions appropriate under the circumstances to nonlawyers outside the firm and guidance on allocating responsibility for monitoring an external nonlawyer when the client directs that the lawyer select the particular nonlawyer was added to new subsection (c)(4). Finally, new subsection (d) requires that each firm designate one lawyer who is responsible for establishing policies and procedures in the firm to assure that all nonlawyers comply with the lawyers’ ethical obligations. The task force suggests that the State Bar may then require that the lawyer identify on the annual dues statement which lawyer in the firm is responsible under ER 5.3(d), similar to the requirement that each lawyer identify the lawyer responsible for the firm trust account procedures. This would provide a level
of entity accountability to assure that a specific attorney must establish appropriate nonlawyer ethics procedures.

**ER 5.7 Responsibilities Regarding Law Related Services**

In evaluating whether to recommend eliminating ER 5.4, the task force considered the need to maintain ER 5.7. Under the existing rule, and depending on the circumstances, a lawyer may be obligated to provide the recipient of law-related services the full panoply of protections enjoyed by the lawyer-client relationship.

Considering the recommendation to eliminate ER 5.4, and thus allow lawyers to partner with nonlawyers, ER 5.7 seems unnecessary and restrictive of innovation. The general conflict-of-interest and confidentiality rules, as well as the rules protecting the professional independence of lawyers, as amended, should suffice to protect clients.

**Recommendation 2: Modify Arizona’s ERs 7.1 through 7.5 to incorporate many 2018 ABA Advertising Rule amendments and to align the rules with the recommendation to eliminate ERs 5.4 and 5.7 and amend ERs 1.0 through 5.3.**

**A. ABA Model Rule Changes and National Trends.**

In 1977, the United States Supreme Court decided *Bates v. State Bar of Arizona*, and in 1985 Arizona adopted the ABA Model Rules. Current ERs 7.1 through 7.5 (the “Advertising Rules”), which govern lawyer communications about legal services, have not substantively changed since their adoption in 1985, despite compelling reasons to make changes. Technological advances in the delivery of legal services as well as cross-border marketing of legal services through the internet, television, radio, and even print advertising have changed the ways

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29 Portions of this summary are derived from the Standing Committee on Ethics and Professional Responsibility’s 2018 Report and Resolution 101 for amendment of the ABA Model Rules on Professional Conduct on lawyer advertising.
consumers learn about available legal services. These changes, as well as the mobility of clients and lawyers, require more uniformity in the rules that regulate lawyer advertising among United States jurisdictions. Therefore, the task force recommends bringing the Advertising Rules into conformity with recent changes made by the ABA in 2018 and aligning the rules with current realities of lawyer advertising and law practice.

The task force’s recommended amendments to the Advertising Rules accommodate three trends calling for simplicity and uniformity in the regulation of lawyer advertising. First, lawyers increasingly practice across state and international borders, and clients often need services in multiple jurisdictions. Second, technologies that were not prevalent in 1985 to search for professional services today are ubiquitous. Third, trends in First Amendment and antitrust law suggest that burdensome and unnecessary restrictions on the dissemination of accurate information about legal services may be unlawful.

30 See Association of Professional Responsibility Lawyers 2015 Report of the Regulation of Lawyer Advertising Committee (2015) [hereinafter APRL 2015 Report], https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aprl_june_22_2015%20report.authcheckdam.pdf at 18-19 (“According to a Pew Research Center 2014 Social Media Update, for the 81% of American Adults who use the Internet: 52% of online adults now use two or more social media sites; 71% are on Facebook; 70% engage in daily use; 56% of all online adults 65 and older use Facebook; 23% use Twitter; 26% use Instagram; 49% engage in daily use; 53% of online young adults (18-29) use Instagram; and 28% use LinkedIn.”).

31 For nearly 20 years, the Federal Trade Commission (FTC) has actively opposed lawyer regulation where the FTC believed it would, for example, restrict consumer access to factually accurate information regarding the availability of lawyer services. The FTC has reminded regulators in Alabama, Arizona, Florida, Indiana, Louisiana, New Jersey, New Mexico, New York, Ohio, Tennessee, and Texas that overly broad advertising restrictions may reduce competition, violate federal antitrust laws, and impermissibly restrict truthful information about legal services. For developments in First Amendment law on lawyer advertising, see APRL June 2015 Report, supra note 30, at 7-18.
Empirical data from a survey sent to bar regulators by APRL regarding the enforcement of current advertising rules shows that complaints about lawyer advertising are rare; the vast majority of advertising complaints are filed by other lawyers and not consumers, and most complaints are handled informally, even when there is a provable advertising rule violation.\textsuperscript{32} APRL’s survey data is consistent with charges received by the State Bar of Arizona regarding lawyer advertising. Based in part on this data, in August 2018 the ABA House of Delegates adopted model rule amendments while maintaining the primary regulatory standard for advertising – communications must be truthful and not misleading.\textsuperscript{33} The State Bar of Arizona expressed support for these amendments through the vetting process. Many jurisdictions currently are considering adoption of the 2018 ABA Model Rule amendments – and some jurisdictions, such as Virginia, Washington, and Oregon already have updated their Rules with variations on the recommendations.

B. Summary of Proposed Amendments to ERs 7.1 through 7.5.

The proposed amendments to Arizona’s ERs 7.1 through 7.5 incorporate many of the 2018 ABA Model Rule amendments and fulfill the task force’s charge to identify issues and improvements in the delivery of legal services. As evidenced by Recommendation 1 above, the task force recommends eliminating or amending ethical rules that impede lawyers’ abilities to provide cost-effective legal services.

The proposed amendments to the Advertising Rules would:

- retain the rules’ primary regulatory mandate of refraining from making false and misleading communications;

\textsuperscript{32} ABA Report and Resolution 101 on Lawyer Advertising, August, 2018: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/final_d ar_resolution_and_report_advertising_report_as_amended_by_rules_and_calendar_for_submissi on_004.pdf

\textsuperscript{33} Id.
• set forth the requirements for who may identify themselves as a “certified specialist” in an area of law;
• maintain reasonable restrictions on direct solicitation of specific potential clients; and
• eliminate obsolete and anticompetitive provisions that unreasonably restrict the dissemination of truthful advertising.

The most significant proposed amendment, which goes beyond the 2018 ABA Model Rule amendments, would eliminate current ER 7.2(b)’s prohibition against giving anyone anything of “value” for recommending a lawyer or referring a potential client to a lawyer. Anecdotally, it has been observed that this provision is violated daily because, taken literally, this provision prohibits taking an existing client golfing to say thank you for a referral or giving a firm paralegal a gift card or sending flowers for referring a family member to the firm. Similarly, there are many ethics opinions issued both in Arizona\footnote{See State Bar of Ariz. Ops.05-08 (2005), 06-06 (2006); 10-01 (2010), and 11-02 (2011).} and around the United States that provide convoluted attempts to distinguish between what is permissible “group advertising” versus what is an impermissible “referral service.” Not only do these technical interpretations serve no productive regulatory purpose, but the unnecessary complexity in the regulations stifles lawyers’ abilities to embrace more efficient online marketing platforms for fear the website or service may be deemed a for-profit referral service.

Rule 7.2(b)’s prohibition against “giving anything of value” exists although there is no quantifiable data evidencing that for-profit referral services or even paying for referrals confuses or harms consumers. Consumers do not expect online marketing platforms to be nonprofit operations – which are the only referral services permissible under the current regulatory
framework. Note that Florida, one of the most restrictive lawyer advertising jurisdictions in the country, already permits for-profit referral services.

The proposed changes to the Advertising Rules are set forth in Appendix 1. The following summarizes those changes.

**ER 7.1 Communications Concerning a Lawyer’s Services**

The amended rule retains the existing prohibition against “false and misleading” communications about a lawyer’s services. Most bar regulators in the United States have expressed the view that this provision is the rule primarily relied on to regulate lawyer advertising. The current requirements for identifying a lawyer as a “certified specialist” were moved from current ER 7.4 into new ER 7.1(b) and the proposed amendment updates the language from restricting use of the term “specialist” to restricting only the use of the phrase “certified specialist,” consistent with the ABA Model Rule. This change avoids constitutional challenges to the overly restrictive prohibition in current ER 7.4, which limits use of the term “specialist.” The proposed changes would also bring Arizona’s rule in line with the ABA Model Rule language in noting that lawyers may not identify themselves as “certified specialists” unless they comply with the requirements set forth in Court rules. The reference in new ER 7.1(b) to new criteria for certified specialist will be contained in Supreme Court Rule 44, and this cross-reference will assist lawyers researching Arizona’s certified specialist advertising requirements. Explanatory comments from current ER 7.4 have been moved to the comments of ER 7.1 to reassure patent attorneys that their specialization is still recognized.

The amendments also move the requirement that all communications must contain the name of a lawyer or law firm and some “contact” information from ER 7.2(c) into new ER 7.1(c). Comments to 7.1 also now include explanatory comments regarding law firm names that were in current ER 7.5. This is consistent with the 2018 Amendments to the ABA Model Rules of
Professional Conduct and clarifies that disbarred lawyers’ names and names of lawyers on disability inactive status cannot continue in a firm name.

**ER 7.2 (RESERVED)**

Current ER 7.2 sets forth specific rules concerning lawyer advertising. The task force recommends deleting that rule and moving the substance of current ER 7.2(c) to new ER 7.1(c). There consumer protection afforded by current ER 7.2 can be provided by less non-competitive provisions. For instance, the rules on conflicts of interest, including ERs 1.7, 1.8, and 1.10, protect clients/consumers because they restrict a lawyer’s (and firm’s) representation of a client if the lawyer’s own interests could “materially limit” the lawyer’s independent professional judgment in representing the client. Thus, a lawyer cannot be “forced” to represent a client simply because they were referred by someone who the lawyer pays as a referral source. The conflict of interest rules control who and how a lawyer may represent a client, and such representations must be free of any conflict that could materially limit the lawyer’s objectivity. And disclosures revealing that a lawyer will pay referral fees sufficiently informs consumers about the referral system. Such disclosures may be required to comply with ER 7.1’s “false and misleading” standard to assure that adequate information is conveyed to website visitors or referral sources about the fact that the site is not a nonprofit operation.

**ER 7.3 Solicitation of Clients**

Consistent with the 2018 Amendments to the ABA Model Rules, the title of this rule was modified, and a definition of “solicitation” was added. This rule governs direct marketing to individuals with specific needs for legal services, as opposed to general advertising on billboards, business cards, print advertisements, television commercials, websites, and the like. The proposed amendments are narrowly tailored to protect consumers who need legal services in particular matters from overreaching by lawyers. The amendments would preclude, for example, solicitation
letters sent to homeowners in a community where there are known construction defects, car accident victims, members of a neighborhood that has been affected by an environmental hazard, and individuals charged with crimes. Solicitation would not include sending a letter to everyone in a certain zip code simply to introduce a law firm to a general community that does not have a specific legal need (such as an estate planning firm sending letters to everyone in Paradise Valley or a family law attorney sending announcement postcards to all businesses in her business complex, announcing the opening of her office). Solicitation also would exempt class action court or rule-required notifications.

ER 7.3 retains the prohibition against in-person (face to face or door-to-door) and real-time electronic (such as telephone calls or Facetime) solicitation, unless the prospective client falls within certain categories of individuals not likely to be overwhelmed by a lawyer’s advocacy/solicitation skills, such as other lawyers, a former client, or a family member or friend of the lawyer. And even for these categories of prospective clients, a lawyer cannot solicit them (or anyone) if they have made known that they do not want to be solicited or the communication involves coercion, harassment, or duress. At the same time, an amendment to ER 7.3 adds an exception to the prohibition against in-person solicitation for communications directly with business people who regularly hire lawyers for business legal services, consistent with the 2018 Amendments to the ABA Model Rules. The task force notes that this language was vetted extensively through ABA entities and Bar regulators to assure that the language could not be misinterpreted to mean, for instance, that a lawyer could call someone who regularly hires business lawyers to solicit business for criminal defense, bankruptcy, or family law matters. The language in the proposed amendment limits this category of prospective client to only those who regularly
retain counsel for business purposes and therefore are experienced at receiving calls, emails, and meetings with lawyers seeking to represent their companies.

The proposed amendments delete the current Rule’s “ADVERTISING MATERIAL” notation requirement for envelopes (and filing requirement), consistent with the 2018 Amendments to the ABA Model Rules. Several jurisdictions, including, for instance, the District of Columbia, Massachusetts, Maine, Pennsylvania, North Dakota, Oregon, and Washington either have never had a notation requirement or deleted the requirement years ago. None of these jurisdictions indicate any consumer confusion in receiving written communications from lawyers. Nor is there any empirical evidence to indicate that the notation serves a necessary purpose in alerting consumers to the contents of an envelope. Given the changes in technology and methods of direct marketing consumers receive on a regular basis, there is far less likelihood of a consumer being confused about the purpose of a direct mail solicitation letter or email today, than perhaps existed in 1985 when the notation requirement was adopted.

**ER 7.4 (RESERVED)**

Current ER 7.4 concerns a lawyers’ abilities to communicate their fields of practice. As noted previously, the requirements for identifying a lawyer as a “certified specialist” was moved to new ER 7.1(b). Comments to ER 7.4 regarding patent attorneys were moved to ER 7.1. The remainder of ER 7.4 has been deleted as duplicative of proposed ER 7.1.

**ER 7.5 (RESERVED)**

Current ER 7.5 concerns firm names and letterheads. The ABA deleted ER 7.5 as unnecessary, given that ER 7.5 simply described information in a firm name that might be false or misleading. The task force recommends deleting ER 7.5 because it is not needed to regulate law firm names. ER 7.1 is sufficient and the more commonly used regulation. As previously explained, the task force recommends moving ER 7.5’s comments to ER 7.1.
Recommendation 3: Promote education and information on what unbundled legal services are to the bench, bar, and public to encourage expanded understanding and utilization of unbundled legal services.

When lawyers provide limited scope representation also known as “unbundled” legal services, clients hire them to perform a specific task or represent them for only a limited process or issue of the legal matter instead of the entire matter. There is no standard unbundled process because lawyers perform many different tasks and clients have different needs. Arizona has allowed lawyers to engage in limited scope representation since 2003. However, the practice appears to be used predominately by lawyers who work in family law. One explanation for the lack of lawyers engaging in limited scope representation is a concern that once the limited representation ends between the client and the lawyer, the court will continue to require the lawyer to represent the client beyond the limited scope agreement.

The task force reviewed articles and best practices concerning unbundled legal services. Unbundled legal services have existed in the American legal system for some time as many legal engagements can be broken into discrete tasks. However, it is imperative that courts explicitly support this model of providing legal services to ensure that the bench, bar, and public fully understand what this type of legal service entails and ensure that consumers do not go without representation rather than pay the high cost of a full-service legal engagement.

To remedy these concerns the task force recommends:

A. The Supreme Court should explicitly support the delivery of unbundled legal services through a campaign of education for the bench and court staff in Arizona.

The task force recommends that the Supreme Court incorporate information on what unbundled legal services are, how to recognize an entry of limited appearance and notice of termination of appearance, and how to honor those limited engagements in cases. This education

35 ER 1.2(c), Ariz. R. Sup. Ct. 42.
campaign should include educating court clerk offices and staff on unbundled legal services so that staff can ensure once a notice of termination of limited appearance is entered, the attorney is no longer noticed or required to appear in court for matters unrelated to the limited scope of service for which they had appeared. The task force recommends that the Court include information on unbundled legal services in new judge orientation programs and in annual judicial conference and leadership conference programs.

B. The State Bar should explicitly promote and educate the bar about unbundled legal services.

The task force recommends that the State Bar of Arizona encourage listings and promotion of lawyers offering unbundled legal services. The State Bar recently launched a Find-A-Lawyer portal that aids consumers in connecting with lawyers offering needed legal assistance in particular areas of the law. This website also allows consumers to indicate their ability to pay for such services which opens a pathway for lawyers conducting pro bono work to connect to clients in need of services with limited financial means. The task force recommends the State Bar assess the Find-A-Lawyer program to determine ways to allow consumers to identify attorneys who offer unbundled legal services to encourage the public to obtain representation rather than go it alone for the entirety of their matter.

The task force also recommends that the State Bar offer educational opportunities through regular CLE programs, the annual bar conference, and articles in the Bar’s e-news and print journals about what unbundled legal series are, best practices for initiating and terminating a limited scope representation, including drafting limited scope fee agreements, and how to assess a matter to determine if unbundled legal services are appropriate.
C. Provide information to the public on the different types of lawyer representation, including limited scope representation, on AZCourtHelp.org and AZCourts.gov.

The task force explored opportunities to educate the public on what unbundled legal services are and how they differ from other types of legal services, particularly full-service legal representation. The Bar Foundation in conjunction with the Supreme Court hosts the AZCourtHelp.org webpage which is a statewide virtual legal resource center. Cathleen Cole, Content Manager for AZCourtHelp.org, developed a draft webpage that describes each type of legal representation that an attorney might provide. Descriptions of the various types of legal services include a summary of what each type of legal representation is and descriptions of what each type of service entails. The page on unbundled legal services includes a Notice of Limited Scope Representation form, a Notice of Completion of Limited Scope Representation form, and an example of a limited scope representation contract.

At the time of this report, the Bar Foundation had launched this webpage. The task force recommends that the Supreme Court continue to collaborate with the State Bar and the Bar Foundation to ensure that relevant and meaningful content remains available on the type of legal services pages to ensure that the public has every opportunity to learn about the types of legal services they might secure to assist them with their legal needs.

In addition, the task force recommends that the Administrative Office of Courts develop similar content on AZCourts.gov. The Court Programs Unit of the AOC also developed webpages located under “Resources” in the Self-Help Center that explain the various types of legal representation. In addition, the AOC is working on developing legal information sheets – essentially pages that answer frequently asked questions – for inclusion on the types of representation page. The task force recommends that the Court continue to support the efforts of
the AOC to provide educational information to the public about the types of legal services, particularly unbundled legal services, through the Court’s website.

D. Issue an administrative order drawing attention to limited scope representation and adopting uniform notices.

The task force recommends that the Supreme Court issue an administrative order that notifies the Judiciary that ER 1.2 explicitly allows limited scope representation (unbundled legal services) by attorneys in Arizona if the appearances are reasonable under the circumstances. Low-income individuals and increasing numbers of unrepresented litigants cannot afford the costs of full-service legal representation. Although self-represented litigants may be armed with online court forms and self-help materials, without advice and counsel from an attorney, many come to court uninformed, unprepared, or simply overwhelmed.

The task force also recommends that the Supreme Court, by administrative order, adopt two form notices for all practice areas:

- A form Notice of Limited Scope Representation that a lawyer would file upon appearing and which notifies the court that the filing attorney is entering the case for a specific scope of representation (by date, time period, activity, or subject matter).

- A Notice of Completion of Limited Scope Representation that notifies the court when the attorney’s appearance terminates. Through education, judicial officers should learn that such a withdrawal or termination of appearance does not require leave of court (1) if the notice of limited appearance specifically states the scope of the appearance by date or time period; or (2) upon the attorney filing a Notice of Completion, which must be served on each of the parties, including the attorney’s client.

Finally the task force urges the Supreme Court to inform the bench through the administrative order that (1) service on an attorney who has entered a limited appearance is
required only for matters within the scope of the representation as stated in the notice, (2) any such service must also be made on the party, and (3) service on the attorney for matters outside the scope of the limited appearance does not extend the scope of the attorney’s representation. These efforts will ensure that the bench, opposing parties or counsel, and court staff are aware of when an attorney appearing for a limited purpose should be served with pleadings or noticed for court appearances.

A proposed administrative order and forms can be found in Appendix 2 to this report.

**Recommendation 4: Revise Rule 38(d), Arizona Rules of Supreme Court, to clarify when a law student at an accredited law school or a recent law graduate may practice law under the supervision of a lawyer admitted to practice in Arizona, what legal services the law student or law graduate may provide, and the duties and obligations of the supervising lawyer.**

This recommendation was brought to the task force by members of the legal community. In Arizona, law students can practice law under the supervision of a licensed attorney in accordance with Arizona Supreme Court Rule 38(d). This limited student law practice is restricted to students who are either supervised by an attorney in a public or private legal office or by a clinical law professor in conjunction with a law school clinical program. Although Rule 38(d) currently allows recent law graduates to engage in a limited practice of law until the first offering of the Arizona bar examination, the rule was drafted in a way that downplayed or masked this opportunity for recent law graduates. Current Rule 38(d) is unduly complicated and unclear in large part and fails to include certain program essentials. Thus, the proposed amendments revise and reorganize the rule for clarity and substantive completeness. As revised, the proposed rule

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36 Certification of a certified limited practice student shall commence on the date indicated on a notice of certification and shall remain in effect . . . [until] the certified student fails to take or pass the first general bar examination for which the student is eligible. Ariz. R. S. Ct. 38(d)(5)(F)(iv).
sets out the program requirements and practice restrictions for both law students and recent law graduates in a clear, organized, consistent, and complete manner.

The proposed amendments clarify that recent law graduates may be certified to engage in the limited practice of law under the supervision of an attorney. The proposed amendments also more clearly state that limited practice does not need to be tied to a clinical law program. At least 16 states allow recent law graduates to engage in the limited practice of law post-graduation and pre-bar admission. These state programs share common features:

- All programs have specified durations. For example, some programs authorize practice only during the period in which the graduate has applied to take the first bar examination after his or her graduation and is awaiting the results. Other programs include similar restrictions and incorporate a tiered expiration date for the authorization to practice, such as no later than 12 or 18 months after the graduate graduated from law school.

- Most of these programs authorize graduates to practice law to the same extent law students are authorized to practice law under programs like existing Rule 38(d)(5). Thus, graduates are permitted to meet with clients, go to court, try cases, argue motions, and the like. Most of the states authorize graduates to handle civil and criminal cases, although some restrict the criminal cases to misdemeanors or less-serious felonies.

- Several programs authorize graduates to practice for certain type of employers, such as legal-aid clinics, public defenders, prosecutor’s offices, or city, county, and state offices or agencies.

- Many programs impose supervisory requirements that are similar to the supervisory requirements imposed under existing Rule 38(d).
A few programs require the dean of the graduate’s law school, or the graduate’s proposed supervising attorney, to certify the graduate’s good character and competence to the state supreme court or another entity. Other programs simply require the employer to comply with the requirements of the program and do not require the employer to file any other documentation with any court or state agency.

Although these other state programs vary in operational details, they all provide a means by which law students and non-licensed law graduates may practice law, and effectively result in expanding the delivery of legal services, especially by public agencies or public service groups that provide legal services to individuals with limited resources. These programs do this by allowing recent law school graduates in the process of becoming licensed to gain experience by practicing law under the supervision of admitted lawyers for a limited duration. Because this limited exception to licensure is anticipated to benefit the public, the task force’s proposed amendments to Rule 38(d) fall squarely within the mandate to consider and evaluate new models for delivering legal services.

Further, the amendments would eliminate, or at least lessen, many of the practical problems experienced by law school graduates given the workload of the individuals involved in the admission and character and fitness process. The amendments permit recent law graduates to practice under the supervision of a lawyer after graduation from an ABA accredited law school if the graduate takes the first Arizona uniform bar examination, or the first uniform bar examination offered in another state for which the graduate is eligible. Certification to practice terminates automatically if the graduate fails the bar examination, if the Committee on Character and Fitness does not recommend to the Supreme Court the graduate’s admission to practice, if the graduate is denied admission to practice law by the Supreme Court, or on the expiration of 12 months from
the date of the graduate’s graduation from law school unless the Supreme Court extends the 12-month period. If the graduate passes the bar examination, certification terminates 30 days after the graduate has been notified of approval for admission to practice and eligibility to take the oath of admission. Certification to practice for both graduates and law students also terminates on the occurrence of other events such as failure to meet the requirements for certification.

Proposed amended Rule 38(d) is set forth in Appendix 3.

Recommendation 5: Revise Rule 31(d), Arizona Rules of Supreme Court, by restyling the rule into four separate rules, making the rule easier to navigate and understand.

The task force was charged with restyling Rule 31(d), Arizona Rules of Supreme Court, which govern the practice of law. Over the years, Rule 31(d) has been expanded incrementally to include thirty-one exceptions, becoming cumbersome and difficult to navigate. Consistent with other restyling efforts, the task force separated current Rule 31 into four separate rules. Thus, proposed Rule 31 incorporates current Rule 31(a), proposed Rule 31.1 incorporates current Rule 31(b), proposed Rule 31.2 incorporates current Rule 31(c), and proposed Rule 31.3 incorporates current Rule 31(d). This restructuring is intended to make the rule easier to navigate and understand. Consistent with the Arizona Supreme Court’s restyling conventions, the task force sought to state the rules using the active voice and eliminate ambiguous words (especially “shall”) and archaic terms (e.g., herein, thereto, etc.). The rules were also restated in a positive—rather than prohibitory—manner (e.g., “a person may” rather than “a person may not,”; “a person or entity may” rather than “nothing in this rule prohibits”).

The following is a summary of the changes recommended by the task force. The changes in restyled Rules 31 through 31.2 are mostly stylistic, with one major exception. Currently, the “authority to practice” in Rule 31(b) and the “unauthorized practice of law” in Rule 31(a)(2)(B) state that one is authorized to practice law only if he or she is an active member of the State Bar.
of Arizona. One notable difference is restyled Rule 31.2(a), which specifically acknowledges that Rules 38 and 39 authorize non-Bar members (such as in-house counsel and out-of-state lawyers admitted pro hac vice) to practice law in Arizona.

The definition of “legal assistant/paralegal” was removed as that term is not used in current or restyled Rule 31. The definition of “mediator” was not included in the restyled rule. The definition of “unprofessional conduct” in current Rule 31(a)(2)(E) was not included in the restyled rule. The term “unprofessional conduct” is not used in Rule 31. In a rule petition seeking to restyle Rule 31, the task force also proposes an amendment to Supreme Court Rule 41 or 54 to include the definition of “unprofessional conduct” as those rules depend on that definition.

The most extensive changes occur to current Rule 31(d), which the proposed rule denominates as Rule 31.3. Rule 31(d) currently has thirty-one subsections with little reason to their order. To make the rule more useful, subsection (d) was reorganized into ten subsections in proposed Rule 31.3: (1) a “Generally” section; (2) Governmental Activities and Court Forms; (3) Corporations, Limited Liability Companies, Associations, and Other Entities; (4) Administrative Hearings and Agency Proceedings; (5) Tax-Related Activities and Proceedings; (6) Legal Document Preparers; (7) Mediators; (8) Legal Assistants and Out-of-State Attorneys; (9) Fiduciaries; and (10) Other.

The following matters merit specific mention. First, proposed restyled Rule 31.3(c)(i)(1) provides a definition of “legal entity.” Second, subsection (3) collapses the three current provisions regarding the representation of companies and associations in municipal or justice courts. Third, subsection (4) retains the provision authorizing a person to represent entities in superior court in general stream adjudications. Fourth, subsection (5) collapses seven current rules regarding the representation of various types of legal entities in administrative hearings or
administrative proceedings. Fifth, subsection (6) sets forth in a single location a general exception saying that a hearing officer or presiding officer can order an entity to be represented by counsel.

In addition, the task force considered rule petition R-18-0004, which the Supreme Court had continued pending the task force’s recommendation. That petition seeks an amendment to the rule that would permit owners of closely held corporations and like entities, or their designees, to represent the entities in litigation. While the task force empathized with the plight of “mom and pop” entities that cannot afford counsel and yet are deprived of the ability to represent the entities in court, the task force does not recommend this proposal. Closely held corporations are not limited to one or two owners, and a myriad of unanticipated consequences could occur if entities are allowed to represent themselves. For example, nothing would prohibit a disbarred attorney from representing the entity. Also, task force members expressed concerns that unless every interest, particularly minority interests, agreed to the nonlawyer representation, the nonlawyer representative might not adequately represent the interests of the business, but rather may only represent majority interests. The task force’s proposed restyling of Rule 31(d) addresses the organizational issues raised by the pending rule petition.

Finally, to the extent practicable, the task force endeavored to conform the rules to one another to avoid expressing identical requirements in different ways. With one possible exception, the task force does not recommend substantive changes to Rule 31. The task force clarified language in proposed 31.3(d), which addresses “Tax-Related Activities and Proceedings.” Even assuming this clarification effects a substantive change, the task force believes the change is within its charge to simplify and clarify the Rule.

The restyled Rule 31 and a copy of existing Rule 31 are found in Appendix 4.
Recommendation 6: Develop, via a future steering committee, a tier of nonlawyer legal service providers, qualified by education, training, and examination, to provide limited legal services to clients, including representation in court and at administrative proceedings.

The task force recommends that Arizona develop a program to license nonlawyer “limited license legal practitioners,” (“LLLPs”) qualified by education, training, and examination, to provide legal advice and to advocate for clients within a limited scope of practice to be determined by future steering committees. The task force discussed at length the elements that would be required to establish an LLLP program, and we offer recommended next steps and component parts below. But the “in the weeds” details required for different areas of certification and regulation are many, and beyond the collective expertise of this task force. We therefore recommend that the Supreme Court appoint a steering committee (and perhaps subcommittees) to establish reasonable parameters for LLLPs, including (A) different areas and scopes of practice; (B) common ethical rules and discipline, (C) education, examination and licensing requirements, and (D) assessment and evaluation methods for proposed program. The task force highly recommends an early focus on family law as a subject area for LLLPs, as this is where the greatest need lies. However, the task force believes several other subject matter areas deserve serious consideration, including all limited jurisdiction civil practice matters, limited jurisdiction criminal matters that carry no prospect for incarceration, and many matters within administrative law.37 Self-represented litigants encounter these practice areas every day in Arizona court with no access to legal assistance.

Members of a steering committee should include lawyers experienced in the subject area, judges who have presided over cases in the subject area, legal educators from law school and

37 The task force also identified areas of the law where practice should specifically be excluded from the new tier due to their complexity and conflict with federal law. For example, federal law prohibits nonlawyers from giving legal advice in bankruptcy (see 11 U.S.C. § 110(e)(2)).
paralegal programs, court administrators, and public representatives. Litigants and potential litigants currently excluded from most legal services should play some role in the steering committee’s process. Guiding principles should include access to justice, service to the public, economic sustainability, professional competence and accountability, and respect for our system of justice.

Arizona is not the first state to consider licensing nonlawyers to provide limited legal services. Washington and Utah have established programs to license nonlawyers to provide limited legal services, as has Ontario, Canada, all of which the task force heard from during its work. Other jurisdictions, including California, Colorado, Nevada, New Mexico, New York, and Oregon are also examining the potential for nonlawyers to provide limited legal services.

Evidence exists that licensing nonlawyers to provide limited legal services will not undermine the employment of lawyers. First, the legal needs targeted for LLLPs involve routine, relatively straight-forward, high-volume but low-paying work that lawyers rarely perform, if ever. Second, other recommendations in this report would allow lawyers to team with LLLPs to provide complementary services, thereby increasing business opportunities for lawyers. Moreover, to date no jurisdiction that allows certified nonlawyers to provide limited legal services has reported any diminution in lawyer employment. The task force acknowledges that some lawyers may prove instinctive skeptics on this issue, but the task force can find no empirical evidence that lawyers risk economic harm from certified LLLPs who provide limited legal services to clients with unmet legal needs.

The task force offers the following specific recommendations for consideration and refinement by a steering committee:
A. Areas of Practice and Scope of Practice

The steering committee should familiarize itself with the report and recommendation of the Delivery of Legal Services Task Force, consider the practice areas explored by the task force including hearing from members of the task force who were involved in the analysis of subject matter areas and educational needs, and address questions raised by the task force about areas of practice and scope of practice. Scope decisions include role definition, as well as identifying areas of law and particular tasks suitable for LLLPs to perform.

The task force recommends that the scope of the new tier — unlike the current role of LDPS — include the ability to provide legal advice and to make appearances in court on behalf of clients. The task force recommends that the steering committee consider whether LLLPs should be able to provide pre-litigation education about legal rights and responsibilities (for example, counseling tenants about how to avoid eviction and counseling debtors about avoiding debt collection litigation).

B. Oversight

The task force recommends that the steering committee develop ethical rules and regulation for LLLPs and create a disciplinary process for the unauthorized practice of law and ethical violations. In general, the task force recommends that such rules be approved by the Supreme Court in the same manner that the Court governs rules for attorneys. The task force further recommends that disciplinary matters for LLLPs be overseen by the State Bar of Arizona in the same manner that the State Bar governs attorney discipline.

Oversight is a critical aspect of the program. Making regulatory requirements that are too onerous will make the new tier unattractive and cost-prohibitive to both participants and users.\(^{38}\)

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\(^{38}\) The stifling effect of over-regulation on expansion of a new tier of service was one caution shared by the State of Washington.
At the same time, the market cannot be the only regulatory control. The steering committee should identify a balance between existing regulatory processes and the scope of practice LLLPs will be engaged in.

C. Education, Examination and Licensing

The steering committee should develop rules, regulations, and administration processes for application and examination to certify LLLPs. The task force recommends, based on requirements for lawyers and other legal paraprofessionals in Arizona, that the steering committee consider regulations in the following areas:

- application and licensing;
- examination; and
- development of curriculum to meet the requirements for obtaining a license.

Questions the task force did not have time or expertise to resolve include whether a minimum number of academic credits in legal ethics be required; whether only ABA-accredited legal training program be accepted; and whether equivalent credentials from other states or nations might satisfy the education requirements in whole or in part. The task force considered whether training should require an experiential learning component. If so, the task force recommends that any experiential learning requirement be integrated into a broader academic program, as opposed to a separate stand-alone endeavor. This recommendation comes after considering the barrier that high experiential learning requirements have posed to the existing Washington State Limited License Legal Technician program, and after considering what other states have shared with the task force about barriers that experiential learning requirements can pose for people in rural areas who apply for certification. Finally, the task force recommends that the steering committee might explore a separate path to certification for existing LDPs and paralegals, who may have had a head start on education and on-the-job experience.
D. Assessment and Evaluation of the Program

The task force recommends that the steering committee develop methods for measuring the appropriateness, effectiveness and sustainability of the LLLP program. Program goals should be to increase access to justice and to protect consumers of legal services. Appropriateness might require that the authorized tasks for LLLPs directly impact access to the courts and unmet legal needs. Appropriateness might also include whether the education requirements and regulations enable LLLPs to perform tasks competently.

Effectiveness might be measured by competence and usage. If self-represented litigants do not engage the services of LLLPs, of course the program fails. But other measures of effectiveness might include reduced burden on courts from self-represented litigants, improvements in procedural justice, improvements in litigant understanding, and improved litigant outcomes such as reduced costs for limited legal services and increased satisfaction ultimate legal outcomes.

Finally, the program should be assessed for sustainability, which would include economic viability for the public, for the court system, and for LLLPs.

**Recommendation 7: Initiate, by administrative order, the Licensed Legal Advocate Pilot program developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law, to expand delivery of legal services to domestic violence survivors through the creation of a new tier of legal service provider.**

In spring 2019, the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law (i4J) brought graduate students, undergraduate students and over 50 members of the community together in i4J’s Innovating Legal Services course to explore a challenge framed as: “should Arizona create a new tier of civil legal professional, and what could that mean for survivors of domestic abuse?” That challenge was selected to provide a community-engaged “sandbox” that would supplement the task force’s exploration of whether nonlawyers, with specific qualifications, should be allowed to provide limited legal services. i4J partnered with
Emerge! Center Against Domestic Abuse and collaborated with community participants including judges, attorneys, lay legal advocates, social services providers, government representatives, domestic violence survivors, social scientists, interested community members, and other stakeholders.

The results of i4J’s Innovating Legal Services course are presented in a report titled Report to the Arizona Supreme Court Task Force on Delivery of Legal Services: Designing a New Tier of Legal Professional for Survivors of Domestic Violence and a video summarizing that report. Course co-instructors Stacy Butler and Jeffrey Willis shared the course’s report and video presentation at a task force meeting. The report demonstrates that domestic violence service providers like Emerge! serve thousands of domestic abuse survivors a year. Lay legal advocates employed by agencies like Emerge! provide information and explain processes within the legal system, but currently cannot provide legal advice.

The Innovating Legal Services course developed a proposal for a pilot program that would train lay legal advocates to become Licensed Legal Advocates (LLAs), able to provide legal advice to domestic violence survivors as they navigate Arizona’s civil legal system. The proposed pilot removes the barrier imposed by unauthorized practice of law restrictions, giving the LLAs the ability to handle specifically-identified legal needs of participants at Emerge! and enhancing those participants’ access to justice. The Innovating Legal Services course report identified above details the scope of service LLAs would be allowed to provide, as well as the training and education requirements LLAs would be required to complete to become an LLA. The report

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39 The full report and video are available under the “projects” tab of the i4J webpage, https://law.arizona.edu/i4J.

40 Retired Pima County Superior Court Judge Karen Adam also served as a co-instructor in the course.
further details licensing and regulation requirements, bench, bar, and public education about LLAs, and an evaluation process for the pilot.

The task force recommends that the Supreme Court issue an administrative order establishing the Licensed Legal Advocate Pilot program, developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law, to expand delivery of legal services to domestic violence survivors through the creation of a new tier of legal services provider.

A draft administrative order can be found in Appendix 5 of this report.

**Recommendation 8: Initiate, by administrative order, the DVLAP Legal Document Preparer Pilot program as proposed by the Arizona Bar Foundation.**

The task force recommends that the proposal offered by the Bar Foundation on behalf of the Domestic Violence Legal Assistance Project (“DVLAP”) to create a DVLAP Legal Document Preparer Pilot program be adopted. The purpose of the Bar Foundation’s recommendation is to increase access to free assistance in the completion of civil legal forms for domestic violence victims. During the pilot program DVLAP Legal Document Preparers would provide this free assistance to domestic violence victims who are receiving services from DVLAP programs in Arizona. The Bar Foundation created this proposed pilot after service providers within DVLAP identified three issues: a need among domestic violence survivors for assistance with the completion of family law and other common court forms, capacity to leverage the role of lay legal advocates within the civil legal justice system, and challenges with applying the traditional process to become a certified legal document preparer to legal professionals working in a social service capacity.41 Because of the high demand for legal aid services, access to legal assistance from one

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41 The Bar Foundation gave a presentation to the task force proposing this recommendation and reported that in conversations throughout 2014 and 2015, lay legal advocates and various stakeholders unanimously identified cost and time as the biggest barriers to lay legal advocates using the current process to become certified legal document preparers. Arizona Foundation for
of Arizona’s three Legal Services Corporation funded legal aid organizations is often limited to basic advice on how to represent oneself, coupled with document preparation help. Lay legal advocates funded by DVLAP can provide legal information to survivors but cannot complete forms on their behalf. Using the existing LDP program and the infrastructure of the DVLAP program, this recommendation would create a pilot project allowing lay legal advocates employed by DVLAP-supported nonprofit domestic violence service and shelter programs to become DVLAP Legal Document Preparers. Under the proposed pilot, the minimum requirements for certification as an LDP under ACJA § 7-208 would be made less restrictive for DVLAP Legal Document Preparers (DVLAP LDPs”) participating in the pilot as follows:

- While LDPs with a high school diploma or GED must have two years of law-related experience, a DVLAP lay legal advocate with a high school diploma or GED would be eligible to become a DVLAP LDP after one year of supervision by an attorney in a partnering DVLAP legal aid office.
- While LDPs with a four-year college degree must have one year of law-related experience, a DVLAP lay legal advocate with a four-year college degree would be eligible to become a DVLAP LDP after six months of supervision by an attorney in a partnering DVLAP legal aid office.
- DVLAP LDP would pay a lower certification fee.


42 ACJA § 7-208(3)(b)(6) states that "law related experience" is one or a combination of the following: under the supervision of a licensed attorney, providing services in preparation of legal documents prior to July 1, 2003, under the supervision of a certified legal document preparer after July 1, 2003, or as a court employee.
• DVLAP LDP would be qualified through the LDP certification exam process and a separate exam measuring DVLAP LDP competency in substantive areas of law.

In exchange for this relaxed eligibility requirement, the scope of work in which a DVLAP LDP can engage is more limited than the scope of work authorized for LDPs pursuant to ACJA § 7-208. For example, an LDP can assist a self-represented litigant in identifying and completing legal documents at the litigant’s direction, without the supervision of an attorney, for any form “for which the legal document preparer’s level of competence will result in the preparation of an accurate document.”

Conversely, an DVLAP LDP would only be authorized to assist a self-represented litigant in identifying and completing civil legal forms related to a domestic violence victim’s family law needs (separation/divorce, legal decision making and/or parenting time, child support, guardianship, and modifications of post-decree matters), housing matters (landlord/tenant related to health, safety and eviction matters, foreclosure, and public housing issues), and areas of law related to stability, safety and rights (including obtaining/preserving protective orders, public benefits, victims’ rights, and safety planning matters such as securing documents). Unlike LDPs, an DVLAP LDP in this pilot program would have a limited certification to provide document preparation services only for DVLAP clients and would not be allowed to charge for those services.

In another recommendation made elsewhere in this report, the task force has recommended that LDPs be allowed to respond if directly addressed by a judge. DVLAP LDP would similarly be able to attend court with DVLAP clients to the same extent that LDPs can attend court with their clients. Otherwise, DVLAP LDP would be subject to the same restrictions as LDPs, such as not giving legal advice or advocating on behalf of domestic violence victims.

43 ACJA § 7-208(J)(4)(b).
All pilot project participants must be employed by nonprofit organizations approved by the Arizona Bar Foundation and DVLAP, and only domestic violence victims accessing services through DVLAP can receive assistance from DVLAP LDP. The Bar Foundation’s report, shared with the task force, detailed the minimum requirements for becoming a DVLAP LDP and set forth a 24-month pilot project timeline. The Bar Foundation would administer the pilot project and verify eligibility for each pilot project participant. All pilot project participants would be orientated to the purpose and goals of the pilot project and addendums to the current DVLAP funding agreements or Memorandums of Understanding would be executed with each party acknowledging the roles and responsibilities of each participant. Throughout the duration of the pilot project, each participant would be required to report quarterly on all activities related to the preparation of documents, number of domestic violence victims served, supervision and training processes, and participate in the evaluation of the pilot project, including implementation of client and stakeholder satisfaction surveys.

**Recommendation 9: Make the following changes to improve access to and quality of the legal services provided by certified Legal Document Preparers.**

The task force was charged with reviewing the LDP program and related Arizona Code of Judicial Administration ("ACJA") requirements and, if warranted, making recommendations for revisions to the existing rules and code sections that would improve access to and quality of legal services provided by legal document preparers. Since 2003, Arizona has certified LDPs to prepare legal documents for self-represented litigants. Rule 31, Arizona Rules of Supreme Court, defines

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the practice of law and provides an exception that defines the scope of legal practice allowed to LDPs.\textsuperscript{45} Section 7-208(A) defines a “legal document preparer” as “an individual or business entity certified pursuant to [ACJA § 7-208] to prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public who is engaging in self representation in any legal matter . . . ”\textsuperscript{46} LDPs spoke to the task force and testified before a workgroup relating their work experiences and sharing suggestions for improvement in the LDP program. In addition, members of the task force with experience in the LDP program shared their observations and suggestions.

After review, the task force makes the following recommendations:

A. Amend ACJA § 7-208 to allow LDPs to speak in court when addressed by a judge.

The task force learned that some judges will directly address an LDP in court, knowing that the LDP will be assisting the litigant in completing the necessary legal documents required by the court. LDPs of course want to be responsive to a judge, but they are also mindful of potential disciplinary action under current rules that prohibit an LDP from assisting consumers by speaking in court unless “ordered” by the court to do so. The task force recommends a single word change to ACJA § 7-208(J)(5)(b) to clarify that LDPs may assist a consumer in court when “authorized” (as opposed to “ordered”) by the court. This proposed amendment does not give an LDP the right to attend court on behalf of a client or to advocate for a client. But, allowing an LDP to interact with a judge who purposefully opens a dialogue with the LDP in the interests of justice should be permitted. The proposed amendment is as follows:

\begin{itemize}
\item \textsuperscript{45} ACJA § 7-208.
\item \textsuperscript{46} ACJA § 7-208(A).
\end{itemize}
A legal document preparer shall not attend court with a consumer for the purpose of assisting the consumer in the court proceeding, unless otherwise ordered authorized by the court.\textsuperscript{47}

B. Amend ACJA § 7-208 to further define permissible and prohibited activities of LDPs.

Since 2003, LDPs have assisted self-represented litigants with the completion of legal forms and documents. However, there is some confusion as to the scope of documents LDPs can complete. The task force recognized that LDPs sometimes need to conduct basic legal research to do their jobs competently, such as prepare up-to-date documents that comply with new statutes or court rules. However, LDPs cannot give legal advice. The line between conducting legal research to assist a self-represented litigant in the form of completing a legal document and conducting research for purposes of giving legal advice can be blurred. A perceived lack of clarity in the current rules governing LDPs has led to some confusion, with some LDPs hesitant to conduct any legal research and other LDPs going so far as to draft substantive motions and briefs based on their legal research.

The task force recommends the ACJA § 7-208 be amended to provide clarity. First, § 7-208 should clarify that an LDP may conduct legal research so far as needed to understand general legal principles required to assist a client identify and complete a competent legal form or document. Second, the rule should also clarify that an LDP cannot perform legal research for providing legal options or legal advice to a client. LDP’s are limited to completing forms and documents that conform to instructions and decisions communicated by clients. Similarly, an LDP cannot perform legal research for purposes of advocating a legal theory on behalf of a client. Specifically, LDPs cannot engage in legal analysis, i.e., conducting legal research and then

\textsuperscript{47} ACJA § 7-208(J)(5)(b).
applying that research to the facts of the client’s case to advocate for an outcome. This means LDPs cannot draft substantive legal motions,\footnote{There was some debate within the task force regarding what constitutes a substantive legal motion. As stated below, the task force recommends that the Certified Legal Document Preparers Board and the Certification and Licensing Division develop a definition accompanied by a comment with examples for clarity.} supporting memoranda, or appellate briefs to be filed in any court. These types of legal activities are beyond the certification and the limited scope of practice allowed to LDPs. However, LDPs can produce motions in family court cases using the “motions form.” The task force envisions that the recommended LLLP program might well file substantive motions and advocate on behalf of clients within the scope of the LLLPs particular certification(s).

The task force urges the Supreme Court to direct the Certified Legal Document Preparers Board and the Certification and Licensing Division to work together to draft a petition to amend ACJA § 7-208 in accordance with this recommendation. The task force also recommends that the amendment reference specific examples of court filings that LDPs can and cannot prepare.

C. The Arizona Supreme Court should pursue a campaign of educating the bench and members of the bar on what a legal document preparer is, what they can do, and what they are prohibited from doing.

The task force recommends that the Supreme Court produce information sheets (referred to as Legal Info Sheets) that can be available in paper and electronically for self-help centers in courts, and the court websites, AZCourtHelp.org, and Azcourts.gov, about LPD services. Presentations should be delivered at the annual judicial conference to educate the bench about LDPs. Moreover, the State Bar should educate its membership about LDPs through presentations at the annual bar convention, articles in e-news and the Arizona Attorney Magazine or other appropriate forums and publications.
D. Recommend ACJA § 7-208 be amended to remove the restrictions prohibiting legal document preparers from assisting clients who are represented by counsel.

The task force has recommended elsewhere in this report that ER 5.4 be eliminated, removing the barrier for attorneys to partner with nonlawyers, such as LDPs.\textsuperscript{49} Moreover, the task force has recommended elsewhere in this report that the Supreme Court take steps to expand the utilization of limited scope representation. Anecdotally, limited scope representation occurs most often in family law matters, an area in which LDPs often assist clients too. An LDP might well assist in drafting most of the documents required for a divorce, but a lawyer may be needed to advise on discrete legal questions.

This recommendation would allow otherwise self-represented litigants to benefit from the services of both an LDP and an attorney. Amendment to § 7-208 as recommended is not intended to create a relationship between an LDP and attorney akin to that of a paralegal working under the supervision of an attorney. Rather, the amendment will allow both legal services providers to work with a client simultaneously (with transparency and disclosure) where the client continues to direct the work of the LDP consistent with existing rules.

E. Recommend that there be increased access to training, especially online, for LDPs, particularly for LDPs in rural areas.

Many rural communities rely on LDPs due to the small number of attorneys in their area as compared with the number of low-income residents in those communities. The task force recommends that the Supreme Court direct increased access to training and continuing education courses for LDPs concerning core skills and the LDP code of conduct. The task force further recommends that these training and education materials be developed in a way that would allow LDPs to participate online.

\textsuperscript{49} See Recommendation 1 herein.
F. Amend the ACJA and any other rules governing the investigation of and seeking of legal sanctions for engaging in unauthorized practice of law when the actions in question involve a person acting in a manner that a legal document preparer would act if certified.

The task force learned through the course of its work that persons have wrongly held themselves out as certified LDPs to the detriment of self-represented litigants. It is difficult to pursue these persons for engaging in the unauthorized practice of law (“UPL”) in a swift and consistent manner. Typically, a superior court judge orders the persons to cease the UPL on threat of sanctions. The task force recommends that UPL matters be brought before the Presiding Disciplinary Judge (PDJ) rather than a superior court judge. This recommendation is supported by several considerations.

First, the sections of the ACJA governing LDPs and LDP sanctions already provides authority for cease and desist orders against persons not certified but otherwise acting in the manner of a certified LDP. The current process brings UPL claims before superior court judges who may not be intimately familiar with the certified LDP program, its governing regulations, or the risks to consumers from uncertified persons pretending to be LDPs. Conversely the PDJ’s function centers on regulatory matters, specifically enforcement of ethical rules and regulations surrounding the practice of law by attorneys and the limited practice afforded to LDPs. The PDJ already presides over LDP Board disciplinary sanctions and is therefore familiar with ACJA 7-208 and Arizona Rule of Supreme Court, Rule 31. It would be consistent with Arizona’s existing process regulating the practice of law to have the PDJ preside over UPL matters related to persons who pretend to be, but are not, certified LDPs. The task force also recommends that the Supreme Court identify any rule or statutory changes necessary for assessment of a civil fine against those persons found to be engaging in the kind of UPL discussed here.

50 ACJA § 7-201(E)(6).
The task force acknowledges that there are inherent difficulties in enforcing the limited sanctions available to address UPL cases. But, having these matters go through the PDJ would result in consistent application of the rules, sharing of these decisions on the PDJ’s website and further increasing the confidence of the bench and bar in the LDP program.

**Recommendation 10: Advance and encourage local courts to establish positions or programs where nonlawyers are located within the court to provide direct person-to-person legal information about court processes to self-represented litigants.**

Arizona courts have initiated programs to make information about legal processes available to self-represented litigants. Some programs reach self-represented litigants statewide, such as self-help resources like legal information sheets and legal information videos available on AZCourts.gov and AZCourtHelp.org. Few Arizona courts, however, offer programs that provide direct “person to person” assistance to self-represented litigants. Two counties offer such services in Arizona, each different from the other, but both developed based on local resources and other practical considerations. For example, the Superior Court of Santa Cruz County employs a court coordinator who meets with self-represented litigants by appointment to assist them in identifying proper forms and giving them legal information about court processes. The court coordinator discloses to all litigants that she cannot give legal advice, that she may meet with an opposing litigant, and that litigant information is confidential. Conversely, the Maricopa County Superior Court Providing Access to Court Services (“PACS”)/AmeriCorps navigator program uses undergraduate students serving as AmeriCorps Navigators alongside staff in the Court’s Law Library Resource Center (“LLRC”). Self-represented litigants can go to the LLRC to research law, obtain forms and receive assistance in completing them, file documents in the LRRC (versus the clerk’s office), and get assistance with finding a courtroom or other court location. The LLRC also partners with the Arizona State University, Sandra Day O’Connor Legal Center to provide court customers with 15 minutes of free on-site legal advice from volunteer attorneys two days per
week. This program has an office in the Superior Court of Coconino County as well. The remaining Arizona courts do not have programs where a self-represented litigant can get direct person-to-person assistance.

Many Arizona residents live in rural communities, where significant distances separate home and the nearest courthouse. More importantly, rural residents have fewer opportunities to confer with lawyers or LDPs than urban and suburban residents.\textsuperscript{51} Arizona’s rural areas, like rural areas across the nation, are experiencing population declines and aging attorney populations.\textsuperscript{52} Therefore, the attorney population in rural areas is diminishing while the average age of lawyers in rural areas is increasing, meaning rural residents are increasingly more likely to be self-represented.\textsuperscript{53} In addition, rural courts are closing, increasing the justice gap in rural communities.\textsuperscript{54}

Urban and suburban areas face their own challenges meeting the needs of self-represented litigants. Burgeoning dockets can be slowed as judges attempt to accommodate the lack of legal knowledge possessed by self-represented litigants.


\textsuperscript{52} \textit{Id.} at 2.

\textsuperscript{53} \textit{Id.} at 3.

\textsuperscript{54} Example, in 2018 the Santa Cruz County Board of Supervisors voted to close the court in Sonoita, forcing residents to travel another 30 miles or more, no small distance to rural residents, to Nogales for court services.
The task force’s review of various court coordinator and court navigator programs here and elsewhere\textsuperscript{55} demonstrates that well-trained and appropriately supervised nonlawyers can perform a wide array of tasks to help self-represented litigants understand and manage their cases.

Understanding the need for each jurisdiction to identify and adopt a program that is sustainable, the task force recommends that the Supreme Court pursue means to advance establishment of nonlawyer staff who are located within the court and who provide direct person-to-person court and civil process navigation assistance to self-represented litigants in local courts.

\textbf{III. Conclusion}

The task force undertook the Supreme Court’s assigned tasks with great enthusiasm and worked as diligently as possible within the limited time allotted to make significant recommendations to “move the ball forward” in closing the civil justice gap. Some in the bar and in the public may have grave concerns about some recommendations. Skepticism is healthy and welcomed in debating the merits of our recommendations. When all is said and done, we are hopeful that our system of justice in Arizona is remolded to accommodate the needs of all Arizonans needing legal assistance without sacrificing the high ethical and performance standards necessary to protect the public.

\footnote{\textit{See} report from the Justice Lab at Georgetown Law Center, titled \textbf{Nonlawyer Navigators in State Courts: An Emerging Consensus}.}
OPPOSITION STATEMENT

Hon. Peter B. Swann
Chief Judge, Arizona Court of Appeals, Division I

I wholeheartedly embrace the basic mission of the Task Force to make access to legal services more affordable to all. And I concur with recommendation numbers 2-5, 7, 8, and 10 in its report. I write separately, however, because I view recommendation number 1 as posing a serious threat to the long-term health of the justice system, and I view recommendations number 6 and 9 as ineffective proposals that create more risk of public harm than opportunity for good.

The Report begins with a discussion of a problem whose existence cannot be disputed: legal services are too expensive, and most citizens are priced out of the ability to secure meaningful justice through the courts. The Report does not, however, examine the barriers to justice erected by the court system itself: understaffing, which contributes to delay and cost, and bloated, one-size-fits-all procedural rules that are designed for the most complex cases. The recommendations then take an odd turn: rather than examining the reasons that the system is so difficult and expensive to navigate, the Task Force’s first recommendation is to cast aside ethical rules in an effort to make the practice of law more profitable. Such a proposal would make Arizona unique in the nation, and a leader in the race to the bottom of legal ethics.

I was honored to serve on the Civil Justice Reform Committee and the Restyling Task Forces for the Civil and Family Rules. In my opinion, the rules that came from those efforts are among the most cogent sets of procedural rules in effect in any jurisdiction. But the existing rules

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56 The task force discussed many of Judge Swann’s concerns (some are newly raised in his opposition statement) and ultimately rejected them. The task force modestly supported having court-employed navigators but lacked sufficient time to formulate a recommendation. (See Recommendation 10.) Finally, because the minority position was received after the last task force meeting, the task force was unable to discuss it and address specific points.
should ensure the effective litigation of all cases, and in this regard they fail. Though the current rules do an excellent job of implementing the “Cadillac” system of trial by jury and cutting-edge discovery techniques, they are completely ineffective at offering a simple path to dispute resolution for self-represented litigants, and they offer no streamlined procedures for small cases.\textsuperscript{57} The complexity of the system – indeed the very need for legal services in many cases – is a problem of our own making. I respectfully submit that the Task Force should have directed its attention to \textit{systemic} reforms, and not to finding ways to direct even more resources to an already-too-resource-hungry system. If the court system is too complex for the average citizen, then we must create a simpler and more efficient system – not new industries that will continue to consume the public’s money.

Bad legal advice is never a bargain. And nothing in the Report suggests that allowing nonlawyers to own law firms or otherwise practice law will increase the \textit{quality} of legal services. Yet the recommendations from which I dissent here are designed to enhance the role of nonlawyers in the delivery of legal services at every level. The argument seems to be that “something is better than nothing,” and because traditional legal representation is often unaffordable, a corps of new service providers is the answer. This argument ignores the underlying reality that our system is ill-designed to assist the very people it tries to help.

\textsuperscript{57} For reasons addressed at length by the Civil Justice Reform Committee, Arizona’s system of compulsory arbitration has proven ineffective at ensuring access to justice. The Task Force nonetheless declined to devote time to alternative procedures that would better enable self-represented litigants to handle their own matters without the cost of a lawyer, LDP or LLLP.
Recommendation 1:

Recommendation number one is to eliminate the ethical rules prohibiting nonlawyer ownership of law practices. To be clear, this recommendation would allow anyone, including disbarred lawyers, large corporations, and venture capitalists to have full equity stakes in law firms while escaping any duties to the clients. No other state has adopted such a proposal.\(^5\) And while I take pride in Arizona’s spirit of innovation, this proposal is neither innovative nor responsible. The proposal would surely open vistas of new sources of wealth for lawyers, but it would not benefit the public.

The Task Force’s discussions of this proposal often questioned why the current rules against nonlawyer equity, which have existed in every state for at least decades, exist at all. The Report proclaims “Ethical rules have been called out as contributing to the justice gap as demonstrated by [the Henderson Report].” Indeed, the Report relies exclusively on the Henderson Report for this proposition. The fact that a professor has “called out” ethical rules is, to my mind, no more persuasive than the fact that a substantial part of the population has “called out” lawyers as greedy crooks. Both beliefs are no doubt sincere – I submit that neither is correct.

There is no empirical proof that ethical rules have created the problems with the delivery of legal services. I find this perspective troubling, and therefore highlight a few of the reasons for the existing rule.

The relationship between attorney and client is the most sacred of fiduciary relationships. The duties of loyalty and confidentiality that are present in every representation are foundational to a functioning justice system. Proponents of the recommendation will point out that they are

\(^5\) Washington, D.C. and Utah have made modest efforts at exploring alternate business structures, but the Task Force recommendation takes an absolutist approach, and expressly rejects the approaches of these jurisdictions.
proposing no changes to the rules governing loyalty and confidentiality. But this is at most theoretically half-correct. As a matter of law, practice, and human nature, the fiduciary duties owed to partners and other investors are quite real. And the interest of an investor may well be in conflict with that of a client.

Investors owe no duty of loyalty to the clients of the lawyers in whom they invest. The lawyers in such relationships would retain the full duty of undivided loyalty to the client, yet assume fiduciary duties to conduct the representations to maximize profit for the nonlawyer partner. It does not take great imagination to understand that undivided loyalty would be a practical impossibility in such a relationship.

Because the recommendation does not include a proposal for entity regulation (opting instead to leave the question for future study), a nonlawyer investor with interests directly adverse to the client would generally not impute that conflict to the lawyer. Under the proposed revisions to ER1.10, nonlawyer conflicts would be imputed only in the rare circumstance when the nonlawyer owns the opposing party. Lawyers would then be free to represent clients despite conflicts of interest that would rightly disqualify a law firm operating under the current rules. Though it might be comforting to suppose that no lawyer would take advantage of such a situation, it is not realistic.

Much of the need for legal services exists in Arizona’s smaller communities. The recommendation contains no limits on the types of entities that could be formed, or on their size. Under the proposal, an entity could effectively buy up a majority of the practices in these communities, consuming brick-and-mortar law firms and leaving residents of those communities with no real choice but to be represented by a lawyer beholden to the entity. Under the proposal, both sides of a dispute could even be represented by lawyers beholden to the same entity.
The risks of such conflicts are not theoretical. Under the current rules, all individuals with an ownership stake in a law firm must be lawyers. All such individuals owe the same duty of loyalty to the client. The proposal would shatter that unified duty, and require that clients entrust their rights, their lives, and their secrets to a lawyer who has an affirmative duty (not merely a desire) to maximize profit – even at the expense of the client.

A glimpse of this phenomenon can be seen in the use of captive law firms by insurance companies. Insurance defense counsel already experience an evolved form of control over representation through aggressive cost restraints. And while few insurance defense counsel would candidly deny those restrictions sometimes interfere with their ability to provide the best service to their clients, they are nonetheless able to serve ethically when there is significant alignment of interests between the insurer and the insured. In these cases, the insurer bears the financial risk of any enforced lack of diligence. Imagine, however, that there was no alignment of interests between the insurer and insured, and the insurer did not bear the risk of shoddy legal work. What incentive would the insurer then have except to drive quality down?

The latter, nearly unimaginable, scenario is exactly what the recommendation entails. Any entity could substitute itself for the insurer in the above example, control local markets, drive costs (and quality) down, and control fees. But apart from the rare legal malpractice judgment, the nonlawyer would bear no practical risk if the results of its business practices were an increase in unjust or unfavorable results. And the risk of a malpractice judgment could neatly be reduced by requiring clients to sign retainer agreements with comprehensive arbitration clauses.

I fail to see how the public would be benefitted by a system that allows law firm owners to run the business aspect of the practice without regard to the interests of clients or serious conflicts,
and without meaningful economic risk or ethical regulation. The goal of the Supreme Court should be to promote access to justice, not merely access to for-profit services.

The Court should consider the harm that will befall the public perception of a justice system that strips away ethical constraints on lawyers in favor of corporate profits. Public confidence in lawyers is already low. Yet public confidence in the courts remains high, and that confidence is the basis of the legitimacy of the justice system itself. If the Arizona Supreme Court is perceived as placing a thumb on the scale in favor of lawyers and investors, it is difficult to see how that public confidence will be enhanced. “Trickle down economics” might be the subject of fair debate, but “trickle down justice” is not. There is simply no likelihood that nonlawyers will enhance the quality of justice in Arizona, and I urge the Court not to place Arizona on the track to be the first jurisdiction to be seduced by such an argument.

Recommendation 6:

Arizona ranks 51st in lawyers per capita in the United States, including the District of Columbia and Puerto Rico. And with so few lawyers, Arizona is still home to one of the largest trial courts in the nation. This is important, because it undercuts the relevance of the national economic data underlying the speculations advanced in the “watershed” Henderson paper on which the Report places such heavy reliance. Because the relative supply and demand for legal services in Arizona is far out of line with much of the country, the relevance of Professor Henderson’s economic models is questionable. But if one thing is clear, it is that Arizonans are not clamoring for more lawyers. Nor is there a public thirst for practitioners who never attended law school and charge a “mere” $100 per hour. What the public rightfully wants is a system of

justice that is itself more scalable and responsive to its diverse needs – a system it can navigate for free.

A theme in the Task Force deliberations was a sense that because services like LegalZoom exist, the Court should embrace them and create a new industry of nonlawyers to offer similar services. By the same reasoning, the existence of WebMD should prompt the state to allow anyone to take a few courses, pass a test, and prescribe medication. Both arguments are fallacious, and any expansion of legal services provided by nonlawyers should instead be justified by a firm conviction that the services will benefit the public without significant risk. Recommendation number 6 does not satisfy that test.

Indeed, experienced practitioners understand that services such as LegalZoom actually create massive risk for clients. While basic forms can be useful tools, it is dangerous in the extreme to assume that they constitute adequate legal services. Rarely are an individual’s legal needs so “standard” that a simple form will ensure the efficient or effective protection of legal rights. And the use of such devices without adequate advice concerning the implications of various courses of action can transform a simple problem into ruinous litigation. I fail to grasp how a corps of individuals with minimal legal training and experience can expect to protect their clients’ interests.

The Task Force’s response to my question, of course, is that many legal problems are fairly simple and do not require the full resources of a lawyer. To be sure, services are often effectively rendered today by a paralegal operating under the supervision of a lawyer. But that supervision is critical: in our complex justice system, every move entails great risk of unintended consequences and it is naive to assume that a nonlawyer will be effective in providing the advice needed to guard against such risks. A simple problem poorly managed can become a complex problem, and the Task Force’s tacit assumption that “simple” matters can safely be left to forms is simply wrong.
My objections to recommendation number 6 is not simply a kneejerk defense of a guild. I recognize that nonlawyers can and do serve critical roles in assuring access to justice. To that end, I regret that the Task Force did not include in its recommendations my proposal to create a system of court navigators who could provide meaningful information to litigants at the courthouse. I regret that it did not propose the creation of alternative procedural tracks for self-represented litigants in smaller disputes. And yet I agree with its support for targeted non-profit programs aimed at providing services in specific case types. Programs carefully developed by each of Arizona’s two law schools and the Arizona Bar Foundation reflect the type of careful planning and targeted services that are likely to provide services to those in crisis who could not otherwise afford them. By contrast, the sweeping recommendations of the Task Force to create a new class of practitioner, the LLLP, have been the product of a few days of discussion, and the details are left to a future steering committee.

By acknowledging that a steering committee would be needed to do the real work of defining the LLLP tier, the Task Force highlights the extreme difficulty of turning a “new tier” into a successful program. The Task Force worked for nine months, yet its recommendation provides only the most skeletal description of the proposed LLLP program. Put simply, the concept is not fully baked. In view of the large number of issues (both known and unknown) that remain unaddressed, I suggest that the Court either reject the recommendation outright or request further detailed study before deciding to create such a tier. It would be unwise to decide to create the LLLP program until its precise contours can be described and debated.
Recommendation 9:

I agree with most of the components of Recommendation number 9. I disagree, however, with subpart (a), which would authorize LDPs to speak in court. Though the Task Force acknowledges that LDPs are engaged in the practice of law (a prerequisite to the Court’s regulation of LDPs), it speaks with two inconsistent voices. On the one hand, it seeks to expand the role of LDPs by letting them address a court. On the other hand, it sets LDPs up for failure by prescribing unworkable limitations on their ability to do legal research. I find both proposals untenable.

Legal research is a First Amendment right. Any person is free to conduct legal research, and I cannot see how the Court can lawfully prohibit such research. But even if a prohibition were constitutionally possible, where is the public good in such a proposal? The Court has already created the LDP tier of practitioners, and any notion that they do not provide legal advice is folly. Legal advice is inherent in any aspect of the practice of law, and a LDP cannot properly fill out a form or prepare an original document without creating legal consequences.

It is essential, if we are to have such a tier in Arizona, that LDPs be empowered to provide the best service possible to clients. An uninformed LDP is an ineffective or even dangerous LDP, and I submit that LDPs should face no restrictions on research activities. If we cannot trust LDPs to conduct legal research, then we should not allow them to practice law in any form. But I have no reason to believe that LDPs would not be able to conduct legal research appropriately as long as the services they offer do not exceed the scope authorized by the code. I would therefore delete the restriction.
APPENDIX

APPENDIX 1: Proposed Amended ERs (Clean and Redline)\textsuperscript{60}

ER 1.0 Terminology (Clean)
(a) – (b) No Change.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in any affiliation, or any entity that provides legal services for which it employs lawyers. Whether two or more lawyers constitute a firm can depend on the specific facts.

(d) – (f) No Change.

(g) – (i) [Formerly (h) – (j)] No Change.

(j) “Screened” denotes the isolation of a lawyer or nonlawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or nonlawyer is obligated to protect under these Rules or other law.

\begin{itemize}
\item \textbf{(1)} Reasonably adequate procedures include:
\begin{itemize}
\item (i) Written notice to all affected firm personnel that a screen is in place and the screened lawyer or nonlawyer must avoid any communication with other firm personnel about the screened matter;
\item (ii) Adoption of mechanisms to deny access by the screened lawyer or nonlawyer to firm files or other information, including information in electronic form, relating to the screened matter;
\item (iii) Acknowledgment by the screened lawyer or nonlawyer of the obligation not to communicate with any other firm personnel with respect to the matter and to avoid any contact with any firm files or other information, including information in electronic form, relating to the matter;
\item (iv) Periodic reminders of the screen to all affected firm personnel.
\item (v) Additional screening measures that are appropriate for the particular matter will depend on the circumstances.
\end{itemize}
\end{itemize}

\textsuperscript{60} This Appendix presents all of the ERs covered by Recommendations 1 and 2. A clean version of each ER is followed immediately by a redline version of that ER.
(2) Screening measures must be implemented as soon as practical after a lawyer, nonlawyer or firm knows or reasonably should know that there is a need for screening.

(k) – (m) [Formerly (l) – (n)] No Change.

(n) “Business transaction,” when used in reference to conflicts of interests:
   (1) includes but is not limited to
      (i) The sale of goods or services related to the practice of law to existing clients of a firm’s legal practice;

      (ii) A lawyer referring a client to nonlegal services performed by others within a firm or a separate entity in which the lawyer or the lawyer’s firm has a financial interest;

      (iii) Transactions between a lawyer or a firm and a client in which a lawyer or firm accepts nonmonetary property or an interest in the client's business as payment of all or part of a fee.

   (2) does not include
      (i) Ordinary fee arrangements between client and lawyer;

      (ii) Standard commercial transactions between a lawyer and a client for products or services that the client generally markets to others and over which the lawyer has no advantage with the client.

(o) “Personal interests,” when used in reference to conflicts of interests, include but are not limited to:
   (1) The probity of a lawyer’s own conduct, or the conduct of a nonlawyer in the firm, in a transaction;

   (2) Referring clients to a nonlawyer within a firm to provide nonlegal services; or

   (3) Referring clients to an enterprise in which a firm lawyer or nonlawyer has an undisclosed or disclosed financial interest.

(p) “Authorized to practice law in this jurisdiction” denotes a firm that employs lawyers or nonlawyers who provide legal services as authorized by Rule 31.

(q) “Nonlawyer” denotes a person not licensed as a lawyer in this jurisdiction or who is licensed in another jurisdiction but is not authorized by these rules to practice Arizona law.

(r) “Nonlawyer assistant” denotes a person, whether an employee or independent contractor, who is not licensed to practice law in this jurisdiction, including but not limited to secretaries, investigators, law student interns, and paraprofessionals. Law enforcement personnel are not considered the nonlawyer assistants of government lawyers.
Comment [2019 amendments]
Confirmed in Writing

Firm
[2] Similar questions can also arise with respect to lawyers in legal aid, legal services organizations, and other entities that include nonlawyers and provide other services in addition to legal services. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules. For instance, an organization that provides legal, accounting, and financial planning services to clients is a “firm” for purposes of these Rules for which a lawyer is responsible for assuring that reasonable measures are in place to safeguard client confidences and avoid conflicts of interest by all employees, officers, directors, owners, shareholders, and members of the firm regardless of whether or not the nonlawyers participate in providing legal services. See Rules 5.1, 5.2 and 5.3.

Fraud

ER 1.0 Terminology (Redline)
(a) – (b) No Change.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association; or lawyers employed in a legal services organization or the legal department of a corporation or other organization any affiliation, or any entity that provides legal services for which it employs lawyers. Whether government lawyers should be treated as a firm depends on the particular Rule involved and the specific facts of the situation. Two or more lawyers constitute a firm can depend on the specific facts.

(d) – (f) No Change.

(g) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h g) No Change other than renumbered.

(i h) No Change other than renumbered.

(j i) “No Change other than renumbered.

(k j) “Screened” denotes the isolation of a lawyer or nonlawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably
adequate under the circumstances to protect information that the isolated lawyer or
nonlawyer is obligated to protect under these Rules or other law.

(1) Reasonably adequate procedures include:

(i) Written notice to all affected firm personnel that a screen is in place and the
screened lawyer or nonlawyer must avoid any communication with other firm
personnel about the screened matter;
(ii) Adoption of mechanisms to deny access by the screened lawyer or
nonlawyer to firm files or other information, including information in electronic
form, relating to the screened matter;
(iii) Acknowledgment by the screened lawyer or nonlawyer of the obligation
not to communicate with any other firm personnel with respect to the matter
and to avoid any contact with any firm files or other information, including
information in electronic form, relating to the matter
(iv) Periodic reminders of the screen to all affected firm personnel.
(v) Additional screening measures that are appropriate for the particular matter
will depend on the circumstances.

(2) Screening measures must be implemented as soon as practical after a lawyer,
nonlawyer or firm knows or reasonably should know that there is a need for
screening.

(l k) – (n m) No Change, other than renumbered.

(n) “Business transaction,” when used in reference to conflicts of interests:

(1) includes but is not limited to
   (i) The sale of goods or services related to the practice of law to existing clients
       of a firm’s legal practice;
   (ii) A lawyer referring a client to nonlegal services performed by others within
        a firm or a separate entity in which the lawyer or the lawyer’s firm has a
        financial interest;
   (iii) Transactions between a lawyer or a firm and a client in which a lawyer or
        firm accepts nonmonetary property or an interest in the client's business as
        payment of all or part of a fee.

(2) does not include
   (i) Ordinary fee arrangements between client and lawyer;
   (ii) Standard commercial transactions between a lawyer and a client for
        products or services that the client generally markets to others and over which
        the lawyer has no advantage with the client.

(o) “Personal interests,” when used in reference to conflicts of interests, include but are not
limited to:
(1) The probity of a lawyer’s own conduct, or the conduct of a nonlawyer in the
firm, in a transaction;
(2) Referring clients to a nonlawyer within a firm to provide nonlegal services; or
(3) Referring clients to an enterprise in which a firm lawyer or nonlawyer has an
undisclosed or disclosed financial interest.

(p) “Authorized to practice law in this jurisdiction” denotes a firm that employs lawyers or
nonlawyers who provide legal services as authorized by Rule 31.

(q) “Nonlawyer” denotes a person not licensed as a lawyer in this jurisdiction or who is
licensed in another jurisdiction but is not authorized by these rules to practice Arizona law.

(r) “Nonlawyer assistant” denotes a person, whether an employee or independent
contractor, who is not licensed to practice law in this jurisdiction, including but not limited
to secretaries, investigators, law student interns, and paraprofessionals. Law enforcement
personnel are not considered the nonlawyer assistants of government lawyers.

Comment [2003 2019 amendment]
Confirmed Writing

Firm
[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the
specific facts. For example, two practitioners who share office space and occasionally
consult or assist each other ordinarily would not be regarded as constituting a
firm. However, if they present themselves to the public in a way that suggests that they
are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes
of the Rules. The terms of any formal agreement between associated lawyers are relevant
in determining whether they are a firm, as is the fact that they have mutual access to
information concerning the clients they serve. Furthermore, it is relevant in doubtful cases
to consider the underlying purpose of the Rule that is involved. A group of lawyers could
be regarded as a firm for purposes of the Rule that the same lawyer should not represent
opposing parties in litigation, while it might not be so regarded for purposes of the Rule
that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there
is ordinarily no question that the members of the department constitute a firm within the
meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to
the identity of the client. For example, it may not be clear whether the law department of
a corporation represents a subsidiary or an affiliated corporation, as well as the corporation
by which the members of the department are directly employed. A similar question can
arise concerning an unincorporated association and its local affiliates.

[4-2] Similar questions can also arise with respect to lawyers in legal aid, and legal services
organizations, and other entities that include nonlawyers and provide other services in
addition to legal services. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules. For instance, an organization that provides legal, accounting, and financial planning services to clients is a “firm” for purposes of these Rules for which a lawyer is responsible for assuring that reasonable measures are in place to safeguard client confidences and avoid conflicts of interest by all employees, officers, directors, owners, shareholders, and members of the firm regardless of whether or not the nonlawyers participate in providing legal services. See Rules 5.1, 5.2, and 5.3.

Fraud

Screened
[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under ERs 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.
ER 1.5 Fees (Clean)
(a) – (d) No Change.

(e) Two or more firms jointly working on a matter may divide a fee resulting from a single billing to a client if:

1. the basis for division of the fees and the firms among whom the fees are to be divided are disclosed in writing to the client;
2. the client consents to the division of fees, in a writing signed by the client;
3. the total fee is reasonable; and
4. the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

Comment [2019 amendment]
Reasonableness of Fee and Expenses

Basis or Rate of Fee

Terms of Payment

Prohibited Contingent Fees

Disclosure of Refund Rights for Certain prepaid Fees

Disputes Over Fees
[8] No Change, except renumbered from comment [10].

ER 1.5 Fees (Redline)
(a) – (d) No Change.

(e) A division of a fee between lawyers who are not in the same firm may be made only Two or more firms jointly working on a matter may divide a fee resulting from a single billing to a client if:

1. the division is in proportion to the services performed by each lawyer or each lawyer receiving any portion of the fee assumes joint responsibility for the
representation; the basis for division of the fees and the firms among whom the fees are to be divided are disclosed in writing to the client;

(2) the client agrees consents to the division of fees, in a writing signed by the client, to the participation of all the lawyers involved and the division of the fees and responsibilities between lawyers; and

(3) the total fee is reasonable; and

(4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

Comment [2003 2019 amendment]
Reasonableness of Fee and Expenses

Basis or Rate of Fee

Term of Payment

Prohibited Contingent Fees

Disclosure of Refund Rights for Certain Prepaid Fees

Division of Fee
[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee by agreement between the participating lawyers, if the division is in proportion to the services performed by each lawyer or all lawyer assume joint responsibility for the representation and the client agrees, in a writing signed by the client, to the arrangement. A lawyer should only refer a matter to a lawyer who the referring lawyer reasonably believes is competent to handle the matter and any division of responsibility among lawyers working jointly on a matter should be reasonable in light of the client's need that the entire representation be completely and diligently completed. See ERs 1.1, 1.3. If the referring lawyer knows that the lawyer to whom the matter was referred has engaged in a violation of these Rules, the referring lawyer should take appropriate steps to protect the interests of the client. Except as permitted by this Rule, referral fees are prohibited by ER 7.2(b).
[9] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Dispute Over Fees
[40 8] No Change, other than renumbered.
ER 1.6 Confidentiality (Clean)

(a) – (d) No change.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, even if the firm provides the client with only nonlegal services.

2003 Comment [amended 2019]

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client, including representation by the firm for only nonlegal services. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.


Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other, and nonlawyers in the firm, information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.


Disclosure Adverse to Client


Withdrawal


Acting Competently to Preserve Confidentiality

[22] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision including individuals who are providing nonlegal services through the firm. Lawyers shall establish reasonable safeguards within firms to assure that all information learned from or about a firm client shall remain confidential even if the only services provided to the client are nonlegal services. See ERs 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made
reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this ER or may give informed consent to forgo security measures that would otherwise be required by this ER. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these ERs. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see ER 5.3, Comments [3]–[4].

[23] No Change.

**Former Client**


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**ER 1.6 Confidentiality (Redline)**

(a) – (d) No change.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, even if the firm provides the client with only nonlegal services.

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**2003 Comment [amended 2009 2019]**

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client, including representation by the firm for only nonlegal services. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.


**Authorized Disclosure**

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other, and nonlawyers in the firm,
information relating to a client of the firm, unless the client has instructed that particular
information be confined to specified lawyers.


Disclosure Adverse to Client

Withdrawal

Acting Competently to Preserve Confidentiality
[22] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the
representation of a client against unauthorized access by third parties and against inadvertent or
unauthorized disclosure by the lawyer or other persons who are participating in the representation
of the client or who are subject to the lawyer's supervision including individuals who are providing
nonlegal services through the firm. Lawyers shall establish reasonable safeguards within firms to
assure that all information learned from or about a firm client shall remain confidential even if the
only services provided to the client are nonlegal services. See ERs 1.1, 5.1 and 5.3. The
unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to
the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made
reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the
reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the
information, the likelihood of disclosure if additional safeguards are not employed, the cost of
employing additional safeguards, the difficulty of implementing the safeguards, and the extent to
which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a
device or important piece of software excessively difficult to use). A client may require the lawyer
to implement special security measures not required by this ER or may give informed consent to
forgo security measures that would otherwise be required by this ER. Whether a lawyer may be
required to take additional steps to safeguard a client's information in order to comply with other
law, such as state and federal laws that govern data privacy or that impose notification
requirements upon the loss of, or unauthorized access to, electronic information, is beyond the
scope of these ERs. For a lawyer's duties when sharing information with nonlawyers outside the
lawyer's own firm, see ER 5.3, Comments [3]–[4].

[23] No Change.

Former Client
Personal Interest Conflicts

[10] The lawyer’s own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of the lawyer’s own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, a lawyer may not allow related business interest to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See ER 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also ER 1.10 (personal interest conflicts under ER 1.7 ordinarily are not imputed to other lawyers in a law firm).


[43 12] – [34 33] No change other than renumbered.
ER 1.8 Conflict of Interest: Current Clients: Specific Rules (Clean)

(a) – (l) No Change.

(m) A lawyer or firm must comply with ER 1.7 if the client expects the lawyer or firm to represent the client in a business transaction or when the lawyer's or firm’s financial interest otherwise poses a significant risk that the representation of the client will be materially limited by the lawyer's or firm’s financial interest in the transaction.

Comment [2019 amendment]

[1] The risk to a client is greatest when the client expects the lawyers to represent the client in the transaction itself or when the lawyer’s financial interest otherwise poses a significant risk that the lawyer’s representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer’s role requires that that lawyer must comply, not only with requirements of paragraph (a), but also with requirements of ER 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, including when lawyers refer clients for nonlegal services provided in the firm by either the lawyer or nonlawyer in the form or refer clients through a separate entity in which the lawyer has a financial interest, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer’s interests at the expense of the client. Moreover, the lawyer must obtain the client’s informed consent. In some cases, the lawyer’s interest may be such that ER 1.7 will preclude the lawyer from seeking the client’s consent to the transaction.


ER 1.8 Conflict of Interest: Current Clients: Specific Rules (Redline)

(a) – (l) No Change.

(m) A lawyer or firm must comply with ER 1.7 if the client expects the lawyer or firm to represent the client in a business transaction or when the lawyer's or firm’s financial interest otherwise poses a significant risk that the representation of the client will be materially limited by the lawyer's or firm’s financial interest in the transaction.

Comment [2003 2019 amendment]

Business Transactions Between Client and Lawyer

[1] A lawyer’s legal skill and training, together with the relationship of trust and confidence between lawyers and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the
lawyer’s legal practice. See ER 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by ER 1.5, although its requirements must be met when the lawyer accepts an interest in the client’s business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client’s informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer’s role. When necessary, the lawyer should discuss both the materials risks of the proposed transaction, including any risk presented by the lawyer’s involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See ER 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyers to represent the client in the transaction itself or when the lawyer’s financial interest otherwise poses a significant risk that the lawyer’s representation of the client will be materially limited by the lawyer’s financial interest in the transaction. Here the lawyer’s role requires that the lawyer must comply, not only with requirements of paragraph (a), but also with requirements of ER 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer’s dual role as both legal adviser and participant in the transaction, including when lawyers refer clients for nonlegal services provided in the firm by either the lawyer or nonlawyer in the firm or refer clients through a separate entity in which the lawyer has a financial interest, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer’s interests at the expense of the client. Moreover, the lawyer must obtain the client’s informed consent. In some cases, the lawyer’s interest may be such that ER 1.7 will preclude the lawyer from seeking the client’s consent to the transaction.

ER 1.10 Imputation of Conflicts of Interest: General Rule (Clean)
(a) While lawyers and nonlawyers are associated in a firm, none of them shall knowingly represent a client on legal or nonlegal matters when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or nonlawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers and nonlawyers in the firm.

(b) – (e) [No change.]

(f) If a lawyer or nonlawyer in a firm owns all or part of an opposing party, the personal disqualification of the lawyer or nonlawyer is imputed to all others in the firm.

(g) If a nonlawyer is personally disqualified, the nonlawyer may be screened and the nonlawyer’s personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm.

(h) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer may be screened, and the lawyer’s personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

Comment [2019 amendment]

ER 1.10 Imputation of Conflicts of Interest: General Rule (Redline)
(a) While lawyers and nonlawyers are associated in a firm, none of them shall knowingly represent a client on legal or nonlegal matters when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or nonlawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers and nonlawyers in the firm.

(b) – (e) No change.

(f) If a lawyer or nonlawyer in a firm owns all or part of an opposing party, the personal disqualification of the lawyer or nonlawyer is imputed to all others in the firm.

(g) If a nonlawyer is personally disqualified pursuant to paragraph (a), the nonlawyer may be screened and the nonlawyer’s personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm.

(h) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer
may be screened, and the lawyer’s personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

Comment [2003 and 2016 2019 amendment]
Definition of Firm
[1] For purposes of the Rules of Professional Conduct, the term ‘firm’ denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association, or lawyers employed in a legal services organization of the legal department of a corporation or other organization. See ER 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See ER 1.0 Comments [2]—[4].

Principles of Imputed Disqualification
[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by ERs 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, for example, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm are reasonably likely to be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm. A disqualification arising under ER 1.8(l) from a family or cohabitating relationship is persona and ordinarily is not imputed to other lawyers with whom the lawyers are associated.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that a person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and firm have a legal duty to protect. See ERs 1.0(k) and 5.3.

§ 1 – [14 7] No change, other than renumbered.
ER 1.17  Sale of Law Practice or Firm (Clean)
(a) A firm may sell or purchase a law practice, or a practice area of a firm, including good will, if the seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale, including the identity of the purchaser;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

(b) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(c) A sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

(d) Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.

(e) Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently; avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.

(f) If approval of the substitution of the purchasing lawyer for a selling firm is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale.

(g) This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

[Note: All Comments to existing ER 1.17 were deleted.]

ER 1.17  Sale of Law Practice or Firm (Redline)
(a) A lawyer or a law firm may sell or purchase a law practice, or an area of law practice a practice area of a firm, including good will, if the following conditions are satisfied seller gives written notice to each of the seller's clients regarding:
(a) The seller ceases to engage the private practice of law, or in the area of practice that has been sold, in the geographic area(s) in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale, including the identity of the purchaser;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

(b) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

(c) A sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

(d) Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.

(e) Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently; avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.

(f) If approval of the substitution of the purchasing lawyer for a selling firm is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale.

(g) This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Comment [2003 rule]
[All comments to ER 1.17 were deleted]
ER 5.1 Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors (Clean)

(a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these,

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

(b) A lawyer having supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the persons who is being supervised and the amount of work involved. Whether a lawyer has supervisory authority may vary given the circumstances.

(c) A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

ER 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers Lawyers Who Have Ownership Interests or are Managers or Supervisors (Redline)

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a firm, shall make reasonable efforts to ensure
that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these.

   1. Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

   2. Other measures may be required depending on the firm's structure and the nature of its practice.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person who is being supervised and the amount of work supervised. Whether a lawyer has supervisory authority may vary given the circumstances.

(c) A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

   1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

   2. the lawyer is a partner has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

      i. Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

      ii. A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

Comment [2003 amendment]
[Note: All Comments to existing ER 5.1 were deleted.]
ER 5.3. Responsibilities Regarding Nonlawyers (Clean)

(a) A lawyer who in a firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyers, including those who have equity interests in the firm, is compatible with the professional obligations of the lawyer. Reasonable measures include but are not limited to adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling or materially limiting the lawyer’s independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and.

(2) to ensure that nonlawyers comport themselves in accordance with the lawyer’s ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all firm client information.

(b) A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

(c) A lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has managerial authority in the firm and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
(d) When a firm includes nonlawyers who have an equity interest or managerial authority in the form, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

[Note: All Comments to existing ER 5.3 were deleted.]

**ER 5.3. Responsibilities Regarding Nonlawyers Assistants (Redline)**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s is compatible with the professional obligations of the lawyer.

(a b) a lawyer having direct supervisory authority over the nonlawyer A lawyer in a firm shall make reasonable efforts to ensure that the person’s conduct firm has in effect measures giving reasonable assurance that the conduct of nonlawyers, including those who have equity interests in the firm, is compatible with the professional obligations of the lawyer.

Reasonable measures include, but are not limited to, adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling or materially limiting the lawyer’s independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and.

(2) to ensure that nonlawyers comport themselves in accordance with the lawyer’s ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all firm client information.

(b) A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable
assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

(c) A lawyer shall be responsible for conduct of such a person a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) When a firm includes nonlawyers who have an equity interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

Comment [2003 amendment]
[Note: All Comments to existing ER 5.3 were deleted.]
ER 5.4 Professional Independence of a Lawyer (Clean)
[Note: The entirety of this rule was deleted.]

ER 5.4 Professional Independence of a Lawyer (Redline)
(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer’s firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer’s death, to the lawyer’s estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of ER 1.17, pay to the estate or to other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees or fees otherwise received and permissible under these rules with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment [2003 amendment]
[1] The provisions of this Rule express traditional limitations on the sharing of fees. These limitations are to protect the lawyer’s professional independence of judgment. Where someone other than the client pays the lawyer’s fee or salary, or recommends employment
of the lawyer, that arrangement does not modify the lawyer’s obligation to the client. As stated in paragraph (e), such arrangements should not interfere with the lawyer’s professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer’s professional judgment in rendering legal services to another. See also ER 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer’s independent professional judgment and the client gives informed consent).
ER 5.7 Responsibilities Regarding Law-Related Service

[Note: The entirety of this rule was deleted.]

ER 5.7. Responsibilities Regarding Law-Related Services

(a) A lawyer may provide, to clients and to others, law-related services, as defined in paragraph (b), either:

1. by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients; or
2. by a separate entity which is controlled by the lawyer individually or with others.

Where the law-related services are provided by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients, the lawyer shall be subject to the provisions of the Rules of Professional Conduct in the course of providing such services. In circumstances in which law-related services are provided by a separate entity controlled by the lawyer individually or with others, the lawyer shall not be subject to the Rules of Professional Conduct, in the course of providing such services, only if the lawyer takes reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not apply.

(b) The term law-related services denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment [2003 rule]

[1] When a lawyer performs law related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflict interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] ER 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that
apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., ER 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1).

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with ER 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a) of the Rule cannot be met. In such a case a
lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by ER 5.3, that of nonlawyer employees in the distinct entity which the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (ERs 1.7 through 1.11, especially ERs 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of ER 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with ERs 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also ER 8.4.

[12] Variations in language of this Rule from ABA Model Rule 5.7 as adopted in 2002 are not intended to imply a difference in substance.
ER 7.1. Communications Concerning a Lawyer's Services (Clean)
A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

(a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

[1] Misleading truthful statements are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer’s communication requires that person to take further action when, in fact, no action is required.

[2] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

**Firm Names**

[4] Firm names, letterhead and professional designations are communications concerning a lawyer’s services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm’s identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer’s name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name
or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in this Rule to communications concerning a lawyer’s services.

Certified Specialists
[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a United States Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a United States Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer’s recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Required Contact Information
[9] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.
ER 7.1 Communications Concerning a Lawyer's Services (Redline)
A lawyer shall not make or knowingly permit to be made on the lawyer's behalf a false or misleading communication about the lawyer or the lawyer's services.

(a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

Comment [2003 Rule 2019 amendment]
[1] This Rule governs all communications about a lawyer's services, including advertising permitted by ER 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful. A clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is false or misleading.

[2 1] Misleading Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3 2] Promising or guaranteeing a particular outcome or result is misleading. A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4 3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.
Firm Names

[4] Firm names, letterhead and professional designations are communications concerning a lawyer’s services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm’s identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer’s name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. Whether a communication about a lawyer or legal services is false or misleading is based upon the perception of a reasonable person.

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in this Rule to communications concerning a lawyer’s services. See comment to ER 5.5(b)(2) regarding advertisements and communications by non-members. A non-member lawyer’s failure to inform prospective clients that the lawyer is not licensed to practice law by the Supreme Court of Arizona or has limited his or her practice to federal or tribal legal matters may be misleading.

Certified Specialists

[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an
advanced degree of knowledge and experience in the specialty area greater than is suggested by
general licensure to practice law. Certifying organizations may be expected to apply standards of
experience, knowledge and proficiency to ensure that a lawyer’s recognition as a specialist is
meaningful and reliable. To ensure that consumers can obtain access to useful information about
an organization granting certification, the name of the certifying organization must be included in
any communication regarding the certification.

**Required Contact Information**

[9] This Rule requires that any communication about a lawyer or law firm’s services include the
name of, and contact information for, the lawyer or law firm. Contact information includes a
website address, a telephone number, an email address or a physical office location.
ER 7.2 [RESERVED] Advertising—Communications Concerning a Lawyer’s Services: Specific Rules (Redline)

(a) Subject to the requirements of ERs 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service, which may include, in addition to any membership fee, a fee calculated as a percentage of legal fees earned by the lawyer to whom the service or organization has referred a matter, provided that any such percentage fee shall not exceed ten percent, and shall be used only to help defray the reasonable operating expenses of the service or organization and to fund public service activities, including the delivery of pro bono legal services. The fees paid by a client referred by such service shall not exceed the total charges that the client would have paid had no such service been involved. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and

(3) pay for a law practice in accordance with ER 1.17.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

(d) Every advertisement (including advertisement by written solicitation) that contains information about the lawyer's fees shall be subject to the following requirements:

(1) advertisements and written solicitations indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall disclose (A) that the client will be liable for expenses regardless of outcome unless the repayment of such is contingent upon the outcome of the matter and (B) whether the percentage fee will be computed before expenses are deducted from the recovery;

(2) range of fees or hourly rates for services may be communicated provided that the client is informed in writing at the commencement of any client-lawyer relationship that the total fee within the range which will be charged or the total hours to be devoted will vary depending upon that particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;

(3) fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, may be communicated provided that the client is informed
in writing at the commencement of any client-lawyer relationship that the quoted fee will be available only to clients whose matters fall within the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged;

(4) a lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee, or range of fees, for at least ninety (90) days unless the advertisement specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication;

(e) Advertisements on the electronic media may contain the same information as permitted in advertisements in the print media. If a law firm advertises on electronic media and a person appears purporting to be a lawyer, such person shall in fact be a lawyer employed full-time at the advertising law firm. If a law firm advertises a particular legal service on electronic media, and a lawyer appears as the person purporting to render the service, the lawyer appearing shall be the lawyer who will actually perform the service advertised unless the advertisement discloses that the service may be performed by other lawyers in the firm.

(f) Communications required by paragraphs (c) and (d) shall be clear and conspicuous. To be “clear and conspicuous” a communication must be of such size, color, contrast, location, duration, cadence, and audibility that an ordinary person can readily notice, read, hear, and understand it.

Comment [2003 rule]
[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public’s need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This ER permits public dissemination of information concerning a lawyer’s name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer’s fees are determined, including prices for specific services and payment and credit arrangements; a lawyer’s foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against “undignified” advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons
of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see ER 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[4] Neither this Rule nor ER 7.3 prohibits communications authorized by law, such as notice to members of a class action litigation.

[5] Except as permitted under paragraphs (b)(1)–(b)(3), lawyers are not permitted to pay others for recommending the lawyer’s services or channeling professional work in a manner that violates ER 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities. Directory listings, group advertisements, and online referral services that list lawyers by practice area do not constitute impermissible “recommendations.”

[3] Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this ER, including the costs of print directory listings, online directory listings, newspaper ads, television and radio airtime, domain name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator is consistent with ERs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator’s communications are consistent with ER 7.1 (communications concerning a lawyer’s services). To comply with ER 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person’s legal problems when determining which lawyer should receive the referral. Giving or receiving a de minimis gift that is not a quid pro quo for referring a particular client is permissible. See also ER 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); ER 8.4 (duty to avoid violating the ERs through the actions of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not for profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. Published and electronic group advertising and directories are not lawyer referral services, but participation in such listings is governed by ERs 7.1 and 7.4. A lawyer referral service, on the other hand, is any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers or that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this ER only permits a lawyer to pay the usual charges of a not for profit or qualified lawyer referral service. A qualified lawyer referral service is one that
is approved by an appropriate regulatory authority, such as the State Bar of Arizona, as affording adequate protections for the public.

[7] The reasonable operating expenses of a legal service plan or lawyer referral service include payment of the actual expenses of operating, conducting, promoting and developing the service, including expenditures for capital purposes for the service, as determined on a reasonable accounting basis and with provision for reasonable reserves. Public service activities of a legal service plan or lawyer referral service include the following: (a) furnishing or providing funding for legal services to persons and entities financially unable to pay for all or part of such services; (b) developing and implementing programs to educate members of the public with respect to the law, the judicial system, the legal profession, or the need, manner of obtaining, and availability of legal services; and (c) creating and administering programs to improve the administration of justice or aid in relations between the Bar and the public.

[8] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See ER 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these ERs. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate ER 7.3.

[9] Paragraph (f) requires communications under paragraphs (c) and (d) to be clear and conspicuous. In addition to the requirements of paragraph (f), a statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner.
ER 7.3. Solicitation of Clients (Clean)

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or firm’s pecuniary gain, unless the contact is with a:
   (1) lawyer;
   (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or
   (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf even when not otherwise prohibited by paragraph (b), if:
   (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
   (2) the solicitation involves coercion, duress or harassment; or

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer seeking pecuniary gain solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of under influence, intimidation, and overreaching.
[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. Those forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm the person's judgment.

[4] The contents of advertisements and communications permitted under ER 7.2 can be permanently recorded so that they cannot be disputed. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of ER 7.1. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client or a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of ER 7.1, that involves coercion, duress or harassment within the meaning of ER 7.3(c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer.
[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

**ER 7.3 Solicitation of Clients (Clean)**

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(a b) A lawyer shall not solicit professional employment by live person-to-person in-person, live telephone or real-time electronic contact solicit professional employment from the person contacted or employ or compensate another to do so when a significant motive for the lawyer's doing so is the lawyer's or firm's pecuniary gain, unless the person contacted contact is with a:

1. is a lawyer; or
2. person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or
3. person who routinely uses for business purposes the type of legal services offered by the lawyer.

(b c) A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf from the person contacted by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (ab), if:

1. the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
2. the solicitation involves coercion, duress or harassment; or
3. the solicitation relates to a personal injury or wrongful death and is made within thirty (30) days of such occurrence.

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known or believed likely to be in need of legal services for a particular matter shall include the words "Advertising Material" in twice the font size of the body of the communication on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).
(1) At the time of dissemination of such written communication, a written copy shall be forwarded to the State Bar of Arizona at its Phoenix office.

(2) Written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery.

(3) If a contract for representation is mailed with the written communication, the contract shall be marked "sample" in red ink and shall contain the words "do not sign" on the client signature line.

(4) The lawyer initiating the communication shall bear the burden of proof regarding the truthfulness of all facts contained in the communication, and shall, upon request of the State Bar or the recipient of the communication, disclose how the identity and specific legal need of the potential recipient were discovered.

(d e) Notwithstanding the prohibitions in paragraph (a) this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in live person-to-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

2003 Comment [2009 2019 amendment]

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet electronic searches. See ER 8.4 (duty to avoid violating the ERs through the actions of another).

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. There is a potential for abuse overreaching exists when a lawyer seeking pecuniary gain solicits a person involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to be in need of legal services. This forms of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The potential for abuse inherent in direct in-person, live person-to-person contact telephone or real-time electronic solicitation justifies its prohibition, particularly since
lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. Those forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in live person-to-person, telephone or real-time electronic persuasion that may overwhelm the person's judgment.

[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under ER 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of ER 7.1. The contents of direct in live person-to-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices overreaching against a former client or a person with whom the lawyer has a close personal, or family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Consequently, the general prohibition in ER 7.3(a) and the requirements of ER 7.3(c) are not applicable in those situations. Also, paragraph (ab) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains false or misleading information which is false or misleading within the meaning of ER 7.1, which involves coercion, duress or harassment within the meaning of ER 7.3(b-c)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(b-c)(1) is prohibited. Moreover, if after sending a letter or other communication to a person as permitted by paragraph (c), the lawyer receives no response, any further effort to communicate with the person may violate the provisions of ER 7.3(b). Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.
[7] This ER Rule is does not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under ER 7.2.

[8] The requirement in ER 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Lawyers may comply with the requirement of paragraph (c)(1) by submitting (a) a copy of every written, recorded or electronic communication soliciting professional employment from a prospective client known or believed likely to be in need of legal services for a particular matter, or (b) a single copy of any identical communication published or sent to more than one person and a list of the names and mailing or e-mail addresses or fax numbers of the intended recipients and the dates identical solicitations were published or sent. Lawyers may comply with the requirement of paragraph (c)(1) by submitting the required communications and information to the State Bar on a monthly basis.

[10] The State Bar may dispose of the submissions received pursuant to paragraph (c)(1) after one year following receipt.

[11] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with ERs 7.1, 7.2 and 7.3(b). See ER 8.4(a).
ER 7.4 [RESERVED] (Clean)

ER 7.4. [RESERVED] — Communication of Fields of Practice (Redline)

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(1) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation;

(2) a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation; and (3) a lawyer certified by the Arizona Board of Legal Specialization or by a national entity that has standards for certification substantially the same as those established by the board may state the area or areas of specialization in which the lawyer is certified. Prior to stating that the lawyer is a specialist certified by a national entity, the entity must be recognized by the board as having standards for certification substantially the same as those established by the board. If the national entity has not been recognized by the board, it may make application for recognition by completing an application form provided by the board.

(b) Communications to the Arizona Board of Legal Specialization and its Advisory Commissions relating to an applicant's qualifications for specialization certification shall be absolutely privileged, and no civil action predicated thereon may be instituted or maintained against any evaluator, staff or witness who communicates with or before the Board or its Advisory Commissions. Members of the Board of Legal Specialization, its Advisory Commission, and others involved in the specialization certification process shall be immune from suit for any conduct in the course of their official duties.

Comment

[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" in a particular field is not permitted. These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.

ER 7.5 [RESERVED] (Clean)

ER-7.5. [RESERVED] Firm-Names and Letterheads (Redline)
(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates ER 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENT TO 2003 AND 2012 AMENDMENTS
[1] [2012 Amendment] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity, or by a trade name such as the “ABC Legal Clinic.” A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation that complies with ER 7.1.

[2] [2003 Amendment] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm.

[3] [2003 Amendment] “Of counsel” designation may be used to state or imply a relationship between lawyers only if the relationship is close, personal, continuous, and regular.
APPENDIX 2: Draft Administrative Order and Forms Re: Limited Scope Representation

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:  

LIMITED SCOPE REPRESENTATION (DELIVERY OF UNBUNDLED LEGAL SERVICES)  

Administrative Order No. 2019 - ________

Low-income individuals and increasing numbers of unrepresented litigants cannot afford the costs of full-service legal representation. Limited scope representation, or unbundled legal services, describes a legal service delivery method whereby an attorney assists a client with specific elements of the matter, as opposed to handling the case from beginning to end.

Although self-represented litigants may avail themselves of online court forms and self-help materials, without advice and counsel from an attorney, those litigants may come to court uninformed, unprepared, or simply overwhelmed. Others may be unable to afford the cost of legal representation for every aspect of their case. These situations impede access to justice. Limited scope representation provides unrepresented litigants an option for effective representation they may more easily afford.

Unbundling of legal services is authorized and does not violate the Arizona Rules of Professional Conduct as long as the attorney’s representation is reasonable under the circumstances. (Arizona Ethics Rule 1.2 governs limited scope representation).

Approved limited scope representation forms are commonly used in civil and family law matters, (Rule 5.3 of the Rules of Civil Procedure and Rule 9 of the Family Law Rules of Procedure). The delivery of Legal Services Task Force recommended that a general notice of limited scope representation and notice of completion of limited scope representation be developed for any area of law that may not already offer a form. See Appendix A to this Order for Notice of Limited Scope Representation and Notice of Completion of Limited Scope Representation.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,
IT IS ORDERED, that to the extent not inconsistent with the Rules of this Court, an attorney may enter a limited appearance when representing a client.

IT IS ORDERED, that in accordance with Rule 1.2 of the Arizona Rules of Professional Conduct, an attorney may enter a limited appearance in a court proceeding including, but not limited to, discovery, motions practice, or hearings.

IT IS ORDERED, that an attorney’s appearance may be limited by date, time period, activity, or subject matter, when specifically stated in a Notice of Limited Appearance filed and served prior to or simultaneous with the proceeding(s) for which the attorney appears.

IT IS ORDERED, that the attorney’s limited appearance terminates when that attorney files a Notice of Completion of Limited Scope Representation, which must be served on each of the parties, including the limited appearance attorney’s own client.

IT IS ORDERED, that (1) service on an attorney who has entered a limited appearance is required only for matters within the scope of the representation as stated in the notice; (2) any such service also must be made on the party; and (3) service on the attorney for matters outside the scope of the limited appearance does not extend the scope of the attorney’s representation.

IT IS ORDERED, that this Administrative Order shall take effect on the date of this Order.

Dated this _______ day of ______________________, 2019.

____________________________________
ROBERT BRUTINEL
Chief Justice
THE CLERK OF THE COURT will please note that I am entering an appearance limited to (select one and specify):

☐ date:

☐ time period:

☐ activity:

☐ subject matter:

My appearance will terminate upon my filing a Notice of Completion.

My client and I agree that my appearance is limited and does not extend beyond what is specified above without mutual and informed consent and unless a new Notice of Limited Scope Representation is filed.

Notices and documents concerning my limited scope representation must be served on me and my client. All notices and documents regarding matters outside the scope of my representation
must be served only on my client and any other counsel who has entered an appearance on my client’s behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief and that on the _________ day of ____________________, 20____, I served a copy of this Notice of Limited Scope Representation on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

____________________________________________________________________________________
Signature                                                                                      Street address
____________________________________________________________________________________
Print name and Bar number                                                                        City, state, zip code
____________________________________________________________________________________
Phone number                                                                                     Email address
____________________________________________________________________________________
Date
NOTICE OF COMPLETION OF LIMITED SCOPE REPRESENTATION

THE CLERK OF THE COURT will please note that as of the ____ day of _______________, 20___, I completed the (select one):

☐ date:

☐ time period:

☐ activity:

☐ subject matter:

specified in my Notice of Limited Scope Representation. The filing of this Notice of Completion terminates my appearance without necessity of leave of court. I informed my client that my appearance was temporary and will terminate upon the filing of this Notice of Completion.

Any subsequent notices or documents pertaining to this case must now be served on my client and any other counsel who has entered an appearance on my client’s behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge.
and belief and that on the ______ day of ____________________, 20____, I served a copy of this Notice of Completion of Limited Scope Representation on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

________________________    ___________________________
Signature                  Street address

________________________    ___________________________
Print name and Bar number    City, state, zip code

________________________    ___________________________
Phone number                Email address

________________________
Date
APPENDIX 3: Rule 38(d), Arizona Rules of Supreme Court

Proposed Rule 38(d), Arizona Rules of Supreme Court (Clean)

(d) Clinical Law Professors, Law Students, and Law Graduates

1. Purpose. This purpose of this rule is to provide law students and recent law school graduates with supervised instruction and training in the practice of law for a limited time, and to facilitate volunteer opportunities for those individuals in pro bono contexts.

2. Definitions.

A. “Law school” means a law school either provisionally or fully accredited by the American Bar Association.

B. “Certified limited practice student” is a law student of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice student.

C. “Certified limited practice graduate” is a law graduate of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice graduate.

D. “Clinical Law Professor” is a faculty member teaching a clinical law program at a law school in Arizona either provisionally or fully accredited by the American Bar Association.

E. “Dean” means the dean, the academic associate dean, or the dean’s designee of the accredited law school where the law student is enrolled or the law graduate was enrolled on graduation.

F. “Period of supervision” means the dates for which the supervising attorney has declared, on the application for certification or recertification, that he or she will be responsible for any work performed by the certified limited practice student or the certified limited practice graduate under his or her supervision.

G. “Supervising attorney” is an active member of the State Bar of Arizona in good standing who has practiced law or taught law in an accredited law school as a full-time occupation for at least two years, and agrees in writing to supervise the certified limited practice student or certified limited practice graduate pursuant to these rules, and is identified as the supervising attorney in the application for certification or recertification. The supervising attorney may designate a deputy, assistant, or other staff attorney to supervise the certified limited practice student or certified limited practice graduate when permitted by these rules.

H. “Volunteer legal services program” means a volunteer legal services program managed by an approved legal services organization in cooperation with an accredited law school. Approved legal service organizations are defined in paragraph (e)(2)(C) of this rule.


A. Limited Bar Membership. To the extent a professor, law student, or law graduate is engaged
in the practice of law under this rule, the professor, law student, or law graduate shall, for the limited purpose of performing professional services authorized by this rule, be deemed an active member of the state bar (but not required to pay fees). The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

B. Nonapplicability of Attorney Discipline Rules to Terms of the Certification. The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor, certified limited practice student, or certified limited practice graduate pursuant to these rules. Termination of certification shall be without prejudice to the privilege of the professor, law student, or law graduate to apply for admission to practice law if the professor, law student, or law graduate is in other respects qualified for such admission.

C. Effect of Certification on Application for Admission to Bar. The certification of a clinical law professor, law student, or law graduate shall not be considered as an advantage or a disadvantage to the professor, law student, or law graduate in an application for admission to the state bar.

D. Privileged Communications. The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by and among professors, supervising and designated attorneys, certified limited practice students, and certified limited practice graduates.


A. Activities of Clinical Law Professors. A clinical law professor who is certified pursuant to this rule may appear as a lawyer solely in connection with supervision of students in a clinical law program in a law school in Arizona. A clinical law professor may appear in any court or before any administrative tribunal in this state in the matters enumerated in paragraph (d)(5)(C) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. Requirements and Limitations for Clinical Law School Professors. To appear as a lawyer pursuant to these rules, the clinical law professor must:

i. be admitted by examination to the bar of any state or the District of Columbia;

ii. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered;

iii. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers; and
iv. submit evidence that the clinical law professor has successfully completed the course on Arizona law described in Rule 34(j).

C. Certification of the Clinical Law Professor. The certification shall be signed by the clinical law professor and the dean of the law school on the form prescribed by the clerk of the Court and shall be filed with the clerk and the state bar. The certification shall remain in effect until withdrawn.

D. Duty to Ensure Adequate Supervision and Guidance of Certified Limited Practice Student. The clinical law professor must ensure that certified limited practice students receive adequate supervision and guidance while participating in the law school’s clinical law program.

E. Termination of Certification.

i. The dean at any time, with or without cause or notice or hearing, may terminate a certification of a clinical law professor by filing a notice of the termination with the clerk of the Supreme Court. The clerk shall mail copies of the notice to the clinical law professor and the state bar.

ii. The Court at any time, with or without cause or notice or hearing, may terminate a certification of a clinical law professor by filing notice of the termination with the clerk of this Court. The clerk shall mail copies of the notice to the clinical law professor and the state bar.

5. Law Students

A. Law Student Eligibility for Limited Practice Certification. To be eligible to become a certified limited practice student, an applicant must

i. have successfully completed legal studies amounting to at least two semesters, or the equivalent academic hour credits if the law school or the student is on some basis other than a semester, at an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice student from the person on whose behalf the services are rendered; this requirement does not prevent a supervising lawyer, legal services organization, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law student, or prevent any such lawyer or agency from requesting compensation or remuneration for legal services as otherwise authorized;

iii. certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the law school where the student is enrolled as being in good
academic standing, of good character, and as having either successfully completed or being currently enrolled in and attending academic courses in civil procedure, criminal law, evidence, and professional responsibility.

B. Application to become a Certified Limited Practice Student or Extend the Certification Period

i. All applications to become a certified limited practice student or to extend the period of certification must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The clerk of the Court shall send a copy of all approved student limited practice certifications to the admissions department of the state bar.

ii. The application for certification or extension must be signed by the applicant, the dean, of the law school in which the applicant is enrolled, and the supervising attorney.

iii. The applicant must attest that he or she meets all of the requirements of this rule; will immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules; and has read and will abide by the Arizona Rules of Professional Conduct and these rules.

iv. The dean of the law school in which the applicant is enrolled must attest that the applicant meets the requirements of these rules, and, to the best of the dean’s knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the Clerk of the Court if the certified limited practice student no longer meets the requirements of these rules.

v. The supervising attorney must specify the period during which he or she will be responsible for supervising the applicant and attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

C. Permitted Activities and Requirements of a Certified Limited Practice Student; Presence of Supervising or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has provided written approval of that appearance. The written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge or presiding officer and the certified limited practice student must advise the court on the occasion of the student’s initial appearance in the case of the certification to appear as a law student pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice student in the following circumstances:
a. In any civil case in justice, municipal, and magistrate court, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

b. In any civil case in superior court or before any administrative tribunal.

c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

e. In any misdemeanor criminal defense case, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.

ii. Other Client Representation Activities. Under the supervision of the supervising attorney, but outside the supervisor’s presence, a certified limited practice student may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney or designated attorney;

b. prepare briefs, motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated attorney;

c. assist indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;

d. give legal advice and perform other appropriate legal services, but only with the consent of the supervising attorney or designated attorney.
iii. Other Non-Representation Activities. In connection with a volunteer legal services program and at the invitation or request of a court or tribunal, a certified limited practice student may appear as a law student volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the student’s supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice student has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

D. Use of the Title “Certified Limited Practice Student.”

i. A certified limited practice student may use the title “Certified Limited Practice Student” only in connection with activities performed pursuant to these rules.

ii. When a certified limited practice student’s name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the student is a certified limited practice student pursuant to these rules; state the name of the supervising attorney; be signed by the supervising attorney or designated attorney; and otherwise comply with these rules.

iii. A certified limited practice student shall not hold himself or herself out as an active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice student from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney must:

i. supervise and assume professional responsibility for any work performed by the certified limited practice student while under his or her supervision;

ii. assist and counsel the certified limited practice student in the activities authorized by these rules and review such activities with the certified limited practice student, all to the extent required for the proper training of the certified limited practice student and the protection of the client;

iii. read, approve, and sign any pleadings, briefs or other documents prepared by the certified
limited practice student before the filing thereof, and read and approve any document prepared by the certified limited practice student for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney shall still provide general supervision;

iv. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited practice student has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice student during the period of certification, the certified limited practice student must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice student. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

G. Duration and Termination of Certification. Certification of a certified limited practice student shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

i. The certified limited practice student requests termination of the certification in writing or notifies the clerk of the Court that he or she no longer meets the requirements of these rules. In such event the clerk shall send written notice to the student, the student’s supervising attorney, the dean, and the state bar.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision of the certified limited practice student will cease before the date specified in the notice of certification. In such event, the clerk shall send written notice to the student, the student’s supervising attorney, the dean, and the state bar. The dean may issue a modified certification reflecting the substitution of a new supervising attorney.

iii. The dean at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

iv. The Court at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice student or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule, or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student’s supervising attorney, the dean, and the state bar.

6. Law Graduates
A. Law Graduate Eligibility for Limited Practice Certificate. To be eligible to become a certified limited practice graduate, an applicant must:

i. have graduated from an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice graduate from the person on whose behalf the services are rendered; this requirement does not prevent a supervising lawyer, legal services organization, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law graduate, or prevent any such lawyer or agency from requesting compensation or remuneration for legal services as otherwise authorized;

iii. certify in writing that the law graduate has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the accredited law school where the law graduate was enrolled on graduation as having graduated in good academic standing and being of good character.

B. Application to Become a Certified Limited Practice Graduate

i. All applications to become a certified limited practice graduate must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The clerk of the Court shall send a copy of all approved graduate limited practice certifications to the admissions department of the state bar.

ii. The application for certification must be signed by the applicant, the dean of the law school where the applicant was enrolled on graduation, and the supervising attorney.

iii. The applicant must attest that he or she meets all of the requirements of this rule, will immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules, and has read and will abide by the Arizona Rules of Professional Conduct and these rules.

iv. The dean of the law school where the applicant was enrolled on graduation must attest that the applicant meets the requirements of these rules, and, to the best of the dean’s knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the clerk of the Court if the certified limited practice graduate no longer meets the requirements of these rules.

v. The supervising attorney must specify the period during which he or she will be responsible for and will supervise the applicant and attest that he or she has read and will abide by, the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.
C. Permitted Activities and Requirements of a Certified Limited Practice Graduate; Presence of Supervising Attorney or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice graduate may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has also provided written approval of that appearance. In each case, the written consent and approval must be filed in the case and be brought to the attention of the judge or the presiding officer. In addition, the certified limited practice graduate must advise the court at the law graduate’s first appearance in the case of the certification to appear as a law graduate pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice graduate in the following circumstances:

   a. In any civil case in justice, municipal, and magistrate court unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

   b. In any civil case in superior court or before any administrative tribunal;

   c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

   d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

   e. In any misdemeanor criminal defense case unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

   f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

   g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.

ii. Other Client Representation Activities. Under the general supervision of the supervising attorney or designated attorney, but outside his or her presence, a certified limited practice graduate may:

   a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice graduate is eligible to appear, but such pleadings or documents must be signed by the supervising attorney or designated attorney if filed in the superior court, Arizona Court of Appeals, Arizona Supreme Court, or with an administrative tribunal;
b. prepare briefs, motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated attorney;

c. assist indigent inmates of correctional institutions or other persons who request assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;

d. give legal advice and perform other appropriate legal services, but only after consultation with and consent of the supervising attorney or designated attorney.

iii. Other Non-Representation Activities. In connection with a volunteer legal services program and at the invitation and request of a court or tribunal, a certified limited practice graduate may appear as a law graduate volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the certified limited practice graduate’s supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice graduate has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

D. Use of the Title “Certified Limited Practice Graduate.”

i. A certified limited practice graduate may use the title “Certified Limited Practice Graduate” only in connection with activities performed pursuant to these rules.

ii. When a certified limited practice graduate’s name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the law graduate is a certified limited practice graduate pursuant to these rules, state the name of the supervising attorney, be signed by the supervising attorney or designated attorney if required by these rules, and otherwise comply with these rules.

iii. A certified limited practice graduate shall not hold himself or herself out as an active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice graduate from describing his or
her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney must:

i. supervise and assume professional responsibility for any work performed by the certified limited practice graduate while under his or her supervision;

ii. assist and counsel the certified limited practice graduate in the activities authorized by these rules and review such activities with the certified limited practice graduate, all to the extent required for the proper training of the certified limited practice graduate and the protection of the client;

iii. read and approve all pleadings, briefs, or other documents prepared by the certified limited practice graduate as required by these rules; sign any pleading, brief, or other document if required by these rules, and read and approve any document prepared by the certified limited practice graduate for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney must still provide general supervision;

iv. assume professional responsibility for all pleadings, briefs, or other documents filed in any court or with an administrative tribunal by the certified limited practice graduate under his or her supervision;

v. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited graduate has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice graduate during the period of certification, the certified limited practice graduate must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice graduate. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

G. Duration and Termination of Certification. Certification of a certified limited practice graduate shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

i. The certified limited practice graduate requests termination of the certification in writing or notifies the Clerk of the Court that he or she no longer meets the requirements of these rules. In such event, the clerk shall send written notice to the law graduate, the law graduate’s supervising attorney, the dean, and the state bar.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision
of the certified limited practice graduate will cease before the date specified in the certification. In such event, the clerk shall send written notice to the law graduate, the law graduate’s supervising attorney, the dean, and the state bar.

iii. The dean at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

iv. The Court at any time, with or without cause or notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice graduate or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the law graduate, the law graduate’s supervising attorney, the dean, and the state bar.

vi. The law graduate fails to take the first Arizona uniform bar examination, or the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

vii. The law graduate fails to pass the first Arizona uniform bar examination for which the law graduate is eligible or fails to obtain a score equal to or greater than the acceptable score established by the Committee on Examinations on the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

viii. Thirty days after the Court notifies the law graduate that he or she has been approved for admission to practice law and is eligible to take the oath of admission.

ix. The Committee on Character and Fitness does not recommend to the Court that the law graduate be admitted to practice law.

x. The law graduate is denied admission to practice law by the Court.

xi. The law graduate is admitted to practice law.

xii. Expiration of 12 months from the date of the law graduate’s graduation from law school unless, before expiration of the 12-month period and for good cause shown by the law graduate, the Court extends the 12-month period.
Rule 38, Arizona Rules of Supreme Court (Redline)
(a) – (c) No Change.
(d) Clinical Law Professors, and Law Students, and Law Graduates

1. Purpose. This rule is adopted to encourage law schools to provide clinical instruction of varying kinds. The purpose of this rule is to provide law students and recent law school graduates with supervised instruction and training in the practice of law for a limited time, and to facilitate volunteer opportunities for those individuals in pro bono contexts.

2. Definitions.

A. “Accredited law school” “Law school” means a law school either provisionally or fully approved and accredited by the American Bar Association.

B. “Certified limited practice student” is a law student or a graduate of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice student.

C. “Certified limited practice graduate” is a law graduate of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice graduate.

D. “Clinical Law Professor” is a faculty member teaching a clinical law program at a law school in Arizona either provisionally or fully accredited by the American Bar Association.

C. E. “Dean” means the dean, the academic associate dean, or the dean’s designee of the accredited law school where the law student is enrolled or the law graduate was enrolled on graduation.

D. “Designated attorney” is, exclusively in the case of government, any deputy, assistant or other staff attorney authorized and selected by a supervising attorney to supervise the certified limited practice student where permitted by these rules.

E. F. “Period of supervision” means the dates for which the supervising attorney has declared, on the application for certification or recertification, that he or she will be responsible for any work performed by the certified limited practice student or the certified limited practice graduate under his or her supervision.

F. “Personal presence” means the supervising attorney or designated attorney is in the physical presence of the certified limited practice student.

G. “Rules” means Rule 38, Rules of Supreme Court.

H. G. “Supervising attorney” is an attorney admitted to Arizona full or limited practice who is an active member of the State Bar of Arizona in good standing who has practiced law or taught
law in an accredited law school as a full-time occupation for at least two years, and agrees in writing to supervise the certified limited practice student or certified limited practice graduate pursuant to these rules, and is identified as the supervising attorney in whose name appears on the application for certification or recertification. The supervising attorney may designate a deputy, assistant, or other staff attorney to supervise the certified limited practice student or certified limited practice graduate when permitted by these rules.

H. “Volunteer legal services program” means a volunteer legal services program managed by an approved legal services organization in cooperation with an accredited law school. Approved legal service organizations are defined in paragraph (e)(2)(C) of this rule.


A. Limited Bar Membership. To the extent a professor, or a law student, or law graduate is engaged in the practice of law under this rule, the professor, or law student, or law graduate shall, for the limited purpose of performing professional services authorized by this rule, be deemed an active member of the state bar (but not required to pay fees). The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

B. Nonapplicability of Attorney Discipline Rules to Terms of the Certification. The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor, or a certified limited practice student, or certified limited practice graduate pursuant to this rule. Termination of certification shall be without prejudice to the privilege of the professor, or the law student, or law graduate to make application for admission to practice law if the professor, or the law student, or law graduate is in other respects qualified for such admission.

C. Effect of Certification on Application for Admission to Bar. The certification of a clinical law professor, or a law student, or law graduate shall in no way not be considered as an advantage or a disadvantage to the professor, or the law student, or law graduate in an application for admission to the state bar.

D. Privileged Communications. The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by and among professors, supervising and designated attorneys (and designated attorneys), and certified limited student practice students, and certified limited practice graduates.


A. Activities of Clinical Law Professors. A clinical law professor not a member of the state bar but who is certified pursuant to this rule may appear as a lawyer solely in connection with supervision of students in a clinical law program approved by the dean and faculty of in a law school in Arizona either provisionally or fully approved and accredited by the American Bar Association. A clinical law professor may appear in any court or before any administrative tribunal in this state in the matters enumerated in paragraph (d)(5)(C) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing
to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. Requirements and Limitations for Clinical Law School Professors. In order to make an appearance To appear as a lawyer pursuant to these rules, the clinical law professor must:

1. be duly employed as a faculty member of a law school in Arizona either provisionally or fully approved or accredited by the American Bar Association for the purpose, inter alia, of instructing and supervising a clinical law program approved by the dean and faculty of such law school;

2. be admitted by examination to the bar of any state or the District of Columbia;

3. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered;

4. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers; and

5. submit evidence that the clinical law professor has successfully completed the course on Arizona law described in Rule 34(j).

C. Certification of the Clinical Law Professor. The certification shall be signed by the clinical law professor and the dean of the law school on the form prescribed by the clerk of this Court and shall be filed with the clerk and the state bar. The certification shall remain in effect until withdrawn.

D. Duty to Ensure Adequate Supervision and Guidance of Certified Limited Practice Student. It shall be the responsibility of the clinical law professor to ensure that certified limited practice students receive adequate supervision and guidance while participating in the law school’s clinical law program. In the case of a certified student who has graduated and participates in the program pending the taking of the bar examination, the clinical law professor shall, on a monthly basis, based on such reporting from the certified limited practice student and the supervising attorney as the law school shall require, confirm that the certified graduate has received and is receiving adequate attorney supervision and guidance.

E. Withdrawal or Termination of Certification.

1. The dean at any time, with or without cause or notice or hearing, may withdraw terminate a certification of a clinical law professor at any time by filing a notice to that effect, with or without stating the cause for the withdrawal, of the termination with the clerk of this Court, who shall forthwith mail copies thereof to the clinical law professor and the State Bar of Arizona the Supreme Court. The clerk shall mail copies of the notice to the clinical law professor and the state bar.
ii. The Court at any time, with or without cause or notice or hearing, may terminate the a
certification of a clinical law professor at any time without cause and without notice or hearing
by filing notice of the termination with the clerk of this Court and with the state bar. The clerk
shall mail copies of the notice to the clinical law professor and the state bar.

5. Practical Training of Law Students

A. Law Student Eligibility for Limited Practice Certification. To be eligible to become a certified
limited practice student, a law student applicant an applicant must

i. have successfully completed legal studies amounting to at least two semesters, or the
   equivalent academic hour credits if the law school or the student is on some basis other than a
   semester, at an accredited law school, subject to the time limitation set forth in these rules;

ii. neither ask for nor receive any compensation or remuneration of any kind for services
    rendered by the certified limited practice student from the person on whose behalf the services
    are rendered, but this shall not, this requirement does not prevent a supervising lawyer, legal
    aid bureau services organization, law school, public defender agency, or the state or any
    political subdivision thereof from paying compensation to the eligible law student, nor shall it
    or prevent any such lawyer or agency from making such charges for its services as it may
    otherwise properly require requesting compensation or remuneration for legal services as
    otherwise authorized;

iii. certify in writing that the student has read and is familiar with the Arizona Rules of
    Professional Conduct, and the rules of the Supreme Court of Arizona, and the statutes of the
    State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the accredited law school where the student is enrolled (or was
    enrolled on graduation), or by the dean’s designee, as being in good academic standing, of
    good character, and as having either successfully completed or being currently enrolled in and
    attending, academic courses in civil procedure, criminal law, evidence, and professional
    responsibility.

B. Application for to become a Certified Limited Practice Student or Extend the Certification
Period

i. All applications for student to become a certified limited practice certification student or
   requests to change or add a supervising attorney or to extend the period of certification
   pursuant to these rules must be submitted on a form provided by the clerk of the Court, to the
   clerk, with all the information requested on the form, together with any designated appropriate
   nonrefundable processing fee. The clerk of the Court shall send a copy of all approved student
   limited practice certifications to the admissions department of the state bar.

ii. The application for certification shall require the signature of the applicant, the dean,
    associate dean, or assistant dean of the accredited law school in which the applicant is enrolled,
and the signature of the supervising attorney. The application for certification or extension must be signed by the applicant, the dean, of the law school in which the applicant is enrolled, and the supervising attorney.

iii. The applicant shall must attest that he or she meets all of the requirements of the this rules; agrees to and shall will immediately notify the clerk of the Court in the event if he or she no longer meets the requirements of the rules; and that he or she has read, is familiar with and will abide by the Arizona Rules of Professional Conduct of the State of Arizona and these rules.

iv. The dean, associate dean, or assistant dean of the accredited law school in which the applicant is enrolled shall must attest that the applicant meets the requirements of these rules; that he or she shall immediately notify the clerk of the Court in the event that the certified limited practice student no longer meets the requirements of these rules; and that he or she has no knowledge of facts or information that would indicate that the applicant is not and, to the best of the dean’s knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the Clerk of the Court if the certified limited practice student no longer meets the requirements of these rules.

v. The supervising attorney shall must specify the period during which he or she will be responsible for and will supervise supervising the applicant and attest that he or she has read, is familiar with, and will abide by the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

C. Permitted Activities and Requirements of a Certified Limited Practice Certification Student; Physical Presence of Supervising or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person if that person on whose behalf the student is appearing who has consented in writing to that appearance and if the supervising attorney has also indicated in writing provided written approval of that appearance. In each case, the written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, and the certified limited practice student shall orally must advise the court on the occasion of the student’s initial appearance in the case of the certification to appear as a law student pursuant to these rules. A certified limited practice student may appear in the following matters:

a. Civil Matters. In civil cases in justice, municipal, and magistrate courts, the supervising lawyer (or designated lawyer) is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer’s absence.

b. Criminal Matters on Behalf of the State. In any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the supervising attorney (or designated attorney), the supervising attorney (or designated attorney) must be present except when such appearance is in justice, municipal, or magistrate courts.
e. Felony Criminal Defense Matters. In any felony criminal defense matter in justice, municipal, and magistrate courts, and any criminal matter in superior court, the supervising attorney (or designated attorney) must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

d. Misdemeanor Criminal Defense Matters. In any misdemeanor criminal defense matter in justice, municipal, or magistrate courts, the supervising attorney (or designated attorney) is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the supervising attorney’s absence; however, the supervising attorney shall be present during trial.

e. Appellate Oral Argument. A certified limited practice student may participate in oral arguments in the Arizona Supreme Court and Court of Appeals, but only in the presence of the supervising attorney (or designated attorney) and with the specific approval of the court for that case.

Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising attorney (or designated attorney) to be personally present for such period and under such circumstances as the court may direct.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice student in the following circumstances:

a. In any civil case in justice, municipal, and magistrate court, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

b. In any civil case in superior court or before any administrative tribunal.

c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

e. In any misdemeanor criminal defense case, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.
ii. Other Client Representation Activities. Under the general supervision of the supervising attorney (or designated attorney), but outside his or her personal presence, a certified limited practice student may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney (or designated attorney);

b. prepare briefs, abstracts motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney (or designated attorney);

c. provide assistance to assist indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney (or designated attorney);

d. render legal advice and perform other appropriate legal services, but only after prior consultation with and upon the express consent of the supervising attorney (or designated attorney).

iii. Other Non-Representation Activities. A certified limited practice student may perform any advisory or non-representational activity which could be performed by a person who is not a member of the state bar, subject to the approval by the supervising attorney (or designated attorney). In connection with a volunteer legal services program and at the invitation or request of a court or tribunal, a certified limited practice student may appear as a law student volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the student’s supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice student has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

D. Use of the Title “Certified Limited Practice Student.”
i. In connection with activities performed pursuant to these rules, a certified limited practice student may use the title “Certified Limited Practice Student” only and may not use the title in connection with activities not performed pursuant to these rules.

ii. When a certified limited practice student’s name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the student is a certified limited practice student pursuant to these rules; state the name of the supervising attorney; be signed by the supervising attorney or designated attorney; and otherwise comply with these rules.

iii. A certified limited practice student may not and shall not in any way hold himself or herself out as a regularly admitted or an active member of the state bar.

iv. Nothing contained in these rules prohibits a certified limited practice student from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Requirements and Duties of the Supervising Attorney. The supervising attorney shall:

i. be an active member of the state bar under these rules, and before supervising a certified limited practice student shall have practiced law or taught law in an accredited law school as a full-time occupation for at least two years;

ii. supervise no more than five (5) certified limited practice students concurrently; provided, however, that a supervising attorney who is employed full time to supervise law students as part of an organized law school or government agency training program may supervise up to, but in no case more than fifty (50) certified students;

iii. i. supervise and assume personal professional responsibility for any work performed by the certified limited practice student while under his or her supervision;

iv. ii. assist and counsel the certified limited practice student in the activities authorized by these rules and review such activities with the certified limited practice student, all to the extent required for the proper training of the certified limited practice student and the protection of the client;

v. iii. read, approve, and sign any pleadings, briefs or other documents prepared by the certified limited practice student before the filing thereof, and read and approve any document prepared by the certified limited practice student for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney shall still provide general supervision;

vi. provide the level of supervision to the certified limited practice student required by these rules (exclusively in the case of government agencies, a designated attorney may, in the place of the supervising attorney, perform the obligation set forth in this subparagraph, but the Supervising Attorney shall still provide supervision); and
vii. in the case of a certified student who is participating in a clinical program post-graduation pending the taking of the bar examination, report to the clinical law professor and the dean of the law school, as the law school shall require, on a monthly basis regarding the supervising attorney’s supervision and guidance of the certified student.

vii. iv. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited practice student has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice student during the period of certification, the certified limited practice student must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice student. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

F. G. Duration and Termination of Certification. Certification of a certified limited practice student shall commence begin on the date indicated on specified in the certification and shall remain in effect for the period specified in the notice of certification unless sooner terminated pursuant to by the earliest of the following occurrences:

i. Termination by the Student. The certified limited practice student may request termination of the certification in writing or notify notifies the clerk of the Court that he or she no longer meets the requirements of this rule, and these rules. In such event the clerk shall send written notice to the student, the student’s supervising attorney, the dean, and the state bar.

ii. Termination by the Supervising Attorney. The supervising attorney may notify notifies the clerk of the Court in writing that his or her supervision of the certified limited practice student will cease before the date specified in the notice of certification. In such event, the clerk shall send written notice to the student, the student’s supervising attorney, the dean, and the state bar, and the dean may issue a modified certification reflecting the substitution of a new supervising attorney, as necessary.

iii. Termination by the Dean. A certification of student limited practice may be terminated by the dean at any time, with or without cause and without notice or hearing, by filing files notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if one or more of the requirements for the certification no longer exists or the certified limited practice student, supervising attorney or designated attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student’s supervising attorney, the dean, and the state bar.

iv. Failure to take or Pass the Bar Examination. A certification of a student limited practice shall be terminated if the certified student fails to take or pass the first general bar examination
for which the student is eligible. The Court at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

v. Termination by the Arizona Supreme Court. A certification of student limited practice may be terminated by the Arizona Supreme Court any time, without cause and without notice or hearing, by filing notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if one or more of the requirements for the certification no longer exists or the certified limited practice student, or supervising attorney or designated attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule, or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student’s supervising attorney, the dean, and the state bar.

6. Law Graduates

A. Law Graduate Eligibility for Limited Practice Certificate. To be eligible to become a certified limited practice graduate, an applicant must:

i. have graduated from an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice graduate from the person on whose behalf the services are rendered; this requirement does not prevent a supervising lawyer, legal services organization, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law graduate, or prevent any such lawyer or agency from requesting compensation or remuneration for legal services as otherwise authorized;

iii. certify in writing that the law graduate has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the accredited law school where the law graduate was enrolled on graduation as having graduated in good academic standing and being of good character.

B. Application to Become a Certified Limited Practice Graduate

i. All applications to become a certified limited practice graduate must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The clerk of the Court shall send a copy of all approved graduate limited practice certifications to the admissions department of the state bar.

ii. The application for certification must be signed by the applicant, the dean of the law school where the applicant was enrolled on graduation, and the supervising attorney.

iii. The applicant must attest that he or she meets all of the requirements of this rule, will
immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules, and has read and will abide by the Arizona Rules of Professional Conduct and these rules.

iv. The dean of the law school where the applicant was enrolled on graduation must attest that the applicant meets the requirements of these rules, and, to the best of the dean’s knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the clerk of the Court if the certified limited practice graduate no longer meets the requirements of these rules.

v. The supervising attorney must specify the period during which he or she will be responsible for and will supervise the applicant and attest that he or she has read and will abide by, the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

C. Permitted Activities and Requirements of a Certified Limited Practice Graduate; Presence of Supervising Attorney or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice graduate may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has also provided written approval of that appearance. In each case, the written consent and approval must be filed in the case and be brought to the attention of the judge or the presiding officer. In addition, the certified limited practice graduate must advise the court at the law graduate’s first appearance in the case of the certification to appear as a law graduate pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice graduate in the following circumstances:

a. In any civil case in justice, municipal, and magistrate court unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

b. In any civil case in superior court or before any administrative tribunal;

c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

e. In any misdemeanor criminal defense case unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and
f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.

ii. Other Client Representation Activities. Under the general supervision of the supervising attorney or designated attorney, but outside his or her presence, a certified limited practice graduate may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice graduate is eligible to appear, but such pleadings or documents must be signed by the supervising attorney or designated attorney if filed in the superior court, Arizona Court of Appeals, Arizona Supreme Court, or with an administrative tribunal;

b. prepare briefs, motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated attorney;

c. assist indigent inmates of correctional institutions or other persons who request assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;

d. give legal advice and perform other appropriate legal services, but only after consultation with and consent of the supervising attorney or designated attorney.

iii. Other Non-Representation Activities. In connection with a volunteer legal services program and at the invitation and request of a court or tribunal, a certified limited practice graduate may appear as a law graduate volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the certified limited practice graduate’s supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice graduate has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.
D. Use of the Title “Certified Limited Practice Graduate.”

i. A certified limited practice graduate may use the title “Certified Limited Practice Graduate” only in connection with activities performed pursuant to these rules.

ii. When a certified limited practice graduate’s name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the law graduate is a certified limited practice graduate pursuant to these rules, state the name of the supervising attorney, be signed by the supervising attorney or designated attorney if required by these rules, and otherwise comply with these rules.

iii. A certified limited practice graduate shall not hold himself or herself out as an active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice graduate from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney must:

i. supervise and assume professional responsibility for any work performed by the certified limited practice graduate while under his or her supervision;

ii. assist and counsel the certified limited practice graduate in the activities authorized by these rules and review such activities with the certified limited practice graduate, all to the extent required for the proper training of the certified limited practice graduate and the protection of the client;

iii. read and approve all pleadings, briefs, or other documents prepared by the certified limited practice graduate as required by these rules; sign any pleading, brief, or other document if required by these rules, and read and approve any document prepared by the certified limited practice graduate for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney must still provide general supervision;

iv. assume professional responsibility for all pleadings, briefs, or other documents filed in any court or with an administrative tribunal by the certified limited practice graduate under his or her supervision;

v. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited graduate has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice graduate during the period of certification, the certified limited practice graduate must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute...
supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice graduate. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

G. Duration and Termination of Certification. Certification of a certified limited practice graduate shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

i. The certified limited practice graduate requests termination of the certification in writing or notifies the Clerk of the Court that he or she no longer meets the requirements of these rules. In such event, the clerk shall send written notice to the law graduate, the law graduate’s supervising attorney, the dean, and the state bar.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision of the certified limited practice graduate will cease before the date specified in the certification. In such event, the clerk shall send written notice to the law graduate, the law graduate’s supervising attorney, the dean, and the state bar.

iii. The dean at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

iv. The Court at any time, with or without cause or notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice graduate or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the law graduate, the law graduate’s supervising attorney, the dean, and the state bar.

vi. The law graduate fails to take the first Arizona uniform bar examination, or the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

vii. The law graduate fails to pass the first Arizona uniform bar examination for which the law graduate is eligible or fails to obtain a score equal to or greater than the acceptable score established by the Committee on Examinations on the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

viii. Thirty days after the Court notifies the law graduate that he or she has been approved for admission to practice law and is eligible to take the oath of admission.

ix. The Committee on Character and Fitness does not recommend to the Court that the law graduate be admitted to practice law.

x. The law graduate is denied admission to practice law by the Court.
xi. The law graduate is admitted to practice law.

xii. Expiration of 12 months from the date of the law graduate's graduation from law school unless, before expiration of the 12-month period and for good cause shown by the law graduate, the Court extends the 12-month period.
APPENDIX 4: Rule 31, Arizona Rules of Supreme Court

Proposed Restyled Arizona Rule of Supreme Court 31 (Clean).

Rule 31. Supreme Court Jurisdiction

(a) Jurisdiction. The Arizona Supreme Court has jurisdiction over any person or entity engaged in the authorized or unauthorized “practice of law” in Arizona, as that phrase is defined in (b).

(b) Definition. “Practice of law” means providing legal advice or services to or for another by:

1. preparing or expressing legal opinions to or for another person or entity;
2. representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation;
3. preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal;
4. negotiating legal rights or responsibilities on behalf of a specific person or entity; or
5. preparing a document, in any medium, intended to affect or secure a specific person’s or entity’s legal rights.

Rule 31.1. Authorized Practice of Law.

(a) Requirement. A person may engage in the practice of law in Arizona, or represent that he or she is authorized to engage in the practice of law in Arizona, only if:

1. the person is an active member in good standing of the State Bar of Arizona under Rule 32; or
2. the person is specifically authorized to do so under Rules 31.3, 38, or 39.

(b) Lack of Good Standing. A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, is not a member in good standing of the State Bar of Arizona under Rule 31.1(a)(1).

Rule 31.2. Unauthorized Practice of Law. Except as provided in Rule 31.3, a person or entity who is not authorized to practice law in Arizona under Rule 31.1(a) must not:

(a) engage in the practice of law in Arizona; or
(b) use the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” or other equivalent words that are reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in Arizona.

Rule 31.3. Exceptions to Rule 31.2.

(a) Generally. Notwithstanding Rule 31.2, a person or entity may engage in the practice of law in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court’s jurisdiction concerning that
activity. A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, may not engage any of the activities specified in this Rule 31.3 unless this rule authorizes a specific activity.

(b) Governmental Activities and Court Forms.

(1) In Furtherance of Official Duties. An elected official or employee of a governmental entity may perform the duties of his or her office and carry out the government entity’s regular course of business.

(2) Forms. The Supreme Court, Court of Appeals, superior court, and limited jurisdiction courts may create and distribute forms for use in Arizona courts.

(c) Legal Entities.

(1) Definition. “Legal entity” means an organization that has legal standing under Arizona law to sue or be sued in its own right, including a corporation, a limited liability company, a partnership, an association as defined in A.R.S. §§ 33-1202 or 33-1802, or a trust.

(2) Documents. A legal entity may prepare documents incidental to its regular course of business or other regular activity if they are for the entity’s use and are not made available to third parties.

(3) Justice and Municipal Courts. A person may represent a legal entity in a proceeding before a justice court or municipal court if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person’s primary duty to the entity, but is secondary or incidental to other duties relating to the entity’s management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(4) General Stream Adjudication Proceeding. A person may represent a legal entity in superior court in a general stream adjudication proceeding conducted under A.R.S. §§ 45-251 et seq. (including a proceeding before a master appointed under A.R.S. § 45-255) if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person’s primary duty to the entity but is secondary or incidental to other duties related to the entity’s management or operation; and

(D) the person is not receiving separate or additional compensation for representing the corporation or association (other than receiving reimbursement for costs).

(5) Administrative Hearings and Agency Proceedings. A person may represent a legal entity in a proceeding before the Office of Administrative Hearings, or before an Arizona administrative agency, or commission, or board, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;
(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person’s primary duty to the entity, but is secondary or incidental to other duties relating to the entity’s management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(6) Exception. Despite Rule 31.3(c)(3) through (c)(5), a court, the hearing officer, or the officer presiding at the agency or commission proceeding, may order the entity to appear only through counsel if the court or officer determines that the person representing the entity is interfering with the proceeding’s orderly progress or imposing undue burdens on other parties.

(d) Tax-Related Activities and Proceedings.

(1) A person may prepare a tax return for an entity or another person.

(2) A certified public accountant or other federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)) may:

(A) render individual and corporate financial and tax advice to clients and prepare tax-related documents for filing with governmental agencies;

(B) represent a taxpayer in a dispute before the State Board of Tax Appeals if the amount at issue is less than $25,000; and

(C) practice before the Internal Revenue Service or other federal agencies if authorized to do so.

(3) A property tax agent (as that term is defined in A.R.S. § 32-3651), who is registered with the Arizona State Board of Appraisal under A.R.S. § 32-3642, may practice as authorized under A.R.S. § 42-16001.

(4) A person may represent a party in a small claims proceeding in Arizona Tax Court conducted under A.R.S. §§ 12-161 et seq.

(5) In any tax-related proceeding before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a person may represent a taxpayer if:

(A) the person is:

   (i) a certified public accountant,

   (ii) a federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)); or

   (iii) in matters in which the amount in dispute, including tax, interest and penalties, is less than $5,000, the taxpayer’s duly appointed representative; or

(B) the taxpayer is a legal entity (including a governmental entity) and:

   (i) the person is full-time officer partner, member, manager, or employee of the entity;
(ii) the entity has specifically authorized the person to represent it in the proceeding;

(iii) such representation is not the person’s primary duty to the entity, but is secondary or incidental to other duties relating to the entity’s management or operation; and

(v) the person is not receiving separate or additional compensation for such representation (other than receiving reimbursement for costs).

(e) Other.

(1) **Children with Disabilities.** In any administrative proceeding under 20 U.S.C. §§ 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a person may represent a party if:

(A) the hearing officer determines that the person has special knowledge or training with respect to the problems of children with disabilities; and

(B) the person is not charging a fee for representing the party (other than receiving reimbursement for costs).

Despite these provisions, the hearing officer may order the party to appear only through counsel or in some other manner if he or she determines that the person representing the party is interfering with the proceeding’s orderly progress or imposing undue burdens on other parties.

(2) **Department of Fire, Building and Life Safety.** In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, a person may represent a party if:

(A) the party has specifically authorized the person to represent the party in the proceeding; and

(B) the person is not charging a fee for representing the party (other than receiving reimbursement for costs).

(3) **Fiduciaries.** A person licensed as a fiduciary under A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration § 7-202 without acting under the supervision of an attorney authorized under Rule 31.1(a) to engage in the practice of law in Arizona. Despite this provision, a court may suspend the fiduciary’s authority to act without an attorney if it determines that lay representation is interfering with the proceeding’s orderly progress or imposing undue burdens on other parties.

(4) **Legal Document Preparers and Limited Licensed Legal Practitioners.** Certified legal document preparers and limited licensed legal practitioners may perform services in compliance with the Arizona Code of Judicial Administration. This exception is not subject to the restriction in the second sentence of Rule 31.3(a) if a disbarred or suspended attorney has been certified as a legal document preparer or licensed as a limited license legal practitioner as provided in the Arizona Code of Judicial Administration.

(5) **Mediators.**

(A) A person who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona may prepare a written agreement settling a dispute or file such an agreement with the appropriate court if:
(i) the person is employed, appointed, or referred by a court or government entity and is serving as a mediator at the direction of the court or a governmental entity; or

(ii) the person is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

(B) Unless specifically authorized in Rule 31.3(e)(5)(A), a mediator who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona and who prepares or provides legal documents for the parties without attorney supervision must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration § 7-208.

(6) Nonlawyer Assistants and Out-of-State Attorneys.

(A) A nonlawyer assistant may act under an attorney’s supervision in compliance with ER 5.3 of the Arizona Rules of Professional Conduct. This exception is not subject to the restriction in Rule 31.3(a) concerning a person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status.

(B) An attorney licensed in another jurisdiction may engage in conduct that is permitted under ER 5.5 of the Arizona Rules of Professional Conduct.

(7) Personnel Boards. An employee may designate a person as a representative who is not necessarily an attorney to represent the employee before any board hearing or any quasi-judicial hearing dealing with personnel matters, but no fee may be charged (other than for reimbursement of costs) for any services rendered in connection with such hearing by any such designated representative who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona.

(8) State Bar Fee Arbitration. A person may represent a legal entity in a fee arbitration proceeding conducted by the State Bar of Arizona Fee Arbitration Committee, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person’s primary duty to the entity, but is secondary or incidental to other duties relating to the entity’s management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).
Current Rule 31, Arizona Rules of Supreme Court

Rule 31 Regulation of the Practice of Law
(a) Supreme Court Jurisdiction Over the Practice of Law
1. Jurisdiction. Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court’s jurisdiction.

2. Definitions.

A. “Practice of law” means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. “Unauthorized practice of law” includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a); or

(2) using the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. “Legal assistant/paralegal” means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

D. “Mediator” means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement to mediate a dispute. Serving as a mediator is not the practice of law.

E. “Unprofessional conduct” means substantial or repeated violations of the Oath of Admission
to the Bar or the Lawyer’s Creed of Professionalism of the State Bar of Arizona.

(b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

(c) Restrictions on Disbarred Attorneys’ and Members’ Right to Practice. No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer’s or managing member’s primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.
6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.

8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.

9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer’s or employee’s primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer’s or employee’s primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation’s and its owners’ legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, or in fee arbitration proceedings conducted under the auspices of the State Bar of Arizona Fee Arbitration Committee, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person’s primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not
receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than $5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person’s primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. In any administrative proceeding pursuant to 20 U.S.C. § 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging the party a fee for the representation. The hearing officer shall have discretion to remove the individual, if continued representation impairs the administrative process or causes harm to the parties represented.

16. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.

17. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).

18. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision
of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).

19. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

20. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

21. Nothing in these rules shall prohibit the preparation of tax returns.

22. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

23. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

24. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the Arizona Code of Judicial Administration.

25. Nothing in these rules shall prohibit a mediator as defined in these rules from preparing a written mediation agreement or filing such agreement with the appropriate court, provided that:

   (A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or

   (B) the mediator is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

In all other cases, a mediator who is not an active member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.

26. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.
28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a nonprofit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if

(A) the public service corporation, interim operator, or nonprofit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

(B) such representation is not the person’s primary duty to the public service corporation, interim operator, or nonprofit organization, but is secondary or incidental to such person’s duties relating to the management or operation of the public service corporation, interim operator, or nonprofit organization, and

(C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require counsel in lieu of lay representation whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

29. In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, an individual may be represented by a duly authorized agent who is not charging a fee for the representation, other than reimbursement for actual costs.

30. A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona code of judicial administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary’s authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties.

31. Nothing in these rules shall prohibit an active member or full-time employee of an association defined in A.R.S. §§ 33-1202 or 33-1802, or the officers and employees of a management company providing management services to the association, from appearing in a small claims action, so long as:

(A) the association’s employee or management company is specifically authorized in writing by the association to appear on behalf of the association;

(B) the association is a party to the small claims action.
APPENDIX 5: Draft Administrative Order Implementing Licensed Legal Advocate Pilot Program

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:  

AUTHORIZING A LICENSED LEGAL ADVOCATE PILOT PROGRAM  

Administrative Order No. 20__ - ________

“Promoting Access to Justice” is Goal 1 of the Judiciary’s Strategic Agenda, Justice for the Future: Planning for Excellence, 2019-2024. The Task Force on the Delivery of Legal Services, established by Administrative Order 2018-111, was charged with reviewing the regulation of the delivery of legal services as well as examining and recommending whether nonlawyers, with specified qualifications, should be allowed to provide limited legal services.

At the same time the Task Force was pursuing its charge, the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law (i4J) brought graduate students, undergraduate students and over 50 members of the community together in i4J’s Innovating Legal Services course to explore a challenge framed as: “should Arizona create a new tier of civil legal professional, and what could that mean for survivors of domestic abuse?” The Innovating Legal Services course developed a proposal for a pilot program that would train lay legal advocates to become Licensed Legal Advocates (LLAs), able to legally advise DV survivors as they navigate Arizona’s civil legal system. The proposed pilot removes the barrier imposed by unauthorized practice of law restrictions, giving the LLAs the ability to handle specifically-identified legal needs of participants at Emerge! and enhancing those participants’ access to justice. The details of the pilot program are captured in a report titled Report to the Arizona Supreme Court Task Force on Delivery of Legal Services: Designing a New Tier of Legal Professional for Survivors of Domestic Violence, which was presented to the Task Force.

The Task Force found the pilot program was consistent with its charge. In October 2019, the Task Force recommended to the Arizona Judicial Council (AJC) that the Supreme Court establish the Licensed Legal Advocate Pilot Program. The AJC recommended adoption of the [report/recommendation].

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,
IT IS ORDERED that:

1. The Licensed Legal Advocate Pilot Program shall run for a period of 24 months from the date of implementation.
2. Rule 31(d) of the Arizona Rules of Supreme Court is deemed modified as set forth in Appendix A for the duration of the Licensed Legal Advocates Pilot Program.

3. Licensed legal advocates may provide legal advice in the following areas:
   a. Identifying urgent legal needs at intake and providing advice regarding next steps of action with respect to those needs;
   b. Assisting self-represented DV survivors with the completion of DV and family law forms and providing legal advice necessary to adequately complete those forms;
   c. Providing advice regarding preserving potential court evidence and preparing for court hearings and mediations; and
   d. Assisting survivors at court hearings by being able to sit with the survivor and quietly advise them as requested by the survivor or the court.

4. Licensed Legal Advocates are subject to the Licensed Legal Advocates Rules of Professional Conduct, as set forth in Appendix B, adapted from the Arizona Rules of Professional Conduct for the duration of the Licensed Legal Advocates Pilot Program.

5. Qualifications of Licensed Legal Advocates are set forth in Appendix C.

6. A licensing exam for the Licensed Legal Advocates Pilot Program shall be developed and administered by the Certification and Licensing Division of the AOC, who shall oversee licensure of Licensed legal Advocates.

7. The Licensed Legal Advocate Pilot Program shall be administered by the Pilot Program Director in coordination with the AOC.

Dated this ______ day of ______________________, 20__.

____________________________________
ROBERT BRUTINEL
Chief Justice
This publication can be provided in an alternate format or other assistance may be provided upon request by a qualified individual with a disability under the provisions of the Americans with Disabilities act.
How to Apply for Legal Paraprofessional Licensure

There are two paths to apply for an LP license: Education-based and experience-based. The education requirements are set forth in section 7-210(E)(3)(b)(9). If an applicant does not meet the education requirements in 7-210(E)(3)(c) they may qualify through experience described in 7-210(E)(3)(c) that allows applicants to take the exam and apply for licensure.

Examinations are scheduled to begin in the spring of 2021.

More information to come.
Legal Paraprofessionals (LP) Questions & Answers

What is a Legal Paraprofessional (LP)?
In the report and recommendations of the Task Force on the Delivery of Legal Services, a Legal Paraprofessional (LP) was called a Limited Provider (LLLP). The rules adopted by the Court renamed these providers. An LP is a professional with specific education and experience to provide legal services in limited practice areas. This professional is often compared to a nurse practitioner in the medical field.

Can I apply to be a Legal Paraprofessional?
Not as of December 2020. On August 27, 2020, the Court took the first step in creating the LP program by adopting changes to the authorized to practice law. In October 2020, the Arizona Judicial Council (AJC) reviewed and adopted 7-210 of the Code of Judicial Admin forth the licensing structure and the scope of practice for LPs, effective January 1, 2021. Information and application forms will be posted Paraprofessional Program page under the “Licensing & Regulation” link at the top of the page at https://www.azcourts.gov/.

Can I register for the LP exam?
The first examination is expected to be administered in March or April, 2021. Information and updates will be posted on the Legal Paraprofessional webpage.

What areas of practice are allowed for an LP?
Applicants must pass an examination in each area of law in which they intend to practice. These areas include:

- Family law;
- Limited jurisdiction civil cases;
- Limited jurisdiction criminal cases where no jail time is involved; and
- State administrative law (where the administrative agency allows).

What kinds of services are LPs authorized to perform?
LP services may include:

- Drafting, signing, and filing legal documents;
- Providing advice, opinions, or recommendations about possible legal rights, remedies, defenses, options or strategies;
- Appearing before a court or tribunal; and
- Negotiating on behalf of a client in the areas or practice that are authorized by the law and if the LP has received a license and endorsement in area of law.

What is required to sit for the LP examination and to apply for a license?
There are two paths to apply for an LP license: Education-based and experience-based. The education requirements are set forth in section (9). If an applicant does not meet the education requirements in 7-210(E)(3)(b)(9), they may qualify through experience described in 7-210(E)(3)(b)(9), allows applicants to take the exam and apply for a license.
Examinations are scheduled to begin in the spring of 2021

What are the costs for taking the LP examination and getting an LP license?
The fees and costs associated with all aspects of the licensing process are listed in 7-210(K).

Where can I find information on:
Requirements to obtain an LP license | LP areas of practice | LP scope of practice | LP ethical requirements

Answers to these questions can be found in the Arizona Code of Judicial Administration sections below:
- Licensing requirements, including education and experience: 7-210(E)
- Scope of practice/areas of practice: 7-210(F)
- Ethical Code: 7-210(J)

Does the public support the concept of Legal Paraprofessionals?
Yes. An overwhelming 80.3% of the public supported the proposal that was adopted as Legal Paraprofessionals.

Where can I get more information?
Email LPProgram@courts.az.gov or call the Certification and Licensing Division at (602) 452-3378

See Task Force on the Delivery of Legal Services Report and Recommendations
See Legal Paraprofessionals Program

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A. Definitions. In addition to the definitions in ACJA § 7-201(A), the following definitions apply to this section:

“Advocacy” means course content or practical experience that demonstrates and develops skills that are associated with conducting court hearings and trials, administrative hearings, mediation and arbitration, and settlement and plea negotiation.

“Board” means the Board of Nonlawyer Legal Service Providers.

“Civil procedures course” means at least 3 credits from a course dedicated to civil procedure and the remaining required credits can be obtained through a course or courses that cover an area of civil law, such as administrative law, if the course includes procedural law content.

“Experiential learning” means learning through a format such as an internship, externship or clinical experience during which students develop knowledge, skills, and values from direct experiences outside a traditional academic setting.

“Legal Paraprofessional” (“LP”) means an individual licensed pursuant to this section to provide legal services without the supervision of an attorney in the areas of law and within the scope of practice defined herein.

“Legal specialization course” means a course that covers substantive law or legal procedures and that was developed specifically for, and that teaches practical skills needed by, paralegals or legal paraprofessionals. For clarity, courses in general “business law” designed for undergraduate or graduate business curriculums and law-related courses that focus solely on theory do not qualify as a legal specialization course.

“Substantive law-related experience” means the provision of legal services as a paralegal or paralegal student including, but not limited to, drafting pleadings, legal documents or correspondence, completing forms, preparing reports or charts, legal research, and interviewing clients or witnesses in the area(s) or practice the applicant seeks to be licensed. Substantive law-related experience does not include routine clerical or administrative duties.

B. Applicability. This section applies to individuals who provide legal services within the exception to the prohibition of the unauthorized practice of law set forth in Supreme Court Rule 31.3(e)(4) and this section. To qualify to provide legal services under the specified exception pursuant to Rule 31.3(e)(4) and this section, legal paraprofessionals shall hold a valid license and perform their duties in accordance with subsection (F). A person shall not represent that he or she is a legal paraprofessional unless the person holds an active license as a legal paraprofessional. This section is read in conjunction with ACJA § 7-201: General Requirements, and the Arizona Rules of Supreme Court governing the practice of law. In the
event of any conflict between the Arizona Rules of Supreme Court, ACJA § 7-201, and ACJA § 7-210, the Rules of Supreme Court shall govern.

C. Purpose. The supreme court has inherent regulatory power over all persons providing legal services to the public, regardless of whether they are lawyers or nonlawyers. Accordingly, this section is intended to result in the effective administration of the legal paraprofessional licensing program.

D. Administration.

1. Role and Responsibilities of the Supreme Court. In addition to the requirements of ACJA § 7-201(D), the supreme court shall review recommendations from the board for licensure of applicants and make a final determination on the licensure of these applicants.

2. Establishment and Administration of Fund. The supreme court shall establish a legal paraprofessional fund consisting of monies received for license fees, costs, and civil penalties. The supreme court shall administer the legal paraprofessional fund and shall receive and expend monies from the fund.

3. Role and Responsibilities of the Division Staff. These responsibilities are contained in ACJA § 7-201(D).

4. Board of Nonlawyer Legal Service Providers. In addition to the requirements of ACJA § 7-201(D) the following requirements apply:

   a. The Board of Nonlawyer Legal Service Providers is established, comprised of the following eleven members appointed by the chief justice:

      (1) Two certified legal document preparers;
      (2) Until June 30, 2022, two additional members and thereafter, two legal paraprofessionals,
      (3) One judge or court administrator;
      (4) One clerk of the superior court or designee;
      (5) One attorney;
      (6) Two public members; and
      (7) Two additional members.

   b. The board shall issue licenses to qualified applicants pursuant to subsections (E)(2) and (3).

   c. On or before April 1 of each year, the board shall file a report with the supreme court describing the status of the legal paraprofessional program. The report shall include but is not limited to, the following information:

      (1) The number of applications granted and declined during the previous calendar year;
      (2) The number of licensed legal paraprofessionals as of December 31 of the previous calendar year;
(3) The number of charges filed against legal paraprofessionals during the previous calendar year and the nature of the charge(s);
(4) The number of complaints initiated by the state bar during the previous calendar year and the nature of the complaint;
(5) Discipline imposed during the previous calendar year, the nature of the conduct leading to the discipline and the discipline imposed; and
(6) Recommendations concerning modifications or improvements to the legal paraprofessional program.

d. The state bar shall provide the board with the following information:

(1) On a calendar quarter basis:
   (a) The number of charges filed against legal paraprofessionals during the previous calendar quarter and the nature of the charge(s);
   (b) The number of complaints initiated by the state bar during the previous calendar quarter and the nature of the complaint; and
   (c) Discipline imposed during the previous calendar quarter, the nature of the conduct leading to the discipline and the discipline imposed.
   (d) The current list of licensed LP’s; the state bar shall submit a copy to the clerk of the supreme court.

(2) On or before January 31 on an annual basis:
   (a) the number of licensed legal paraprofessionals as of December 31; and
   (b) Recommendations concerning modifications or improvements to the legal paraprofessional program.

(3) Such other information as the board may request to prepare the report described in (D)(4)(c) herein.

E. Licensure. In addition to the requirements of ACJA § 7-201(E)(1) through (5), the following requirements apply:

1. Necessity. A person shall not represent that the person is a legal paraprofessional, or is authorized to provide legal services, without holding a valid license pursuant to this section.

2. Eligibility for Applying for a License.

   a. All potential applicants for a license, in addition to meeting the requirements set forth in subsection (E)(3), shall meet the examination requirements of this subsection.

      (1) Potential applicants for a license shall successfully pass the examination prior to submitting an application for licensure.

      (2) Upon a potential applicant passing the examination, division staff shall forward notice to the potential applicant of the potential applicant’s fulfillment of the examination requirement and provide the potential applicant with a license application form which shall include forms necessary for a review of qualification based on character and fitness.
b. Administration of the Examination. In addition to the requirements of ACJA § 7-201(E):

(1) The examinations for a license shall consist of:
   (a) a test on legal terminology, substantive law, client communication, data gathering, document preparation, the ethical code for LPs, and professional and administrative responsibilities pertaining to the provision of legal services, as identified through a job analysis conducted at the direction of the board; and
   (b) a substantive law test on each of the areas of practice described in subsection (F)(2) in which the applicant seeks to be licensed. The examinations shall be administered in a board-approved format and delivery method.

(2) Administration of reexaminations. These requirements are contained in ACJA § 7-201(E)(1)(f)(2).

3. Licensing.

   a. Fingerprinting. Pursuant to ACJA § 7-201(E)(1)(d), an applicant shall furnish fingerprints for a criminal background investigation.

   b. Eligibility for License; Education. The board shall grant a license to an applicant who possesses the following qualifications:

   (1) A citizen or legal resident of the United States;
   (2) At least twenty-one years of age;
   (3) Not have been denied admission to the practice of law in Arizona or any other jurisdiction;
   (4) An applicant disbarred or suspended from the practice of law in Arizona or any other jurisdiction may only be granted a license if approved by the supreme court;
   (5) Of good moral character;
   (6) Complies with the laws, court rules, and orders adopted by the supreme court governing legal paraprofessionals in this state;
   (7) The applicant has successfully passed the legal paraprofessional examination for each area of practice in which they seek licensure;
   (8) The applicant has been deemed qualified by the board based on character and fitness; and
   (9) The applicant shall also possess one of the following combinations of education:
      (a) An associate-level degree in paralegal studies or an associate-level degree in any subject plus a certificate in paralegal studies approved by the American Bar Association or is offered by an institution that is accredited by an institutional accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation (CHEA) and that requires successful completion of a minimum of 24 semester units, or the clock hour equivalent, in legal specialization courses which shall include a minimum of:
         (i) For the family law and civil practice endorsement: 3 credit hours in family law and 6 credit hours in civil procedures, 3 credit hours in evidence, 3
credit hours of legal research and writing, and a minimum of 120 hours of experiential learning under the supervision of a lawyer that includes content on advocacy;

(ii) For the criminal law endorsement: 3 credit hours in criminal law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning under the supervision of a lawyer that includes content on advocacy;

(iii) For the administrative law endorsement: 3 credit hours in administrative law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning under the supervision of a lawyer that includes content on advocacy;

(iv) For all endorsements, a minimum of 3 credit hours in professional responsibility.

All applicants meeting the education requirements of (9)(a) must also have one (1) year of substantive law-related experience under the supervision of a lawyer in the area of practice of each endorsement sought.

(b) Four-year bachelor’s degree in law from an accredited college or university and approved by the court that included the following coursework:

(i) For the family law and civil practice endorsement: 3 credit hours in family law and 6 credit hours in civil procedures, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;

(ii) For the criminal law endorsement: 3 credit hours in criminal law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;

(iii) For the administrative law endorsement: 3 credit hours in administrative law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;

(iv) For all endorsements, a minimum of 3 credit hours in professional responsibility.

(c) Completed a certification program for legal paraprofessionals approved by the Arizona Judicial Council. Certification programs may be for credit or non-credit but must be offered through an educational institution that is at least regionally accredited. Certification programs must provide the subject matter courses that meet the credit hours or equivalent clock hours in the subject matter areas required for each subject matter area endorsement.

(d) A Master of Legal Studies (MLS) from an American Bar Association accredited law school that included the following coursework:

(i) For the family law and civil practice endorsement: 3 credit hours in family law and 6 credit hours in civil procedures, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;

(ii) For the criminal law endorsement: 3 credit hours in criminal law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a
minimum of 120 hours of experiential learning that includes content on advocacy;
(iii) For the administrative law endorsement: 3 credit hours in administrative law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;
(iv) For all endorsements, a minimum of 3 credit hours in professional responsibility.
(e) A Juris Doctor from a law school accredited by the American Bar Association.
(f) Foreign-trained lawyers with a Master of Laws (LLM) from an American Bar Association accredited law school that included the following coursework:
(i) For the family law and civil practice endorsement: 3 credit hours in family law and 6 credit hours in civil procedures, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;
(ii) For the criminal law endorsement: 3 credit hours in criminal law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;
(iii) For the administrative law endorsement: 3 credit hours in administrative law, 3 credit hours in evidence, 3 credit hours of legal research and writing, and a minimum of 120 hours of experiential learning that includes content on advocacy;
(iv) For all endorsements, a minimum of 3 credit hours in professional responsibility.

c. Eligibility for License; Experience. The board shall grant a license to an applicant who does not meet the requirements of (b)(9) of this section, but who possesses the following qualifications:

(1) A citizen or legal resident of the United States;
(2) At least twenty-one years of age;
(3) Not have been denied admission to the practice of law in Arizona or any other jurisdiction;
(4) An applicant disbarred or suspended from the practice of law in Arizona or any other jurisdiction may only be granted a license if approved by the Supreme Court;
(5) Of good moral character;
(6) Complies with the laws, court rules, and orders adopted by the supreme court governing legal paraprofessionals in this state;
(7) The applicant has successfully passed the legal paraprofessional examination pursuant to (E)(2)(b) herein;
(8) The applicant has been deemed qualified by the board based on character and fitness; and
(9) Has completed 7 years of full-time substantive law-related experience within the 10 years preceding the application, including experience in the practice area in which the applicant seeks licensure as follows:
(a) For licensure in family law, limited jurisdiction civil, and limited jurisdiction criminal, 2 years of substantive law-related experience in each area in which the applicant seeks licensure.

(b) For landlord-tenant, debt collection, and administrative law, 2 years of substantive law-related experience in each area in which the applicant seeks licensure.

(10) Proof of substantive law-related experience will be certified by supervising attorney, meeting the following requirements:

(a) The name and Bar number of the supervising lawyer(s);

(b) Certification by the lawyer that the work experience meets the definition of substantive law-related experience in the practice area in which the applicant will be licensed as defined in (A); and

(c) The dates of the applicant's employment by or service with the lawyer(s) or licensed paralegal practitioner(s).

d. Professionalism Course. Within one year after being licensed, a newly licensed LP shall complete the state bar course on professionalism. A newly licensed LP who fails to comply with the requirements of this paragraph shall be summarily suspended upon motion of the state bar pursuant to Rule 62, provided that a notice of non-compliance shall have been sent to the LP, mailed to the LP’s last address of record at least thirty days prior to such suspension, but may be reinstated in accordance with the rules of reinstatement herein.

F. Role and Responsibilities of Licensees.

1. Authorized Services. Upon successful completion of a substantive law exam described in subsection (E)(2)(b) for one or more of the areas of practice described in subsection (F)(2) and the board’s endorsement on the legal paraprofessional’s license, a legal paraprofessional is authorized to render legal services within the scope of practice defined in subsection (F)(2), without the supervision of an attorney, including:

a. Prepare and sign legal documents;

b. Provide specific advice, opinions, or recommendations about possible legal rights, remedies, defenses, options, or strategies;

c. Draft and file documents, including initiating and responding to actions, related motions, discovery, interim and final orders, and modification of orders, and arrange for service of legal documents;

d. Appear before a court or tribunal on behalf of a party, including mediation, arbitration, and settlement conferences where not prohibited by the rules and procedures of the forum; and

e. Negotiate legal rights or responsibilities for a specific person or entity.
2. Areas of Practice; Scope of Practice.

a. Family Law. Legal paraprofessionals may render authorized services in domestic relations, except they may not represent any party in a matter that involves the following unless the legal paraprofessional has met additional qualifications as established by the supreme court.

(1) Preparation of a Qualified Domestic Relations Order (QDRO) and supplemental orders dividing retirement assets;
(2) Division or conveyance of formal business entities or commercial property; or
(3) An appeal to the court of appeals or supreme court.

b. Limited Jurisdiction Civil. Legal paraprofessionals may engage in authorized services in any civil matter that may be or is before a municipal or justice court of this state.

c. Limited Jurisdiction Criminal. Legal paraprofessionals may render authorized services in criminal misdemeanor matters before a municipal or justice court of this state where, upon conviction, a penalty of incarceration is not at issue, whether by law or by agreement of the prosecuting authority and trial court.

d. Administrative Law. Legal paraprofessionals may engage in authorized services before any Arizona administrative agency that allows it. Legal paraprofessionals are not authorized to represent any party in an appeal of the administrative agency’s decision to a superior court, the court of appeals, or the supreme court, except that the legal paraprofessional may file an application or notice of appeal. LPs are not authorized to represent any lawyer or LP before the court, presiding disciplinary judge, or hearing panel.

3. Code of Conduct. Each legal paraprofessional shall adhere to the code of conduct in subsection J.

4. Identification. A legal paraprofessional shall include the practitioner’s name, the title “Arizona Legal Paraprofessional” or the abbreviation “LP” and the legal paraprofessional’s license number on all documents prepared by the legal paraprofessional, unless expressly prohibited by a non-judicial agency or entity. The legal paraprofessional shall also provide the practitioner’s name, title and license number to any person upon request.

5. Notification of Discipline. A license holder who has been disbarred from the practice of law in any state since original licensure as a legal paraprofessional shall provide the information regarding the disbarment to the board within 30 days of service of the notice of the disbarment.

6. Notification of Denial of Admission. A license holder who has been denied admission to the practice of law or suspended or disbarred from the practice of law in any jurisdiction since original licensure as a legal paraprofessional shall provide the information regarding the denial to the board and state bar within 30 days of service of the notice of the denial.
G. Complaints, Investigation, Disciplinary Proceedings, and Continuing Legal Education.
The Supreme Court Rules governing complaints, investigations, discipline, sanctions, reinstatement, continuing legal education, and public access to state bar records are applicable to legal paraprofessionals, except:

1. Rule 44 is not applicable to legal paraprofessionals.

2. Rule 60(a)(1) is applicable to legal paraprofessionals, except that the term “revocation” shall replace the term “disbarment.”

3. Reinstatement proceedings under Rules 64 and 65, Rules of Supreme Court, are applicable to legal paraprofessionals, except the term “revoked” or “revocation” shall replace the term “disbarred” or “disbarment.”

H. Policies and Procedures for Board Members. These requirements are contained in ACJA § 7-201(I).

I. Continuing Legal Education Policy.

1. Purpose. Ongoing continuing legal education (“CLE”) is one method to ensure legal paraprofessionals maintain competence in the field after licensure is obtained. Continuing education also provides opportunities for legal paraprofessionals to keep abreast of changes in the profession and the Arizona judicial system.

2. Applicability. All legal paraprofessionals shall comply with the continuing education requirements of Rule 45, Arizona Rules of Supreme Court. Continuing education must relate to the subject matter in which the legal paraprofessional is endorsed to practice.

3. Responsibilities of legal paraprofessionals.

   a. It is the responsibility of each legal paraprofessional to ensure compliance with the continuing education requirements, maintain documentation of completion of continuing education, and to submit the maintained documentation to the nonlawyer legal service provider program upon the request of the board or division staff.

   b. Upon request, each legal paraprofessional shall provide any additional information required by the board or division staff when reviewing renewal applications and continuing education documentation.

J. Code of Conduct. This code of conduct is adopted by the supreme court to apply to all legal paraprofessionals in the State of Arizona. The purpose of this code of conduct is to establish rules of professional conduct and minimum standards for performance by legal paraprofessionals.

1. Ethics. Each legal paraprofessional is bound by Supreme Court Rule 42, Arizona Rules of Professional Conduct in accordance with the following:
a. References to “lawyer(s)” are to be read as “legal paraprofessional(s).”

b. References to “applicant” or “applicant for admission to the state bar” is to be read as applicant for a legal paraprofessional license.

c. References to “admission to practice” or “admitted to practice” shall be read as licensed as an LP.

d. ER 5.5(a) through (b) applies to LPs. ER 5.5(c) through (h) are not applicable.

2. Professionalism. Each legal paraprofessional shall adhere to Supreme Court Rule 41, except for the Oath of Admission to the Bar.

3. Trust Accounts. Each legal paraprofessional shall adhere to Supreme Court Rule 43.

4. Insurance Disclosures. Each legal paraprofessional shall adhere to Supreme Court Rule 32(c)(13).

5. Performance in Accordance with Law.

   a. A legal paraprofessional shall perform all duties and discharge all obligations in accordance with applicable laws, rules, or court orders.

   b. A legal paraprofessional shall not represent that the practitioner is authorized to practice law beyond the areas of practice and scope of practice as provided in subsections (F)(1) and (2).

   c. A legal paraprofessional shall not use the designations “lawyer,” “attorney at law,” “counselor at law,” “Esq.,” or other equivalent words, the use of which is reasonably likely to induce others to believe the legal paraprofessional is authorized to engage in the practice of law beyond that allowed by the practitioner’s license. Any communications concerning an LP’s services must identify the LP as being a legal paraprofessional.

   d. A legal paraprofessional shall not provide any kind of advice, opinion or recommendation to a client about possible legal rights, remedies, defenses, options, or strategies unless the practitioner has the license and subject matter area specific endorsement to do so.

   e. A legal paraprofessional shall inform the client in writing that a legal paraprofessional is not a lawyer and cannot provide any kind of advice, opinion or recommendation to a client about possible legal rights, remedies, defenses, options, or strategies beyond what the LP is specifically licensed to provide authorized services for.
K. Fee Schedule.

1. Application Fees
   a. Application Fee; Initial Licensure $300
   b. Fingerprint Application Processing - rate set by Arizona law and is subject to change.

2. Examination Fees
   a. Core Skills Test $100
   b. Core Skills Test Reexaminations $100
      (For any applicant who does not pass the examination on the first attempt. The $100 fee applies to each reexamination.)
   c. Core Skills Test Reregistration for Examination $100
      (For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)
   d. Subject Matter Test $150
   e. Subject Matter Test Reexamination $150
      (For any applicant who does not pass the examination on the first attempt. The $150 fee applies to each reexamination.)
   f. Subject Matter Test Reregistration for Examination $150

4. Miscellaneous Fees.
   a. Application. Printed Application for Admission or Character Report
      (materials available online for free) $ 20.00
   b. NSF Fee $ 40.00
   c. Document Deficiency Fee: assessed if required supporting documents are not filed with application. $100.00
   d. Public Record Request per Page Copy $ .50
   e. Certificate of Correctness of Copy of Record $ 18.00

5. Annual Dues for Arizona State Bar Affiliate Members. Each person licensed as a legal paraprofessional is subject to the membership fees and requirements of Supreme Court Rule 32(c). Dues for State Bar Affiliate Membership are assessed separately.

Report to the
Attorney General
of Ontario
Pursuant to Section 63.1
of the Law Society Act
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Executive Summary

Background

At the request of the Ontario government, and following assessment and study dating back to at least 1990, the Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2007. This represented an important change to the role of the Law Society, and an expansion of its mandate to cover the regulation of all legal services provided in Ontario.

The Law Society Act amendments through which this was implemented also created the requirement for reviews of paralegal regulation, after two years and again after five years.

When the then-Attorney General, The Honourable Christopher Bentley, tabled the two-year review in the legislature in March 2009, he commented, “The Law Society has made tremendous progress so far and I am confident it will continue to oversee the regulation of paralegals in the same professional and dedicated manner in which it put the regulatory system in place.”

This report is the outcome of the five-year review and demonstrates effective progress in the regulation of licensed paralegals in the intervening years.

The Review Process

In reviewing the effect regulation has had on paralegals, particular emphasis was placed on whether the Law Society has established fair and transparent licensing processes, reasonable standards of competence and conduct, and fair and transparent investigative and disciplinary processes.

In reviewing the effect of regulation on members of the public, particular focus was placed on whether Law Society regulation has established reasonable standards of competence for licensed paralegals in Ontario, accessible information about the legal services available in Ontario, and accessible and transparent complaint and disciplinary processes for the public.

The Law Society retained a consultant to conduct extensive background research on the subject of the review, including focus groups with paralegals and members of the public who have used paralegal services, key stakeholder interviews and surveys of licensed paralegals and users of paralegal services. These research findings have informed the report’s analysis.

The Law Society also solicited submissions from paralegals, lawyers, legal organizations and members of the public. Twenty-six were received, 12 from organizations and 14 from individuals. All of these submissions have been considered in the preparation of this report.

Paralegal Regulation Today

As of December 31, 2011, the Law Society had licensed 4,096 individuals to provide legal services within the paralegal scope of practice. Primary areas of practice include small claims court, traffic and other provincial offences, landlord-tenant and various other matters handled by tribunals and administrative bodies, and minor matters under the Criminal Code. A majority of paralegals (62 per cent) practice outside Metropolitan Toronto.

A significant proportion of licensed paralegals are carrying on practices established prior to regulation, with 2,230 having taken advantage of the grandparenting and transitional provisions. There was a high success rate on the part of these applicants, and therefore minimal mid-career disruption among long-term paralegals.

With that process complete, current applicants for licensing must graduate from one of 24 accredited college programs offered by 22 institutions around the province (including one French-language institution). Accredited programs must meet defined criteria and pass regular audits. In 2011, 604 licences were issued to graduates of these programs.

Licensing examinations are available three times annually, and licensing candidates must also be of good character, a consistent standard for both lawyers and paralegals. The Law Society Act provides that no one who meets the other licensing requirements can be refused a licence on the basis of good character without a hearing. In thegrandparented and transitional licensing categories, 45 cases involving good character were referred to a hearing, and in 22 cases a licence was denied.
Once licensed, paralegals are subject to regulatory requirements that closely parallel those applicable to lawyers. Key elements include adherence to rules of professional conduct and requirements regarding trust accounts, insurance and continuing professional development, payment into a compensation fund, and the application of investigative and disciplinary processes. These requirements are central to a system of regulation that safeguards the public interest. Research conducted as part of the review process indicates that licensed paralegals are working to a higher standard of competence and enjoying enhanced professional standing. Further, paralegal clients are highly satisfied with the regulated services they have received.

As members of a regulated profession, paralegals also have the benefit of a wide range of resources provided by the Law Society. These include continuing professional development programs, a practice management helpline and mentoring services. The Law Society also implemented a practice audit program for paralegals, an integral part of the quality assurance activities in the public interest. The audits provide practical advice to help paralegals achieve effective and efficient practices.

Annual Law Society fees charged to paralegals compare favourably to those applicable to various other regulated professions, and fee revenues were sufficient to avoid incurring an anticipated deficit in the start-up phase of regulation. In addition to the requirement to pay an annual fee, licensed paralegals are required to file a Paralegal Annual Report. The reports provide demographic data, areas of legal services provided, maintenance of trust accounts and other financial information, and self-study activities.

Paralegals were integrated into the Law Society’s governance structure through an election process for five paralegal members of the Paralegal Standing Committee, established under the Law Society Act. The Committee is composed of the elected paralegals, and elected and lay benchers. The first election of paralegal members of the Committee was held in March 2010. In the relatively short period of its existence, the Committee has completed an extensive agenda, developing all the necessary details of the regulatory model for recommendation to the Law Society’s board, Convocation. The committee has worked very collegially together without tension between the paralegal and non-paralegal members.

Overall Results of the Review and Conclusions

The review has shown that implementation of the Law Society’s regulation of paralegals has been successful. The Paralegal Standing Committee agrees, but also notes that the review identified opportunities that merit further consideration.

In summary, the report has demonstrated the following:

- Consumer protection has been balanced with maintaining access to justice and the public interest has thereby been protected. Paralegals operate within a regulatory framework that closely parallels that for lawyers and are establishing a prestigious and well-regarded profession. A large majority of them (71 per cent) believe regulation has been beneficial. The Law Society was the right choice of regulator, having put in place a framework at a reasonable cost and without undue burden on licensed paralegals. Extensive services are in place and issues have been addressed as necessary to ensure paralegals are treated as respected legal services providers. It is implausible that a new regulator could have achieved comparable progress.

- The large group of paralegals who were providing legal services before regulation have been integrated into the regulated profession through a fair and transparent grandparenting process, with the one caveat that the good-character hearing process was perceived as slow.

- Initial cohorts have graduated from the accredited paralegal college programs. Submissions to the review included calls for more rigorous program standards and for a pre-requisite of two years of college education.

- In spite of extensive communications work by the Law Society, public awareness has not kept pace with changes in the legal services market, particularly with respect to awareness of the distinction between services provided by lawyers and services provided by paralegals.

- The categories of those who provide legal services but are exempt from licensing continue to provide challenges. The Law Society believes the number of exemptions should be further reduced over time. Tracking mechanisms regarding appearances before tribunals by exempt persons are also needed.
• Some anomalies remain in older provincial statutes that were not among the many amended when regulation was implemented, and the Law Society continues to work with government in this regard.

• The governance structure in the Law Society Act has worked well. Paralegal and non-paralegal members of the Paralegal Standing Committee work together cordially and no Committee report has ever been rejected by Convocation. The initial allocation of two paralegal benchers, however, will become increasingly disproportionate as the number of licensed paralegals increases.

• Most paralegals (68 per cent) are satisfied with overall progress to date with respect to Law Society regulation. Key benefits to them include enhanced credibility and prestige, and access to a wide range of services.

• Among the concerns the review disclosed, some relate to the activities of peers within the paralegal profession, for example, in the use of certain business names and marketing practices. Some paralegals see the regulatory enforcement as too lenient.

• While a significant proportion of paralegals (62 per cent) said they were satisfied with the scope of practice, some believe it should be expanded. The Law Society is actively considering whether changes to the scope of practice are appropriate, based in part on the recent Legal Needs Analysis, which is currently under committee review. Consultations on this issue are envisioned.
Foreword by the Paralegal Standing Committee

The Paralegal Standing Committee has reviewed and contributed to this Five Year Report on Paralegal Regulation in Ontario, and has reviewed the attached consultant’s report prepared by Strategic Communications Inc.

The Committee regards the implementation of paralegal regulation in Ontario as a success, providing consumer protection while maintaining access to justice, although there are remaining challenges and opportunities to be addressed, as noted in the report.

As shown by the focus groups conducted by the consultant, paralegals feel that the Law Society has provided fair and transparent licensing and regulatory processes, and that regulation has enhanced paralegals’ professional standing.

The Paralegal Standing Committee is satisfied that this report fairly presents the development of this initiative over the last five years. Given that the Law Society Act section 63.1 requires that “a portion of the report is authored by the Paralegal Standing Committee,” the Committee is pleased to submit this foreword in compliance with this legislative requirement.

The Committee looks forward to continuing to work with all stakeholders to further this important work.

Respectfully submitted,

Cathy Corsetti, Chair
On behalf of the Paralegal Standing Committee
Requirement for this review

At the request of the Ontario government, the Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2007, implemented through amendments to the Law Society Act. This represented an important change to the role of the Law Society, which, while previously limited to the regulation of lawyers, expanded to make the Law Society the regulator of all legal services in Ontario.

Law Society Act amendments also created the requirement for two reviews of the implementation of paralegal regulation, one to be conducted after two years and one after five years.

The two-year review was completed in 2009, and presented to the then–Attorney General, The Honourable Christopher Bentley, for tabling in the legislature in March 2009. In his remarks, the Attorney General commented “The Law Society has made tremendous progress so far and I am confident it will continue to oversee the regulation of paralegals in the same professional and dedicated manner in which it put the regulatory system in place.” The two-year review is available on the Law Society website.

The provision of the Law Society Act governing the five-year review is as follows:

Report after five years

DEFINITION

63.1 (1) In this section,

“review period” means the period beginning on the day on which all of the amendments to this Act made by Schedule C to the Access to Justice Act, 2006 have come into force and ending on the fifth anniversary of that day.

Review and report by Society

(2) The Society shall,

(a) review the manner in which persons who provide legal services in Ontario have been regulated under this Act during the review period and the effect that such regulation has had on those persons and on members of the public;

(b) prepare a report of the review, ensuring that a portion of the report is authored by the Paralegal Standing Committee; and

(c) give the report to the Attorney General for Ontario within three months after the end of the review period.

The “review period” in subsection 63.1 (1) ran from May 1, 2007 to April 30, 2012.
Focal points for this review

In reviewing the effect regulation has had on paralegals, particular emphasis was placed on whether the Law Society has established:

- fair and transparent licensing processes for paralegal applicants;
- reasonable standards of competence and conduct for licensed paralegals; and
- fair and transparent investigative and disciplinary processes for situations where it is alleged that licensed paralegals have failed to observe Law Society standards.

In reviewing the effect of regulation on members of the public, particular focus was placed on whether Law Society regulation has established:

- reasonable standards of competence for licensed paralegals in Ontario such that the public has access to competent paralegal services;
- accessible information about the legal services available in Ontario;
- accessible and transparent complaint processes for the use of members of the public who have concerns about the conduct or competence of licensed paralegals; and
- accessible and transparent disciplinary processes to address breaches of Law Society standards.

Methodology for this review

Following a request for proposals, the Law Society retained a consultant to conduct extensive background research on these issues. The methodology included focus groups with paralegals and members of the public who have used paralegal services, key stakeholder interviews and surveys of licensed paralegals and users of paralegal services. These research findings have informed the report’s analysis.

The Law Society also solicited submissions from paralegals, lawyers, legal organizations and members of the public. Twenty-six were received, 12 from organizations and 14 from individuals. All of these submissions have been considered in the preparation of this report.

The list of those who made submissions and the research findings are appended to this report.
History of Paralegal Regulation

The Attorney General’s Request

On January 22, 2004, then–Attorney General, Michael Bryant, attended Convocation and requested that the Law Society assume responsibility for regulating paralegals in Ontario. By that time, work on the issue dated back at least 15 years, and included major reports by Professor Ronald Ianni (1990) and Justice Peter de C. Cory (2000).

In August 1999 the Ontario Court of Appeal had commented as follows in the case of *R. v. Romanowicz*:

A person who decides to sell t-shirts on the sidewalk needs a license and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case where that person may be sentenced to up to 18 months imprisonment. Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person’s liberty and livelihood are at stake invites miscarriages of justice. Nor are *de facto* attempts to regulate the appearance of agents on a case-by-case basis likely to prevent miscarriages of justice.

From 2001 to 2002 the Law Society had worked with the Professional Paralegal Association of Ontario to resolve some of the key issues, which led to the development of a document called *A Consultation Document on a Proposed Regulatory Framework*, which became an important building block in the project as it developed.

In response to the 2004 request from the Attorney General, Convocation authorized the Treasurer to establish a task force to develop a detailed proposal in collaboration with the Ministry of the Attorney General. The then Treasurer, Frank Marrocco, established the Task Force on Paralegal Regulation on February 10, 2004, chaired by Bencher William Simpson. On April 22, 2004, the Task Force submitted a revised consultation document to Convocation, which served as the basis for consultations with stakeholders to inform a more detailed proposal.

The Task Force consulted with stakeholders from April to August 2004, holding meetings in many centres across the province, from Thunder Bay to Windsor. It heard from more than 50 organizations and groups and submitted its Report to Convocation on September 23, 2004.

The 2004 Report to Convocation

In the view of the Task Force, previous attempts to regulate paralegals had failed principally because of the inability to achieve a consensus on two difficult issues, namely, the regulatory model and the scope of paralegal activities.

The Task Force believed that, with more than 200 years of experience as a regulatory body governing lawyers in the public interest, the Law Society could more efficiently and economically regulate paralegals than could a new regulatory body. The Task Force further found that there was now considerable support for this approach in the legal profession. This resolved the first of the two most difficult issues.

The Task Force also determined regulation of paralegals could best be achieved on the basis of the current law respecting paralegal activities, thus avoiding the need for numerous substantive-law changes. The Task Force received many submissions arguing that the permitted scope of practice for paralegals should either be broadened or narrowed. The Task force was concerned that an effort to resolve these disparate views would risk indefinitely postponing the regulation of paralegals. The appropriate starting point for paralegal regulation was instead deemed to be the regulation of persons providing services in currently permitted areas of law, as defined in legislation and case law.

The Task Force agreed that the approach to paralegal regulation should be based on the following principles:

- it should reflect the current definition of the “unauthorized practice of law” as set out in case law;
- it must be in the public interest, providing consumer protection and enhancing access to justice;
- it must ensure paralegal competence;
- it should be as uncomplicated as possible while achieving the desired result;
- it should mirror the regulation of lawyers wherever possible, to avoid confusion and duplication.
As the objective was to enable the Law Society’s regulation of the delivery of legal services comprehensively, a broad definition of the practice of law was required. Exemptions could then be created for those whom it was not necessary or appropriate for the Law Society to regulate. In this way, the regulation of paralegals would be focused on individuals retained by the public to provide services for a fee.

The over-arching scheme of regulation would appear in the Law Society Act, with the details in the more flexible format of regulations and by-laws.

Key features of the model would include the following:

- Persons wishing to acquire a licence would take an approved college course, be of good character, and pass a Law Society licensing examination.
- Licensed paralegals would — in the same manner as lawyers — be required to follow a code of conduct, carry insurance, and pay into a compensation fund.
- Licensed paralegals should be subject to discipline, with the most serious sanction being loss of their licence after a hearing.

Convocation approved the Task Force Report and submitted it to the Attorney General as the recommended basis for the necessary legislation. This recommendation, incorporating the principles and features outlined above, was accepted.

The Access to Justice Act

Attorney General Bryant introduced the Access to Justice Act on October 27, 2005. Schedule C contained amendments to the Law Society Act that closely followed the recommendations of the Task Force Report, including the recommendation that the details should be addressed by way of regulations and by-laws.

The Act received Royal Assent on October 19, 2006, with an effective date for the Law Society Act amendments of May 1, 2007. At that point, the challenge to the Law Society of preparing the required by-laws and supporting operational programs began.
Analysis of Paralegal Regulation

Initial Implementation

The amended Law Society Act meant that the Law Society ceased to regulate only lawyers and became the regulator of the delivery of legal services comprehensively. This was achieved through a broad definition of the "provision of legal services". Within this broad definition, the scope of practice for paralegals was set out through by-law.

Subsection 1(8) of the amended Act excludes four areas from Law Society jurisdiction:

- other regulated professions, within the normal course of their work;
- in-house employees preparing documents for their employer;
- persons acting on their own behalf; and
- trade union representatives dealing with members’ trade union matters.

In addition to these four areas, subsection 1(8) gives the Law Society authority to exempt any other persons or classes of persons through by-laws. This gives the Law Society wide discretion to determine the areas of legal services that the Law Society will regulate.

While most of the Law Society Act amendments were effective on May 1, 2007, two provisions were effective immediately upon Royal Assent — the creation of the Paralegal Standing Committee (PSC) and the addition of two paralegal benchers to Convocation. The members of the PSC were appointed in November and met for the first time on December 5, 2006. Section 16 of the Law Society Act required that five paralegal members of the committee be appointed by the Attorney General to sit until the first election could be held. That election took place in March 2010.

The committee immediately began the challenging work of developing the details of the regulatory model for Convocation’s approval. From November 2006 to May 2007, when all of the other amendments to the Act came into effect, the PSC developed extensive recommendations addressing:

- the grandparenting process;
- development of the rules of conduct;
- exemptions to licensing;
- insurance requirements;
- fees; and
- the compensation fund.

Developing an appropriate grandparenting process was a significant challenge, but was necessary for the benefit of the large number of paralegals already in practice. A key rationale for the regulation of paralegals was that there was a mix both of competent, conscientious paralegals and of some less competent, and even incompetent and unethical ones. This was not only harmful to vulnerable clients and contrary to the public interest, but also damaging to the reputation of competent paralegals. At the same time, one of the concerns of the Ontario government was that conscientious practitioners should not face unreasonable barriers to continuing their careers under the new regulatory framework.

Regulation was designed to create a standard of competence and to address the problem of incompetent and unethical paralegals. The grandparenting provisions gave applicants a six-month window to apply for a licence, from May 1 to October 31, 2007. There were no educational requirements, provided applicants had three years of full-time experience. These applicants were subject to all the other licensing requirements, including being of good character, carrying insurance and passing the licensing examination.

Where an application raised an issue of good character, the file was referred for investigation and a possible hearing.

More than 2,200 applicants applied under these grandparenting provisions. Of these, 1,930 took the first-ever licensing examination on January 17, 2008. In total, 2,230 paralegal licences were eventually issued under the grandparenting process.

With this process concluded, licensing now proceeds on an annual timetable, in much the same manner as the licensing process for lawyers.

By-law 4 under the Law Society Act was passed on March 29, 2007 and became effective on May 1, 2007. It set out details of the regulatory model, including the permitted scope of paralegal practice. As recommended by the Task Force, the permitted scope embodied the existing permitted areas.
As noted above, the amended Law Society Act, in subsection 1(8), provided exemptions to the licensing requirements. By-law 4 established further exemptions, in keeping with the intent to focus initially on the private provision of legal services for a fee. For example, in-house paralegals who only represent their employer, such as municipal prosecutors, are not required to have a licence.

Other exemptions were subsequently added by Convocation, on the recommendation of the PSC, where there was a public policy rationale. These included, for example, the staff of legal aid clinics and of not-for-profit organizations providing free legal services, as long as they carry professional liability insurance.

The regulatory exemptions were regarded as part of a phase-in of paralegal regulation — the By-law specified that they were to be reviewed after two years. The exemptions review began in spring 2009 and concluded in 2011 with two of the exemptions being removed from the By-law and others amended. While some exemptions are likely to be permanent, such as the exemption for immediate family members, the appropriateness of others continues to be assessed.

One of the guiding principles was that the regulation of paralegals be as similar as possible to that of lawyers. The regulatory provisions governing lawyers are for the most part found in the Law Society’s by-laws. A large proportion of the by-laws now apply equally to lawyers and paralegals, and when amendments are proposed, they are generally applicable to both. Provisions are essentially the same for both lawyers and paralegals with respect to:

- practice structures;
- professional liability insurance requirements;
- standards of competence;
- financial regulation; and
- mandatory continuing professional development.

In March 2007, Convocation approved the Paralegal Rules of Conduct (‘Rules’) developed by the PSC. The Rules have been amended on a number of occasions since then to clarify duties and obligations, and to ensure consistency internally and with the lawyers’ Rules of Professional Conduct.

Provisions are essentially the same for both lawyers and paralegals with respect to:

- accepting instructions;
- carrying out instructions;
- professional relationships;
- advertising, competition and restraint of trade;
- professional conduct;
- conflicts of interest; and
- confidentiality of client information.

**Effect on Paralegals**

**Grandparenting Process**

While many aspects of paralegal regulation affect all licensed paralegals, some issues are specific to those who used the grandparenting process, as distinct from graduates of the accredited college programs.

When this process became available in May 2007, the Law Society had no means of knowing the potential number of applicants, but estimates had ranged from 750 to 1,200. When the window closed on October 31st, over 2,200 had applied. This represented a significant operational challenge.

The grandparenting provisions were meant to protect mid-career paralegals from undue disruption in their work lives, an important objective for both the Law Society and the government. They were designed to strike a balance between consumer protection and access to justice. The Law Society’s Professional Development & Competence Department developed proposals for the consideration of the PSC and subsequently Convocation, that required applicants to:

- have three years of full-time experience in the permitted areas of practice;
- be of good character;
- carry $1 million of professional liability insurance; and
- pass the licensing examination.

The vast majority of applicants were able to fulfil these requirements, regarding which there were very few complaints. Most paralegals who had practised for five or more years had no difficulty with the licensing examination. They were therefore able to continue providing legal services, assuring their clients that they were now licensed and insured, backed by a compensation fund and subject to regulation by the Law Society in the event of any problem.
As noted, many paralegals had satisfactory insurance coverage from private insurers and there was no compelling reason to disrupt these relationships. Paralegals remain able to purchase the specified level of coverage from their choice of provider. This contrasts with the situation for lawyers, who are required to purchase insurance from the Law Society’s wholly-owned insurance company, LawPRO.

Applicants were eligible for grandparenting if they had worked as paralegals in the permitted scope of practice, either independently or as an employee, for three of the last five years. For applicants requiring accommodation under one of the grounds in the Ontario Human Rights Code, the requirement was three of the last seven years. Candidates who did not meet the years of experience requirement, but who had relevant education or training, could apply as transitional candidates. The Law Society ultimately processed 2,203 applications, 1,725 as grandparenting candidates and 478 as transitional candidates.

All such candidates were required to take and pass the Paralegal Licensing Examination. They were able to write the examination in English or French in five locations across the province: Toronto, London, Ottawa, Sudbury and Thunder Bay. Secure venues and competent invigilators were arranged and sittings took place on January 17, 2008, February 27 and April 2, 2008.

Applicants who successfully completed the licensing examination were notified by the Law Society and invited to complete the licensing process by submitting their annual fee and a registration package, subject to a good character review. Comments received from the first group of paralegals who went through the process were extremely positive with respect to service provision, learning materials and sessions and the overall experiences. The Law Society began issuing licences in May 2008 and by the end of October more than 2,000 had been issued to grandparented and transitional applicants.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 83 per cent were satisfied or very satisfied with the grandparenting process.

Licensing Examinations for paralegals now take place three times a year in February, August and October in Toronto. Applicants are permitted to write the examination up to three times, after which they may be required to obtain further education before re-applying.

Competency and Education

COMPETENCY PROFILE AND EXAMINATION DEVELOPMENT

The starting point for paralegal licensing was the development of a profile setting out the required competencies for an entry-level paralegal. Competencies form the basic building blocks for a defensible examination and licensure system and can be defined as the knowledge, skills, abilities, attitudes and judgments required to competently provide legal services to the public.

The Professional Development and Competence Department began with a review of the scope of practice and the creation of rules of professional conduct for paralegals. Consultations were held with tribunals and agencies, colleges and paralegals themselves. In addition, the department reviewed and analyzed legal services programs offered by private and community colleges. The competency profile was designed to reflect the Rules as well as core issues involving professional responsibility, practice management and ethics. Competencies in the various substantive areas of law within the paralegal scope of practice were to be addressed through the college accreditation process (see below).

Each competency in the final profile was rated on a scale of importance to create an examination blueprint. The blueprint specifies types and numbers of questions, and a scoring methodology. The department then organized a series of examination item writing sessions, during which subject matter experts created questions that aligned with the competencies and parameters of the examination blueprint. Questions were then validated by qualified external assessors. The end result was an examination consisting of 100 multiple-choice questions with a passing mark set using the ‘Angoff’ method.

Reference materials were developed to support the competencies being assessed in the examinations, and addressing ethics and practice management concepts related to the Rules and competency profile. Once the reference materials were complete, questions were tagged to the appropriate section to ensure the materials comprehensively addressed the paralegal examination bank. Examination items and reference materials were externally translated into French. In addition, a study guide and learning sessions to help paralegals prepare were developed.
Information from the focus groups and online survey of paralegals conducted as part of this review indicated a high degree of satisfaction with the licensing examination: 83 per cent of respondents were satisfied or very satisfied with the examination.

ACCREDITATION OF PARALEGAL COLLEGE PROGRAMS

Once the window for grandparenting and transitional applicants closed in October 2008, the Law Society began the process of accrediting paralegal programs of study. The objective was to ensure that all candidates seeking paralegal licensing have graduated from approved education programs that meet required standards.

A competency profile for paralegal program accreditation was developed by the Professional Development and Competence Department after extensive consultation with various colleges and the Ministry of Training, Colleges and Universities (MTCU). The profile specifies 18 required courses in a variety of substantive, procedural, skills related and practice management areas within the paralegal scope of practice. Specifically, accredited college programs must offer a minimum of 830 hours of instruction, comprised of:

- 590 instructional hours in compulsory legal courses within the permitted scope of practice;
- 120 hours of field placement/practicum work experience; and
- 120 instructional hours in additional (non-legal) courses that support a well-rounded college education.

In addition, accreditation requirements set out standards related to program infrastructure, including the number and qualifications of faculty, thoroughness of the institution’s assessment practices and examinations, and the suitability of the program’s field placement process.

The department prepared accreditation packages that were distributed to academic institutions in the fall of 2007. Colleges were given until May 1, 2010 to submit an application and obtain accreditation. Priority was given to assessing accreditation applications from institutions that already had paralegal programs in place. A total of 20 college programs had submitted an application and received accreditation by June 30, 2010.

The Law Society continues to liaise regularly with the MTCU on accreditation and auditing of paralegal education programs. The ministry is copied on accreditation approvals or denials, along with the reasons for such decisions. This relationship has been extremely beneficial in ensuring the effectiveness of the new system.

There are currently 24 accredited programs in Ontario, offered by 22 community colleges and private career academies (some in more than one location). This includes a French-language program at La Cité collégiale in Ottawa. Only candidates who have graduated from accredited college programs are permitted to apply for a paralegal licence. In 2011, 604 college graduates became licensed; this number is expected to rise in 2012. In addition, there have so far been 85 licences granted to the 497 applicants via the Integration Process described below.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 70 per cent reported that the college program was adequate preparation for the licensing examination.

AUDITING OF ACCREDITED PARALEGAL COLLEGE PROGRAMS

As a measure of quality assurance, accreditation policies allow the Law Society to attend at accredited programs to review systems, conduct interviews or otherwise assess information provided in the institution’s application. To ensure that each accredited program of study maintains appropriate standards of competence training and assessment, an audit is conducted within the first three years after accreditation, and at least every five years thereafter. The Law Society began these audits in November 2009.

Each audit is comprised of the following:

- review of selected materials (e.g. course descriptions, completed assessments, faculty lists and field placement reports) to ensure they meet or exceed minimum standards; and
- two-day site visits to each campus, during which the auditors observe classes and interview administrators, faculty, students, and the field placement coordinator.

After the site visits, an audit report is drafted, providing recommendations and commentary, and is sent to the institution for review and clarification prior to issuance of a final audit report.

As of April 30, 2012, the paralegal accreditation team has conducted 19 audits at 30 campuses. The audit team has experienced an excellent level of compliance with respect to recommendations and commentary made within the process, and feedback has been very positive overall.
INTEGRATION LICENSING PROCESS

On October 1, 2010, the Law Society approved an Integration Licensing Process for members of certain previously exempted paralegal groups. The Professional Development and Competence Department developed an online training and assessment program that covers substantive areas of law within the permitted scope of practice, in addition to ethics and practice management issues.

This self-paced Paralegal Conduct and Advocacy Course is organized into 15 modules and takes approximately 50 hours to complete. The curriculum is delivered in various formats, including readings, exercises, videotaped mini-lectures, vignettes, demonstrations, and interviews with licensed paralegals. Candidates are required to pass a 20-minute, multiple-choice assessment at the end of each module.

Eligible candidates were required to apply by September 30, 2011, and must satisfy all licensing requirements, including successful completion of the licensing examination and a good character assessment. The Law Society received a total of 497 applications for this Process by the end of September 2011. Comments from candidates who have completed the course to date have been very positive.

PRACTICE RESOURCES

The Law Society conducted an extensive review of all existing Law Society practice management offerings, and where applicable, products, resources and services were updated to include reference to paralegal practices. These resources include the Knowledge Tree, a comprehensive, online listing of the most common practice-management questions that legal professionals have asked and the answers to those questions — and the following practice guides:

• Guide to Opening Your Paralegal Practice
• Paralegal Bookkeeping Guide
• Paralegal Guide to Retention and Destruction of Closed Client Files
• Paralegal Guide to Closing Your Practice
• Client Identification and Verification Resources for Paralegals.

CONTINUING PROFESSIONAL DEVELOPMENT PROGRAMS

Effective January 2011, paralegals have been subject to the continuing professional development (CPD) requirement. All paralegals who provide legal services are required to complete 12 hours of eligible educational activities in every calendar year, including a minimum of three hours of accredited professionalism-related content.

The CPD team works closely with volunteer paralegals to develop programs that meet the needs of paralegals in different practice areas and at different experience levels. Programs have addressed issues in landlord and tenant, small claims court, and provincial offences practice areas, as well as a cross-practice program for new paralegals and a program dealing with trust accounting and financials.

In 2011, the Law Society presented 18 CPD programs for paralegals, including seven free programs addressing practice management topics meeting the professionalism hours requirement. Free programs included Professionalism for Workers’ Compensation Practitioners, Opening Your Paralegal Practice, Effective Practice Management for Paralegals and Effective Writing for Paralegals.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant 65 per cent reported they were satisfied or very satisfied with the CPD requirements.
PRACTICE MANAGEMENT HELPLINE AND MENTORING

The Practice Management Helpline provides paralegals with assistance regarding the application of the Rules, and Law Society-related legislation and by-laws. The service is confidential and the helpline strives to return all calls within 24 hours.

Representatives screen calls, assist callers to identifying the issues, make referrals to existing resources and escalate the call to counsel, if necessary. Counsel will discuss the ethical issues, applicable legislation and potential options and the advantages and disadvantages of each. In 2011, the helpline responded to 861 calls from paralegals, representing growth over 606 in 2010, 797 in 2009 and 410 in 2008; in the first four months of 2012, there were 368 calls. Most calls from paralegals relate to the Provincial Offences Act, Small Claims Court and Statutory Accident Benefits matters.

Through the Practice Mentoring Initiative, staff working on the Practice Management Helpline can link callers who have specific substantive legal issues to mentors. The caller must have a unique legal issue and must demonstrate that he or she has already completed some legal research.

In 2011, the Practice Mentoring Initiative was expanded to include paralegals. Seven paralegal mentors working in the areas of property tax assessment, small claims court, landlord and tenant matters and Highway Traffic Act offences have been added to the roster.

LEGAL NEEDS REPORT

The Law Society regularly reviews the appropriate standards of competence for its licensed legal service providers. These issues formed part of the recent Legal Needs Analysis report prepared by the Professional Development and Competence Department, to determine the knowledge, skills and abilities required to provide specific services competently. Subsection 4.2 (5) of the Law Society Act refers to the Law Society’s obligation to set standards of learning and specifies that restrictions on service provision should be proportionate to the significance of the regulatory objectives. The primary goal is to ensure that competent, ethical and accessible legal services are available to the people of Ontario.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 62 per cent reported satisfaction with the current scope of practice.

CLIENT SERVICE CENTRE

With the exception of professional liability insurance, discussed below, the Law Society’s Client Service Centre adapted its existing structures and processes for use by paralegals. Depending on their employment situation, paralegals are assigned practice or employment status codes and corresponding fee categories that generally parallel those used for lawyers. Status codes are used by the Law Society for various purposes, such as determining insurance and trust account reporting requirements.

PARALEGAL ANNUAL REPORT

In addition to the requirement to pay an annual fee, licensed paralegals are required to file a Paralegal Annual Report. As paralegals were first licensed in 2008, the first reports were filed in 2009.

These reports provide important information to the Law Society on licensees’ activities, including demographic data, areas of legal services provided, maintenance of trust accounts and other financial information, and self-study activities. The report, covering the previous year’s activities, is due by March 31 each year. Failure to file more than 120 days after the due date may result in suspension of the licence to provide legal services.

Paralegal Insurance

The processes related to professional liability insurance for paralegals differ from those for lawyers, and therefore have required more changes in the operation of the Client Service Centre than other aspects of paralegal regulation. While lawyers in Ontario must purchase their professional liability insurance from a single entity (LawPRO), paralegals have a choice of service providers.

Subsection 12 (1) of Part II of By-law 6 outlines the minimum requirements for professional liability insurance, as follows:

- policy limits of $1 million per claim and $2 million in the aggregate;
- a reasonable deductible in relation to the financial resources of the licensee;
- coverage for liability for errors, omissions and negligent acts arising out of the provision of legal services by a paralegal;
- individual paralegals must be named as an “Insured” on the policy, or by way of endorsement;
• an extended reporting period of 90 days from the date of cancellation of the policy;
• addition of the Law Society as an “Additional Insured”;
• a provision that the policy may not be cancelled or amended without at least 60 days written notice to the Law Society.

Paralegals must provide written proof of their compliance with this requirement to carry mandatory insurance before they begin providing legal services, and annually thereafter.

In addition to the above requirements, the Law Society must have reviewed and approved the policy. The Law Society worked closely with a number of insurance providers to develop policy wording that meets the by-law requirements and, to date, has approved eleven errors and omissions policies offered by:

• ACE/INA
• A.M. Fredericks Underwriting Management Ltd./Echelon
• Berkley Canada
• Encon Group Inc.
• GCAN
• Lloyd’s of London – Complete Equity Markets
• Lloyd’s of London – Creechurch/Pembroke
• Lloyd’s of London – Elliot Special Risk/Markel
• Lloyd’s of London – Elliot Special Risk/XN
• Travelers Guarantee Company of Canada
• Trisura

While paralegals have an obligation to provide the Law Society with up-to-date insurance information, as the Law Society has relationships with the insurance providers and their respective brokers, in most cases the insurance information is sent directly from the broker to the Law Society.

Follow-up processes further ensure that paralegals adhere to the insurance requirements, including:

• Reminder Notices - 60 days prior to a policy expiring, a reminder notice is automatically printed and mailed to the paralegal requiring proof of valid insurance on or before their policy expiration date.
• Cancellation Notices - Policies that have been cancelled are captured in the Law Society’s system and an automated notice is generated informing the paralegal that they must either provide a new policy on or before the cancellation date, or change their status to one that does not require insurance.
• Paralegals who fail to maintain required insurance are subject to suspension of their licence.

The Client Service Centre also captures information about paralegals who are providing legal services, but are exempt from the insurance requirement, such as those who work for Legal Aid Ontario clinics or who work under the direct supervision of a lawyer.

Paralegal Business Structures

The Client Service Centre is responsible for the administration of forms and processes related to permissible paralegal business structures. These include professional corporations, multi-discipline partnerships (MDPs), and affiliations. Professional Corporations have an annual renewal process. There are filing requirements for MDPs and affiliations, and suspension may result from non-filing.

An information sheet explaining permissible business structures for paralegals was distributed during the grandparenting process, since it was clear that many existing business structures would no longer be permissible after paralegal licensing took effect.

Paralegals affected by these changes were given a grace period to bring their business structures into compliance, since many large businesses had to restructure and spin off their paralegal activities.

Law Society counsel also worked with staff to conduct a review of paralegal business names and assisted in the development of paralegal firm name guidelines. Since paralegals tend to use trade names, the approval process for professional corporation names posed some early challenges.

The significant number of professional corporation applications at the outset probably indicated that paralegals were most comfortable with these traditional structures. This meant that revisions were required to some of the Law Society’s internal processes, since shares of professional corporations can be owned entirely by lawyers, entirely by paralegals, or a combination of both (with different requirements for the Articles of Incorporation).

Administrative Suspensions

Paralegals who fail to comply with the Law Society’s administrative requirements — including payment of annual fees, submission of annual filings, maintenance of professional liability insurance, and completion of CPD requirements — may be subject to licence suspension. In this administrative process, the Client Service Centre
monitors compliance, takes due diligence steps relating to non-compliance (typically consisting of reminder letters, emails and phone calls), prepares the summary order of suspension for signature by the designated Bencher, and mails out the notice of summary order of suspension of licence. Client Service Centre staff are also responsible for changing the status codes of paralegals whose licences are suspended.

LAW SOCIETY REFERRAL SERVICE (LSRS)

The Law Society’s Lawyer Referral Service, created in 1970, is a popular access to justice service that puts prospective clients in touch with lawyers who have indicated they are willing to accept referrals in a given area of law.

Paralegals have now been added to this service, and the scope of the service has been expanded as well. The rebranded service launched in May 2012 as the Law Society Referral Service.

During the preparation of this expansion, Client Service Centre counsel assessed how to address the limited scope of paralegal practice and how to ensure fairness in referrals. It is important to ensure that the new service does not refer callers to paralegals on issues outside their scope.

Conduct and Discipline

SCOPE OF PRACTICE ISSUES

While the process for initial review of paralegal complaints mirrors the process for lawyers, it was necessary to adapt many existing precedents for paralegal complaints.

Early on, certain trends associated with paralegal complaints became apparent. For example, there was a marked increase in complaints about unauthorized practice. Since paralegal regulation brought with it a new category of “unauthorized provision of legal services”, paralegals who had made the effort to become licensed would often bring concerns about unlicensed providers of legal services to the Law Society’s attention.

Client Service Centre employees received specialized training on the scope of practice for paralegals and the exemptions in By-law 4, and were made aware of potential business structure concerns that were unique to paralegals.

The Client Service Centre is also responsible for reinstatement of the suspended licences of paralegals, licence surrender applications, and licensing following surrender.

AREA OF EMPLOYMENT AS AT DECEMBER 31, 2011*

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<thead>
<tr>
<th>Area</th>
<th>Count</th>
<th>Percentage</th>
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<tbody>
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<td>111 Associates</td>
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<td>200 Government</td>
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<td>1,491 Other</td>
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*does not include paralegals who were not working or were outside Ontario

GEOGRAPHICAL DISTRIBUTION AS AT DECEMBER 31, 2011

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<thead>
<tr>
<th>Area</th>
<th>Count</th>
<th>Percentage</th>
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<tr>
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</table>

PARALEGAL RULES OF CONDUCT

An external consultant was retained to assist with the development of the Rules, which were approved by Convocation on March 29, 2007 and have been updated as required — they were drafted to be consistent with the Rules of Professional Conduct for lawyers and to be clear and accessible for paralegals and the public. They address duties to clients, to tribunals, to other licensees and to the Law Society, and focus on ethical and professional obligations in areas such as competence, confidentiality, integrity, conflicts of interest, and civility.

The standards for paralegals are the same as the standards for lawyers to the extent that this is possible, given the different scopes of practice. For newly regulated paralegals, it was critical that the Law Society’s expectations were very clear. To achieve this goal, the Rules are formatted differently from the Rules of Professional Conduct, and do not contain any interpretive commentary.

The Paralegal Professional Conduct Guidelines were approved by the PSC as a companion to the Rules. The guidelines are intended to be used as an educational tool for paralegals in interpreting and applying their professional obligations and responsibilities under the Law Society Act, its by-laws, and under the Rules.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 84 per cent reported they were satisfied or very satisfied with the Rules.
GOOD CHARACTER HEARINGS

Subsection 27(2) of the Law Society Act requires applicants for licensing as lawyers or paralegals to be of good character, with a consistent standard for both lawyers and paralegals. Subsection 27(4) provides that no one who meets the other licensing requirements can be refused a licence on the basis of good character without a hearing. The Law Society assesses good character by requiring all applicants to disclose issues that may bring their character into question — an example of such an issue would be a criminal record. The raising of such an issue may not preclude a licence being granted since the issue to be determined is whether the applicant is of good character at the time of the hearing.

Some 400 grandparent and transitional cases raised good character issues. After investigation, 76 of those files were referred to the Proceedings Authorization Committee for decision on further action. Of these, 14 were closed and 17 were abandoned by the applicants. Forty-five were referred to a hearing, and in 22 cases a licence was denied. While this process may have seemed lengthy, the Law Society is bound to provide a hearing before denying a licence, and hearings are subject to the requirements of administrative law. Many applicants whose licences were denied by the hearing panel commenced appeals, and this significantly extended the length of the process.

By the end of 2011, the paralegal good character investigations and hearings related to the grandparenting and transitional applicants were almost entirely completed, with two decisions on reserve and one hearing remaining in progress.

INTAKE, COMPLAINTS AND INVESTIGATIONS

The Law Society responds to complaints involving conduct, competence and capacity of lawyers and paralegals. Complaints range from service issues to incivility to allegations involving the misuse of trust funds. The Law Society is able to resolve many complaints by working with complainants and licensees. When appropriate, the Law Society will conduct investigations which can lead to formal discipline prosecutions.

The Law Society began to receive complaints against licensed paralegals in 2008. The rate of new complaints increased by 32 per cent in 2010 but slowed dramatically in 2011. The volume is considered by the Law Society to be a predictable result of the regulation of a new profession.

Complaints about licensed paralegals have been integrated into the Law Society’s existing processes, and are generally similar to the types of complaints about lawyers — the most common relate to services, such as delay, lack of communication and failure to serve.

Some of the complaints have resulted in professional discipline of licensed paralegals, with the first such instance in 2009. As at December 31, 2011, 37 notices of application had been issued, 15 of which concerned the paralegal’s failure to respond to communications from the Law Society.

UNAUTHORIZED PROVISION OF LEGAL SERVICES

The Law Society Act prohibits individuals who are not licensed from practising law or providing legal services. With the start of paralegal regulation, the volume of complaints received about unauthorized provision of legal services increased significantly to a high of 445 complaints in 2009. The Law Society continues to receive an increased number of complaints about unauthorized practice, however the number of complaints received each year since 2009 has declined, with 255 complaints received in 2011.

TRUSTEE SERVICES

As is the case with lawyers, the Law Society becomes involved in obtaining trusteeships when a paralegal practice is abandoned or where the paralegal is no longer able to operate the practice, and there is no alternative provision for ongoing management of the practice. There was a significant trusteeship issue at the commencement of paralegal licensing when a large practice became insolvent, requiring Law Society intervention to protect the interests of several thousand clients. A number of paralegal practices have been abandoned since licensing. The frequency with which this has occurred is probably due to adjustments to a new regulatory regime. Altogether there have been a total of 20 trusteeships of paralegal practices.

TRIBUNAL LIAISON

The Law Society’s Professional Regulation Department maintains ongoing contact with the administrative justice community, where many paralegals routinely appear, to continue development of best practices for handling complaints originating from tribunals. This permits the review and improvements of current requirements, and provides support to the administrative justice agencies. Tribunal contacts and submissions to this review emphasize the beneficial effect that paralegal regulation has had in the proceedings before Ontario tribunals, including a general
improvement in professional standards. In addition, there is better protection for vulnerable clients in matters such as automobile accident benefits and workers compensation. Prior to regulation, these were two areas where inappropriate and unscrupulous individuals frequently took advantage of vulnerable clients. Such individuals have sometimes tried to take advantage of the continued existence of regulatory exemptions, and the Law Society continues to work with tribunals to minimize these problems.

**Budgetary and Administrative Issues**

**Paralegal Regulation Start-up Budget**

In preparing for the implementation of paralegal regulation, the Law Society developed a budget for start-up costs in 2007. This included such items as by-law drafting and review, development of the rules of conduct, definition of the scope of practice, grandparenting process, examination development for the initial round of grandparent examinations, information systems development, establishment and support for the PSC and a communication campaign addressed to both the public and to the Law Society membership.

Expenditures were required in advance of the collection of any significant amounts from paralegal candidates. Furthermore, the expected start-up costs were projected to exceed initial revenues from paralegal candidates. Start-up costs were therefore covered from a new separate Paralegal Fund with any deficit generated to be recovered through an annual surcharge to paralegals. As it turned out, applicant numbers exceeded projections resulting in a surplus in the Paralegal Fund, a source of funds used to support paralegal activities in subsequent years.

**Law Society Budget Process**

The Law Society typically prepares its annual budget and sets fees for licensing and annual membership on a break-even basis using a full cost allocation method. Separate budgets are prepared for lawyers and paralegals. Where possible, direct costs are attributed to either lawyers or paralegals. When it is not possible to separate out the costs of paralegal activities, an allocation formula is used.

The Society’s annual membership fee has three common components for lawyers and paralegals charged to each member — the general membership fee, the Compensation Fund fee and the Capital Fund fee.

Members fall into one of three fee-paying categories, broadly defined as practising members (100 per cent fee), employed not practising (50 per cent fee) and not working, including parental leave (25 per cent fee).

The first paralegal licences were granted in early 2008, following the first examinations for grandparenting applicants. Subsequent to issuance of a licence, paralegal members are subject to annual fees in the same manner as lawyers. The paralegal start-up budget was wound up in 2008 and transitioned to an annual operational budget supported by fee revenue.

**Paralegal Operating Budgets**

Use of unique fees for lawyers and paralegals requires distinct fee calculation models. Paralegal annual operating budgets primarily comprise the direct cost of regulatory activities and the operation, maintenance and delivery of the paralegal licensing examination. Other components include a contingency to allow for unanticipated costs that may arise during the year and an amount to ensure the adequate provision of administrative overheads.

Since all operational departments provide some level of support to paralegals, a method of allocating a reasonable portion of expenses for departments without direct paralegal resources is required. This is done in two steps:

- Administrative expenses are allocated to each department based on relevant factors such as head count and floor space.
- Operational expenses are then allocated primarily based on direct paralegal spending as a percentage of total Law Society spending.

**Compensation Fund**

The Compensation Fund compensates members of the public who have suffered a financial loss through the dishonesty of a licensee. The Professional Regulation Division introduced new guidelines for access to the fund to complement those already in place for lawyers. The Law Society also established a limit of $10,000 for grant approval for paralegal dishonesty. As licensing developed, claims started to be made against the fund, many of which related to retainers. Up to the end of 2011, the Compensation Fund has paid $33,000 in grants relating to 40 claims against paralegals.
A separate pool within the Fund has been established for paralegals, funded by the paralegal Compensation Fund levy. Prior to launching this coverage, the Law Society retained an actuary to estimate annual claims for paralegals. This was used to set the initial paralegal Compensation Fund levy.

As a claims history for paralegals has developed over the five years of regulation, the levy calculation has become more similar to that for lawyers. This involves a provision for routine claims, based on the historic claims experience, to approximately cover expected annual costs with no large scale defalcation. The costs of the fund, including salaries and benefits, common expenses and allocated expenses need to be financed. Included in program expenses are the costs of practice audits which are regarded as a risk-control measure. A fund balance also needed to be established as protection against worse-than-expected claims.

Each year, the Law Society has retained an actuary to assist in the calculation of estimates used to set the levy. Actual claims against the paralegal pool of the Compensation Fund have not deviated significantly from actuarial estimates and at December 31, 2011 the balance of the Fund was $217,000.

**Law Foundation of Ontario Grants**

All components of the paralegal licensing process have a direct connection to the Law Foundation of Ontario (LFO)’s mandate to support legal education in the public interest. The process assesses core competencies that are of vital interest at the entry-level into the profession.

The LFO grants have supported the access-to-education component of the paralegal licensing process, which includes translation and support services, and lowers the costs for candidates.

The Law Society appreciates the LFO’s support, which has been as follows:

- 2008: $300,600
- 2009: $176,000
- 2010: $85,000
- 2011: $72,500

**ANNUAL FEES**

The annual fees for paralegals over the last five years have been as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total, of which:</th>
<th>General Fund</th>
<th>Compensation Fund</th>
<th>Capital Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$845</td>
<td>$625</td>
<td>$145</td>
<td>$75</td>
</tr>
<tr>
<td>2009</td>
<td>$900</td>
<td>$710</td>
<td>$145</td>
<td>$45</td>
</tr>
<tr>
<td>2010</td>
<td>$933</td>
<td>$685</td>
<td>$183</td>
<td>$65</td>
</tr>
<tr>
<td>2011</td>
<td>$957</td>
<td>$711</td>
<td>$171</td>
<td>$75</td>
</tr>
<tr>
<td>2012</td>
<td>$982</td>
<td>$693</td>
<td>$214</td>
<td>$75</td>
</tr>
</tbody>
</table>

These fees are about 50 per cent of the fees paid by lawyers.

For purposes of comparison, the annual fees of some other regulatory bodies are shown in the following table:

- Royal College of Dental Surgeons of Ontario $1,760
- College of Midwives of Ontario $1,585
- Immigration Consultants of Canada Regulatory Council $1,550
- College of Physicians & Surgeons of Ontario $1,485
- College of Dental Technologists of Ontario $1,452
- Association of Ontario Land Surveyors $1,130

**Equity Department**

Paralegals have been integrated into programs operated by the Law Society’s Equity and Aboriginal Affairs Department.

- This includes the Discrimination and Harassment Counsel program, which investigates complaints of any incidents of discrimination and harassment, whether by or in defence of a Law Society member;
- The Equity Advisory Group’s Terms of Reference were revised to include a paralegal individual member and a paralegal organizational member;
- The Equity Committee now includes a paralegal member;
- Model policies and guides developed in the equity department are also applicable to paralegals;
- Research has been initiated regarding paralegal demographics. The Paralegal Annual Report includes a self-identification question regarding membership in a list of equity-seeking groups, and the snapshots of the profession are available on the website. The Change of Status survey, which tracks when licensees leave practice, has been expanded to survey paralegals.
Communicating with Paralegals, Lawyers, and the Public

INITIAL OUTREACH

From the beginning of the review period, the Law Society has provided active communications support to paralegals, the public, and other stakeholders. The Law Society continues to use electronic and written materials, teleconferences, the Internet, and email to keep paralegals informed of all aspects of regulation, and to help the public understand the value of having a new group of licensed legal service providers available.

In 2007, no registry or database with contact information for paralegals existed. For the first formal communication, the Law Society invited paralegals to participate in a telephone conference call. More than 800 participants joined the call. The licensing process for grandparenting applicants was explained, as well as the rules for continuing to practise before examinations were held and licences issued. The teleconference included an hour-and-a-half of questions and answers.

After the teleconference, the Law Society received over 200 queries by email. Representatives from Professional Regulation, Professional Development and Competence, Legal Affairs, Policy, and the Client Service Centre departments met for two days to review and develop answers to the questions, which were posted on the Law Society website. Over the following two months, the Client Service Centre received an additional 600 email enquiries, most of which were answered within two days. The Client Services Centre continues to receive queries on a daily basis and strives to maintain the same response time.

ONGOING COMMUNICATION

Electronic registration for the teleconference and subsequent email queries allowed the Law Society to build the initial contact and distribution list. The Law Society created an electronic newsletter, Paralegal Update, with regular summaries of new developments in the growth of the regulatory system. Twenty-three editions have been issued to date. A new section dedicated to paralegals was created on the Law Society’s website. Professional notices, amendments to rules and by-laws, insurance requirements, and other material continue to be provided to paralegals through these pages. They attract several thousand visits every month.

The contact list for paralegals is now maintained by the Membership Services Department and is updated daily when contact information changes. It now numbers more than 4,000.

Every month that Convocation sits, an electronic newsletter is sent to all paralegals summarizing decisions made and issues discussed. In addition, rule changes, notices to the profession, upcoming events, CPD offerings, and other announcements are made to paralegals using the email distribution list.

A second teleconference for paralegals, held in 2008, covered issues related to business structures and the use of trust accounts.

The development and implementation of paralegal regulation is also of keen interest to lawyers, the courts, and the public. Law Society publications, including the Gazette and the Ontario Reports, media releases, the website, emails, and printed brochures are all part of the communications support provided. Media interviews continue to be given on all aspects of paralegal regulation. Paralegal benchers and Law Society staff appear regularly as guest speakers at conferences and meetings with various members of and organizations within the legal community.

To help members of the public find a paralegal, the Law Society maintains a public directory of licensed paralegals on the Law Society website. The directory provides contact information and is searchable by name or postal code. It mirrors the public directory for lawyers.

OTHER OUTREACH ACTIVITIES

In addition to extensive discussions with the Ministry of the Attorney General and other government ministries, the Law Society collaborated with other stakeholders in the legal community as the regulatory system for paralegals was put in place. This included establishing consultative roundtables with interested organizations and consulting with these key contacts:

- Senior judges from all levels of the courts.
- Justices of the Peace and Deputy Small Claims Court Judges, before whom paralegals often appear.
- Paralegal organizations including the Paralegal Society of Ontario, the Institute of Agents at Court (now the Licensed Paralegal Association of Ontario), the Paralegal Society of Canada, and several smaller paralegal groups and individual paralegals.
College Advisory Group — this group, established by the Law Society, advised on the requirements for the accredited college courses and field placements.

The Legal Organizations Group, including the Ontario Bar Association, The Advocates’ Society, and the County & District Law Presidents’ Association.

Legal Aid Ontario and the community legal clinics.

The Criminal Lawyers’ Association and the Family Lawyers Association.

Senior representatives of administrative tribunals, including:
- The Financial Services Commission of Ontario (‘FSCO’) — this tribunal was sufficiently concerned about the absence of paralegal regulation in Ontario that it developed a program to limit who could appear in statutory accident benefit cases — a limited form of paralegal regulation, the ‘Register of Statutory Accident Benefit Representatives’, a pioneering initiative.
- The Workplace Safety and Insurance Board (WSIB) — this board is one of the largest in Ontario in terms of paralegal activity and the Law Society continues to work closely with the WSIB on a range of issues.
- The Workplace Safety and Insurance Appeals Tribunal, to which cases from WSIB may be appealed, also provided helpful advice.
- The Assessment Review Board.

Paralegal Governance

The governance structure was addressed in the 2004 Task Force Report as follows:

The Consultation Paper set out a model for paralegal governance, involving a Standing Committee of Convocation that would develop policies on paralegal regulation and submit them to Convocation for approval in the same way as other Law Society committees. Unlike other committees, however, it is proposed that Convocation could not at the first instance substitute its own decision for that of the committee, but could send the matter back to the Standing Committee for further consideration. Only on the second consideration could Convocation substitute its own decision.

The composition of the Standing Committee would be:

a. five paralegals, to be elected from all licensed paralegals (until the first election, the five licensed paralegals would be appointed by the Attorney General);
b. five elected benchers appointed by Convocation on the recommendation of the Treasurer, and
c. three lay benchers, appointed by Convocation on the recommendation of the Treasurer, for a total of thirteen members.

All members of the Standing Committee would be under an obligation to act in the public interest.

The Chair of the Committee would always be a paralegal. The Task Force proposes that all thirteen members of the committee choose the chair. The vice-chair would be an elected lawyer bencher or a lay bencher.

The Task Force further proposes that two of the paralegal members of the committee sit as full members of Convocation; these two persons would be chosen by eight members of the committee, the five paralegals and the three benchers. The committee chair would also be a member of Convocation, but would not have a vote (unless he or she is one of the two persons chosen as described).

This model was implemented through amendments to the Law Society Act that came into force on October 19, 2006. To permit the PSC to commence work on the details of the regulatory model immediately, section 25.2 of the Act provided that the first five paralegal members were appointed by the Attorney General.

The initial governance structure was conceived at a time when it was estimated that there would be 1,000 to 1,200 grandparenting applicants. In the submissions to this review, a number of paralegals have raised the issue of the proportionality of paralegal representation at Convocation, and only 27 per cent of paralegals in the online survey expressed satisfaction with the current structure. There are currently approximately 44,000 licensed lawyers who elect 40 voting members of Convocation. The over 4,000 paralegals elect two voting members, although the chair of the PSC also attends and speaks at Convocation. As the number of licensed paralegals increases, this issue will probably be revisited. Any change would require an amendment to the Law Society Act.

The first election of paralegal members of the PSC was held in March 2010. There were 39 candidates and 2,817 eligible paralegal voters. The election was conducted entirely online, using an external service provider selected through a competitive bidding process.
A total of 831 paralegals voted, a turn-out of 29.5 per cent. The successful candidates were Cathy Corsetti, W. Paul Dray, Michelle Haigh, Kenneth C. Mitchell and Robert Burd.

Once the paralegal members had been elected, the PSC elected the Committee Chair, Cathy Corsetti, who was re-elected in 2011 and 2012. Currently, the two elected paralegal benchers are Paul Dray and Michelle Haigh.

In the relatively short period of its existence, the PSC has completed an extensive agenda, developing all the necessary details of the regulatory model for recommendation to Convocation. The committee has worked very collegially together without tension between the paralegal and non-paralegal members.

**Statutory Environment**

Creating the paralegal regulatory model required the amendment of dozens of Ontario statutes. The Office of Legislative Counsel provided excellent assistance in this regard. However, some anomalies remain in older statues, where complex issues arise when considering the most appropriate amendments. These issues have been raised by several paralegals and are discussed in a submission to this review from a paralegal association.

The Law Society continues to work on these issues with government representatives and stakeholders. Among the statutes that have been or are being considered for amendment are the following:

**JUSTICES OF THE PEACE ACT**

The Law Society recommends appointments to the Justices of the Peace Appointments Advisory Committee, but under the current wording of the Act, appointees must be lawyers. The Law Society has proposed that paralegals should be able to sit on this committee, as they often appear before Justices of the Peace. The Ministry of the Attorney General has the matter under consideration.

**COMMISSIONERS FOR TAKING AFFIDAVITS ACT**

The Act automatically makes lawyers, by virtue of their office, commissioners for taking affidavits. The Law Society has suggested that this would also be appropriate in the case of paralegals, as they are frequently required to prepare affidavits as evidence in proceedings. It would improve service to the public for paralegals to be able to take an affidavit. The Ministry of the Attorney General has the matter under consideration.

**NOTARIES ACT**

Under the Act, lawyers are automatically entitled to be notaries, upon application. It has been suggested that this would also be appropriate in the case of paralegals. The Law Society and the Ministry of the Attorney General are reviewing this issue.

**SOLICITORS ACT**

This Act is a historical piece of legislation that has been amended many times. It includes provisions on several important topics, including contingency fees and the assessment of costs. However, several aspects of the Act have caused difficulty since the introduction of paralegal regulation. The most significant problem is section 1 of the Act, which limits the charging of fees for representation in legal proceedings to lawyers. The provision is not enforced, but causes embarrassment and confusion. The Law Society has recommended that this provision be reworded, and it may be appropriate to consider re-allocating the remaining provisions of this Act to other statutes.

**BARRISTERS ACT**

A related issue arises in the context of this historical statute. Section 3 provides that Queen’s Counsel have precedence in court, and that precedence for other counsel is to be set by year of call to the bar. This provision dates from before other legal service providers were contemplated, and while it is again not generally observed, it has occasionally caused problems when matters to be argued by a paralegal have been moved to the bottom of the court list. The Law Society recommends that the Act be amended to ensure that paralegals are treated with respect and clients are not prejudiced by their choice of representative.

**JURIES ACT**

The Act currently exempts lawyers from jury duty but does not exempt paralegals. The Law Society would regard it as appropriate for paralegals to be treated the same. However, it should be noted that some common law jurisdictions have removed the exemption for lawyers.

**IMMIGRATION AND REFUGEE PROTECTION ACT**

By-law 4 sets out the current scope of practice for paralegals, which includes advocacy work before both provincial and federal tribunals. However, in 2009 the Law Society became aware that the federal Immigration and Refugee Board was refusing to accept Ontario licensed paralegals as representatives. Accordingly, the Law Society
made a number of submissions and representations to
the federal government when the relevant legislation, the
Immigration and Refugee Protection Act was to be amended
in 2010. Bill C-35 was referred to the House of Commons
Standing Committee on Citizenship and Immigration on
September 23, 2010. The Committee reported the Bill to the
House on November 24, 2010 having added paralegals to
the list of those eligible for an exemption (new section 91(1)
(b)). Bill C-35 was passed by the House of Commons on
December 7, 2010 with all the amendments proposed by the
committee, and was proclaimed in effect in 2011.

OTHER STATUTES
In the course of the review, other statutes were mentioned
that potentially require consideration, including the
Insurance Act, the Private Security and Investigative Services
Act, the Criminal Code, and the Legal Aid Services Act.
The Law Society continues to work with the government on
the necessary updating of statutes, which is an unavoidably
complex process.

By-law 4 Exemptions

One area that has caused challenges for the Law Society
is the development of the appropriate exemptions to
regulation. As mentioned above, subsection 1(8) of the
Law Society Act excludes four groups from Law Society
regulation:

- other regulated professions, within the normal course
  of their work;
- in-house employees preparing documents for their
  employer;
- persons acting on their own behalf; and
- trade union representatives dealing with members’
  trade union matters.

In addition to these four areas, subsection 1(8) gives the Law
Society authority to exempt any other persons or classes of
persons by by-law, providing wide discretion to determine
the areas of legal services that the Law Society regulates.
The development of the appropriate list of exemptions has
been challenging, and sections 28 to 30 of By-law 4 have
already been amended several times. When the initial
exemptions list was developed in 2007, the By-law explicitly
provided for a review of exemptions to be conducted after
two years. This review, which took place over the course of
2009, involved extensive consultations with affected parties
and led to a number of revisions, adopted in 2010.

The Law Society has taken the position that it would be
desirable for the number of exemptions to be further
reduced over time. The large number of exempted persons
who applied under the Integration Process may assist in this
regard. The Law Society has noted that many employers are
now hiring licensed paralegals in exempt positions, which is
an indication of the growing respect for the new profession.

Since the 2010 revisions, the most difficult issues have
remained those in connection with the exemption for
“friends”. This exemption was created for situations such
as where someone wishes to help a neighbour or co-worker
who may have poor language skills or anxiety about
speaking in court, for no fee. However, there is no doubt
that it has sometimes been used by unscrupulous persons
wishing to evade the law, by claiming to be the friend of
large numbers of parties and charging under the table
fees. For this reason, the subsection 30 (1) of By-law 4 was
amended in June 2010 to limit the exemption to,

An individual:

i. whose profession or occupation is not and does
not include the provision of legal services or the
practice of law;
ii. who provides the legal services only for and on
behalf of a friend or a neighbour;
iii. who provides the legal services in respect of not
more than three matters per year; and
iv. who does not expect and does not receive any
compensation, including a fee, gain or reward,
direct or indirect, for the provision of the legal
services.

The limitation to “not more than three matters per year”
has assisted in reducing abuse of the exemption, but has
not eliminated it. One of the difficulties is the lack of
effective tracking mechanisms regarding how many times a
particular individual has appeared as a representative. Since
the potential locations for such appearances are in a variety
of courts and tribunals throughout Ontario, it is not feasible
for the Law Society to keep track. It is hoped that over time
it may become possible for individual courts or tribunals to
take steps in this regard.
Public Satisfaction with Paralegal Regulation

Assessing the effect of paralegal regulation on the public requires consideration of whether Law Society regulation has succeeded in establishing:

a. reasonable standards of competence for Ontario paralegals such that the public has access to competent services;

b. accessible information about the legal services available in Ontario;

c. fair and transparent complaint procedures for the use of members of the public who have concerns about the conduct or competence of licensed paralegals; and

d. an accessible, transparent discipline process to address breaches of Law Society standards.

Obtaining objective data on public satisfaction with paralegal regulation represents a challenge. Most members of the public have limited awareness of any legal issues, and of who could assist them with legal problems, until they have a specific problem. To obtain representative data, the consultant retained by the Law Society sought as large a sample as possible of Ontarians who had used the services of a paralegal in the last three years. The primary services used related to traffic disputes, small claims court matters, landlord and tenant issues, and workers’ compensation.

Results of the survey indicate a general degree of satisfaction with the paralegal services used.

- 74 per cent of clients were satisfied or very satisfied with the services they had received.
- 87 per cent would use paralegal service again.
- 68 per cent reported that paralegal services were good value.

Understandably, knowledge of the regulation of paralegals was more limited. Only 55 per cent were aware that a dissatisfied client could complain to the Law Society.

Generally, the effect on the members of the public can be assessed in terms of the availability of professional services from a newly regulated profession, and the improved protection of vulnerable clients from substandard services from which there used to be no recourse.
Conclusions

1. The implementation of the regulation of paralegals in Ontario has been a success, and has provided consumer protection while maintaining access to justice. The paramount consideration in the development of the model has been protection of the public interest. Paralegals are now required to be licensed and insured and to pay into a compensation fund in the same manner as lawyers. They are required to observe the Paralegal Rules of Conduct and to have their practices examined regularly under the Law Society’s practice review program, and to engage in Continuing Professional Development. Paralegals are well on the way to establishing a prestigious and well-regarded profession. Among surveyed paralegals, 71 per cent indicate they believe that regulation has been beneficial for them.

2. The Law Society was, and continues to be, the right choice of regulator for paralegals — a view endorsed by about three-quarters of surveyed paralegals. It is implausible that a new regulator created from scratch could have achieved comparable progress in five years. Regulation has been achieved at reasonable cost and without undue burden on licensed paralegals. The Law Society has provided services to paralegals in a wide range of areas. It has also addressed issues and problems as they have arisen, to ensure proper respect for paralegals as professional legal service providers.

3. The large group of paralegals who were providing legal services before regulation have been integrated into the regulated profession. Paralegals report being regarded with more respect, while tribunal adjudicators, judges and justices of the peace report improvements in courtroom and hearing room deportment. The grandparenting process was fair and transparent, although the good character hearings process was perceived as slow. Among surveyed paralegals, 83 per cent report being satisfied with the grandparenting process.

4. The first few cohorts of students have graduated from accredited paralegal college programs. Submissions to the review included arguments that the standards of the college programs should be reviewed with the intention of making them more rigorous. Some have suggested that the education requirement should have a pre-requisite of two years of college. Any changes would have to be balanced with access to justice considerations. The Law Society regularly reviews the appropriate standards of competence for its licensed legal service providers. These issues formed part of the recent Legal Needs Analysis report prepared by the Professional Development and Competence Department. The primary goal is to ensure that competent, ethical and accessible legal services are available to the people of Ontario. Five years is still early in the development of the model. Enhancements and refinements over time will continue to improve regulation for both the public and paralegals.

5. In spite of extensive communications work by the Law Society, public awareness has not kept pace with the changes in the legal services market. Further work is required on communication strategies, especially in explaining the services that lawyers and paralegals provide and the differences between them.

6. The ‘exempt’ categories continue to provide challenges; the Law Society has taken the position that it would be desirable for the number of exemptions to be reduced over time. In addition, more work is required with the courts and tribunals to develop tracking mechanisms to obtain information on exempted persons. While a number of submissions proposed that the Law Society place conditions on unlicensed exempted persons, there is no legal authority for the Law Society to do this.

7. While a large number of provincial statutes were amended as part of the introduction of paralegal regulation, there remain some anomalies in older statutes. The Law Society continues to work with the government on the necessary amendments.

8. The governance structure laid out in the Law Society Act, based on the 2004 Task Force Report, has worked well. Members of the Paralegal Standing Committee (PSC) work together cordially, without tension between the paralegal and non-paralegal members. No PSC report has ever been rejected by Convocation. One report was sent back for further consideration, after which the PSC adopted the view of Convocation. The initial allocation of two paralegal benchers, in addition to having the chair of the PSC attend Convocation with a voice but no vote, will become increasingly disproportionate as the number of licensed paralegals increases. Adjusting this would require a statutory amendment.
9. Most paralegals express satisfaction with overall progress so far; 68 per cent of surveyed paralegals indicate they are 'satisfied or very satisfied' with Law Society regulation. Coming under the Law Society's umbrella has had important advantages in credibility and prestige for paralegals, and has provided access to the wide range of services that the Law Society provides.

10. There are some criticisms, some of them involving dissatisfaction with issues outside the Law Society's jurisdiction, such as:
   - the amendment of provincial statutes;
   - the length of the paralegal good-character hearings process, which necessarily adheres to principles of natural justice;
   - the increase in the numbers and class size in the paralegal college programs — as noted in a number of the submissions, while the colleges have an incentive to market their programs, there is obviously no guarantee that graduation will lead to employment or a viable practice.

11. Some criticisms relate to the activities of peers — many paralegals are critical of other paralegals' business names, practices and advertisements, and have taken the position that the Law Society is too lenient when paralegals complain about each other.

12. While 62 per cent of surveyed paralegals indicate satisfaction with the current scope of practice, some paralegals have expressed the view that it should be expanded. The Law Society remains committed to taking an analytical view of the appropriate skills and competencies for specific services, and has been actively researching whether changes to the scope of practice are appropriate, as part of the Legal Needs Analysis referred to above. This report is now being reviewed by Law Society committees and will be forwarded to Convocation for consideration. Following that, a broader framework for consultation will be established, so that the legal community and other stakeholders can provide their views.
Appendices

Submissions Received

GROUPS AND ORGANIZATIONS
The Advocates’ Society
County and District Law Presidents’ Association
Criminal Lawyers’ Association
LawPRO
Legal Aid Ontario
Licensed Paralegal Association
Ontario Bar Association
Ontario Society of Collection Agents
Ontario Trial Lawyers Association
Peel Law Association
Toronto Lawyers Association
Workplace Safety and Insurance Appeals Tribunal

INDIVIDUALS
Mark Brown
Angela Browne
Donna Chaplow
Paul Duarte
Charles Foster
William Grimmett
Henry Lowi
Dan McIntyre
Stephen Parker
Michael Pawlowski
Oleksandr Pichugin
Pamela Thomson & Gary Parker
Shawn Weston
Anonymous
Five Year Review of Paralegal Regulation: Research Findings

Final Report

For The Law Society of Upper Canada

Submitted:
May 6, 2012

Prepared by:
David Kraft, John Willis, Stephanie Beattie and Armand Cousineau
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1.0 Introduction

The Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2006, as a result of amendments to the Law Society Act. Under the amended Law Society Act, the Law Society is required to conduct a review of the regulation of paralegals five years after regulation went into effect on May 1, 2007.

This research project was designed to review the manner in which paralegals have been regulated during the five-year review period and the effect that such regulation has had on paralegals and members of the public.

With respect to paralegals, research explored:

- Impressions of the impact of regulation on the paralegal profession and the impact of regulation on the public.
- Opinions regarding the manner in which the process of regulation was introduced and the extent to which regulation of paralegals has established:
  - Fair and transparent processes for applicants to obtain a paralegal license;
  - Reasonable standards of competence and conduct for paralegal members of the Law Society; and
  - Fair and transparent discipline processes for situations where it is alleged that licensed paralegals have failed to observe Law Society standards.
- Opinions regarding the role of the Law Society as the regulator of the paralegal profession.

With respect to the public, research explored:

- Awareness and knowledge of paralegal regulation and paralegal services.
- The experience of using paralegal services and impressions regarding the impact of regulation on individuals seeking and using the service of paralegals.
- The extent to which Law Society regulation has succeeded in establishing:
Reasonable standards of competence such that the public has access to competent services.
- Accessible information about legal services available in Ontario.
- Fair and transparent complaint procedures for the use of members of the public who have concerns about the conduct or competence of paralegals.
- An accessible, transparent discipline process to address breaches of Law Society standards.

This report presents the findings of an online survey of licensed paralegals and an online survey with members of the public who use paralegal services. Where appropriate the report also references findings from two earlier phases of research: key informant interviews (fall 2011) and nine focus groups (January, 2012).

2.0 Methods

Key Informant Interviews

The first phase of the research component of the Law Society’s five year review of paralegal regulation was an organized scan of the context, issues and perspectives associated with the regulation of paralegals. Interviews were conducted with seven individuals, selected for their knowledge of the history, design and implementation of paralegal regulation, and their insight into the issues associated with paralegal regulation. A focus group with 12 members of the Law Society’s Paralegal Standing Committee explored the purpose and objectives, design, and impact of paralegal regulation. A final round of interviews was conducted with eight judges, Justices of the Peace and adjudicators in Ontario courts and tribunals where paralegals appear. Findings from this research were presented in an interpretive memorandum (‘Review of Paralegal Regulation: Summary of Interviews,’ January 16, 2012).

Focus Group Research

In January 2012, nine focus groups were conducted in Toronto (3), London (2), Sudbury (2) and Ottawa (2), including five groups comprised of paralegals and four with individuals who reported having used the services of a paralegal during the past two years. Focus groups with
licensed paralegals explored impressions of the impact of regulation on the paralegal profession and the public who use paralegal services, and the experience of regulation by the Law Society, including licensing requirements, competence and conduct, discipline and other issues. Focus groups with members of the public explored knowledge of paralegals and awareness of regulation, experiences using paralegal services and impressions of the impact of regulation on the public. Results of focus group research were presented in a final report (Review of Paralegal Regulation: Focus Group Research Findings, April 4, 2012).

**Online Survey of Paralegals and the Public**

Based on the issues identified and hypotheses generated in the first two phases of research, two survey questionnaires were drafted for online administration to paralegals and members of the public who use paralegal services.

The paralegal survey questionnaire was comprised of 29 questions which identified practice characteristics, explored general impressions of the impact of regulation for paralegals and the public, the licensing process, competence and conduct, discipline and the role of the Law Society as regulator. The online survey was promoted on the Law Society website and by regular email communications to all licensed paralegal members of the Law Society. The survey was fielded from March 10 to 29, 2012 and was completed by 1,320 licensed paralegals or 32% of the 4,158 paralegal members of the Law Society. Final results, including three open-ended questions, were coded and analyzed using SPSS 12.0. Results are accurate within +/- 1.8%, 19 times out of 20.

The survey questionnaire administered to members of the public who use paralegal services was comprised of 30 questions which identified demographic characteristics, explored awareness and contact with paralegals, experience using paralegal services and impressions regarding the impact of paralegal regulation. This survey was fielded online using a proprietary panel from March 12 to 21, 2012, resulting in 1,001 completed surveys across Ontario. Final results, including two open-ended questions, were coded and analyzed using SPSS 12.0.

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1 Survey participants were screened for participation with the following question: Paralegals in Ontario independently represent clients in provincial offences court, summary conviction criminal court, small claims court and administrative tribunals such the Financial Services Commission of Ontario or the Workplace Safety and Insurance Board. Have you used the services of a paralegal in the past two years for personal or business purposes?
3.0 Summary of Findings

Paralegal regulation is viewed as beneficial and effective by the paralegal profession and the public who use paralegal services. Both groups view regulation as contributing to increased consumer protection and higher professional standards of paralegal service. Both groups were satisfied with most of the aspects of regulation and paralegal services they were asked to assess. Although a significant minority of paralegals and those using paralegal services viewed regulation as making ‘no difference’ to some aspects of the provision of paralegal services, comparatively small numbers of both groups expressed outright dissatisfaction or identified negative impacts arising from the regulation of paralegal services.

3.1 Paralegals

Paralegals view regulation as beneficial, overall, for the paralegal profession: promoting higher professional standards, improving competence and conduct, enhancing the stature of the profession in the view of the public, increasing its credibility before judges and lawyers, and appropriately defining areas of practice. Paralegals also viewed regulation as beneficial for the general public, although only moderately beneficial in areas of improving access to information and increasing public awareness about regulated legal services provided by paralegals.

Grandparented and non-grandparented paralegals indicated high levels of satisfaction with the fairness, objectivity and transparency of the licensing process and the good character requirements, although non-grandparented paralegals were somewhat less satisfied that their college program had been adequate preparation to practise as a paralegal. Both groups were very satisfied with the Paralegal Rules of Conduct and moderately satisfied with the Continuing Professional Development (CPD) requirements and the practice audit process. There is strong overall satisfaction with the complaint process and moderate satisfaction with specific aspects of the Law Society’s handling of complaints against paralegals.

The Law Society is widely viewed as having been and continuing to be the appropriate organization to regulate paralegals. About two-thirds of licensed paralegals are satisfied, overall, with Law Society regulation although satisfaction with specific areas of regulation - enforcement of ethical standards, responding to information requests and regulation of competence among paralegals - is slightly lower. The extent and variety of CPD programs and resources is a source of dissatisfaction for a somewhat higher than average proportion of paralegals (about one-fifth), which may reflect the diversity of needs and expectations
regarding this program. One source of dissatisfaction among paralegal members is the annual fees paid to the Law Society, which fewer than one-third viewed as reasonable.

Paralegals are divided on the issue of their representation in the governance of the Law Society. About one-quarter agrees and about two-fifths disagree that paralegals are adequately represented at present.

**Practice Characteristics**

- The province-wide survey sample of 1,320 licensed paralegals included 59% of paralegals with less than and 41% with more than six years experience.

- A majority (52%) received their licence in 2008.

- Almost half (48%) of survey respondents were licensed under the grandparenting provisions, and 91% of the grandparented group was licensed in 2008.

- Just over three-fifths (62%) reported practising full-time and 9% reported practising part-time as a licensed paralegal in Ontario.

- Just under half of the survey respondents are in private practice as a sole practitioner (40%), partner (4%) or associate (4%), and just over one-quarter (26%) indicated they are in private legal/paralegal practice as an employee. Nine percent reported they are not currently employed or not employed in Ontario.

- Major areas of practice cited included Small Claims Court (40%), Ontario Court of Justice (Provincial Offences Act) (37%), Landlord and Tenant Board (27%), and the Workplace Safety and Insurance Board (18%).

**Impressions of Regulation**

- Seventy-one percent of survey respondents viewed regulation of paralegals as beneficial, overall, for the general public, and 60% viewed it as helping to establish fair and transparent complaint procedures.

- Paralegals were more qualified in their assessment of other potential benefits of regulation for the public. A majority felt regulation had improved access to legal services (58%) and
access to information about legal services (54%). A narrow majority (51%) felt regulation had increased public awareness about legal services provided by paralegals, but almost one-quarter (24%) felt it had done little or nothing to increase public awareness.

- A strong majority of paralegals felt regulation was beneficial, overall, for the profession (71%), improved overall standards of competence and conduct for paralegals (73%), and improved the competence and conduct of paralegals (70%).

- A majority of survey respondents also felt that regulation had improved the credibility/stature of the paralegal profession in the view of the public (67%), appropriately defined permitted areas of practice for licensed paralegals (62%), and improved the credibility of paralegals in the eyes of judges, lawyers and tribunal members (57%).

**Licensing**

- A very strong majority of paralegals licensed under grandparenting provisions were satisfied with the fairness (84%), transparency (80%) and objectivity of the grandparenting process (79%).

- Seventy percent of non-grandparented respondents indicated they were satisfied that their college program was adequate preparation for the licensing examination and 64% were satisfied that their college program was fair.

- Among non-grandparented respondents barely half were satisfied (50%) and one-quarter were dissatisfied (26%) that their college program had adequately prepared them to practice as a paralegal. Open-ended comments from these respondents revealed a variety of concerns related to the need for improved education and training.

- A very strong majority of all survey respondents were satisfied that the licensing examination process was fair (83%), objective (80%) and transparent (77%). On each of these measures a majority of respondents were ‘very satisfied.’

- A similarly strong majority of survey respondents were satisfied that the good character requirement and the process for determining it is fair (79%), objective (77%) and transparent (75%). On each of these measures about half of the respondents indicated they were ‘very satisfied.’
Competence, Conduct and Discipline

- Eighty-four percent of survey respondents were satisfied with the Paralegals Rules of Conduct, including 51% who were very satisfied.

- Just under two-thirds (65%) were satisfied with the Continuing Professional Development (CPD) requirements.

- A majority of survey respondents (59%) were satisfied with the practice audit process, although 21% answered ‘don’t know.’ Among the 9% of respondents (n=115) who reported having had direct experience with the practice audit process, satisfaction rose to 77% (47% very, 30% somewhat).

Governance and the Law Society as Regulator

- Asked if the Law Society is the appropriate agency to regulate paralegals 74% answered definitely (51%) or probably (23%), while 17% indicated they were unsure of the alternative and 9% answered no.

- Just over two-thirds (68%) of respondents were very (34%) or somewhat satisfied (34%) with the Law Society’s regulation of paralegals.

- A majority of respondents indicated they were satisfied with the manner in which the Law Society enforces ethical and professional standards (61%), how it responds to information requests (62%), and how it regulates competence (59%).

- A bare majority of 54% of survey respondents were satisfied and 20% were dissatisfied with the extent and variety of CPD programs. This comparatively low ratio of satisfaction to dissatisfaction would appear to confirm focus group findings which suggested there are some differences in the needs and expectations of paralegals with respect to the CPD program.

- Just 32% of survey respondents were satisfied with the annual fees paid to the Law Society whereas 39% were dissatisfied. The issue of fees was one of the very few aspects of regulation tested in this survey where negative response was stronger than positive.
• Whereas 27% of respondents agreed that paralegals are adequately represented in the governance structure of the Law Society, 39% disagreed and 34% indicated they were unsure.

The Complaint Process

• Among respondents who reported having been contacted regarding a complaint against them (n=166), 73% indicated they were, overall, satisfied with the way the Law Society had handled their complaint. On specific aspects of the complaint process, 68% were satisfied that the process was reasonable and fair, 67% that it was transparent and 63% that there was a timely resolution of the matter.

3.2 Users of Paralegal Services

Individuals choose the services of paralegals to deal with a range of legal matters because paralegals are less expensive than lawyers, the legal matter is comparatively simple, paralegals have the appropriate specialization and they are easier to manage than a lawyer.

Many rely on friends/coworkers/family or their lawyer to refer them to a paralegal and help them confirm that they have made the correct choice. Individuals also use the internet, although many do not find the internet that helpful to their search for services or information. As focus group and survey findings suggest, users of paralegal services feel the need for more and better information about legal services in Ontario.

Those who use paralegal services are quite satisfied with the quality and value, and they would use those services again in a similar situation. A majority have some awareness that a complaint process exists but less than one-third reported being aware of how the complaint process works, less than one-tenth of respondents reported having considered making a complaint, and just 3% took steps to do so.

Users of paralegal services view regulation as having practical benefits. Reinforced by their own positive experiences of using paralegal services, they are confident that regulation will ensure they receive competent service from paralegals in the future.

A narrow majority of survey respondents viewed paralegal regulation as contributing to a better justice system in Ontario and making paralegal services more competent and
professional, and a large minority endorsed the view that regulation increases access to justice. On all of these issues only a small percentage of respondents viewed regulation as having a negative impact, but a large minority, and in one case half, opted for a neutral response (‘makes no difference’ or ‘don’t know’).

The Survey Sample

- The Ontario-wide sample (n=1001), comprised of individuals who reported having used paralegal services on at least one occasion during the past two years, included 28% from Toronto, 29% from the GTA outside Toronto, 40% from Central and Southern Ontario, and 3% from Northern Ontario.

Deciding to use Paralegal Services

- Just under two-thirds of respondents (57%) reported having used paralegal services on one occasion, 35% on two to four occasions and 8% on five or more occasions during the past two years.

- Respondents listed traffic ticket/traffic violation (40%), Small Claims Court (21%), landlord/tenant disputes (18%), and Workplace Safety and Insurance Board (10%) among the most frequently used types of legal services they had received from paralegals.

- Almost half (46%) cited lower cost as the reason they chose to use the services of a paralegal rather than those of a lawyer. Other reasons included: simple matter/not requiring a lawyer (41%), the paralegal was experienced/specialist in that area of law (33%), and it was easier to hire and manage a paralegal than a lawyer (23%).

- Almost half (49%) chose paralegal services based on the recommendation of friends, coworkers or family members. 19% cited referral from a lawyer, and 16% accessed a website.

Accessing Paralegal Services and Information

- Just over two-thirds (69%) reported that it was very or somewhat easy to locate a paralegal that suited their needs, 62% that it was easy to find the information they
needed about a paralegal service provider and 61% that it was easy to find the
information they needed to manage their legal matter with a paralegal.

- Although most respondents reported using the internet to find paralegal services and
  information, many may have been unaware of where to look for services and
  information.

- Thirty-eight percent of respondents reported taking specific steps to confirm they had
  chosen a paralegal with sufficient experience and credentials. The most common actions
  were: seeking assurance from friends, coworkers or family members (47%), asking the
  paralegal service provider directly to explain their credentials/experience (44%), and
  searching the internet for reviews, comments or online chat (33%) about the service
  they had chosen.

The Experience of Using Paralegal Services

- Almost three-quarters (74%) of survey respondents reported they were satisfied with
  the paralegal services they had received, whereas 9% reported they were dissatisfied.

- Nine questions explored individuals’ satisfaction/dissatisfaction with how their paralegal
  had handled their legal matter. Seventy-nine percent were satisfied that their paralegal
  had behaved in a professional manner, 75% that their paralegal had sufficient
  knowledge of the law and the relevant legal jurisdiction, 71% that the paralegal
  respected their decisions on legal matters, 71% that their paralegal knew how to do
  his/her job, and 71% that their paralegal had explained their fees and the estimated
  costs.

- Respondents also registered moderate to strong levels of satisfaction on the other four
  questions tested. Seventy percent were satisfied that their paralegal had explained
  his/her approach to their legal matter and the risks involved, 68% that their paralegal
  had explained the range of possible outcomes, 66% that they had been kept informed of
  the progress of their case, and 63% that the paralegal had provided an estimate of the
  time required for the case.

- On each of the nine questions referred to above, less than one-tenth of respondents
  reported they were dissatisfied with the paralegal service they had received.
• Just over two-thirds (68%) of respondents described the paralegal services they had received as very good (32%) or good (36%) value for the fees charged.

• Eighty-eight percent of respondents indicated they would definitely (41%) or probably (47%) use similar paralegal services if they encountered a similar situation.

The Complaint Process

• A narrow majority (55%) reported they were aware that they could make a formal complaint to the Law Society if they had concerns about the paralegal services they had received, and just 31% indicated they were aware of how the complaint process works.

• Four-fifths (80%) of respondents reported having no specific concerns and no reason to consider making a complaint, 11% reported having concerns but not having considered making a complaint, and 5% considered making a complaint but had not followed through. Of the remaining 3%, 1% had made a complaint but did not complete the process, 1% had completed the process and 1% was still involved in the complaint procedure.

The Impact of Regulation

• A narrow majority of survey respondents (53%) indicated that having regulated licensed paralegals in Ontario makes the justice system better and 5% indicated it makes the system worse. Just over two-fifths indicated it ‘makes no difference’ (32%) or answered ‘don’t know’ (10%).

• A narrow majority (52%) reported they were satisfied with their own access to information about legal services in Ontario and 12% were dissatisfied. A further 31% were neither satisfied nor dissatisfied.

• Asked to choose between two opposing views, 59% agreed that ‘regulation protects the public from incompetent and unethical paralegals,’ 18% agreed that ‘regulation is red tape that raises legal costs,’ and 23% indicated that neither statement was close to their own view.
• A narrow majority (51%) believed regulation contributed to more competent and professional paralegal services, whereas just 5% believed regulation contributes to less competent and professional services.

• Four-fifths (80%) of respondents reported they were very confident (21%) or somewhat confident (59%) that regulation would ensure they receive competent paralegal services in the future.

• Asked about the impact of regulation on access to justice, 45% indicated it would increase access to justice, 5% that it would decrease access to justice and 42% that it would make no difference.
4.0 Paralegals: The Experience of Regulation

4.1 Practice Characteristics

4.1.1 Years Practised and Licensed

About three-fifths of survey respondents (59%) reported having practised as a paralegal in Ontario for 5 years or less, including 38% who have practised for less than two years and 21% for two to five years. About two-fifths (41%) have practiced for more than six years, including 13% with six to ten years experience, and 28% who have been practicing for more than 10 years. (Chart 1)

![Chart 1: How long have you been practising as a paralegal in Ontario (include years before regulation/licensing came into effect)? (Q1)](chart1)

Just over half the survey respondents (52%) received their licence in 2008, 10% in 2009 and 18% and 19% in 2010 and 2011 respectively (Chart 2).\(^2\)

\(^2\) Percentages for 2012 are partial, since the survey period ended March 29, 2012.
Paralegals who received their licence under the grandparenting provisions comprised roughly half (48%) of all survey respondents (Chart 3). Of those who reported having received their licence under the grandparenting provisions, 91% were licensed in 2008, 5% in 2009, 2% in 2010 and 2% in 2011. Taken as a percentage of all newly licensed paralegals, those licensed under the grandparenting provisions comprised 83% of all new licensees in 2008, 26% in 2009 and just 5% in each of the following years.
Sixty-two percent of respondents reported they currently practise full-time and 9% practice part-time, while 29% reported that they are not currently practising. (Chart 4)

Survey respondents who were more likely than average to report practising full-time included: men (70%), those who have practised six to 10 years (82%) or more than 10 years (84%), those who were licensed under the grandparenting provisions (80%), and those who are 50 to 65 years of age (69%).

Survey respondents who were more likely than average to report not practising at this time included: paralegals who are women (39%), those who have been practising for less than two years (55%), those who were licensed in 2010 (48%) and 2011/12(46%), and those who are less than 35 years of age.

4.1.2 Area of Practice and Type of Practice

Areas of practice most frequently cited included Small Claims Court (43%), Ontario Court of Justice (37%), Landlord and Tenant Board (27%), the Workplace Safety and Insurance Board (18%) and the Workplace Safety and Insurance Appeals Tribunal (15%)
Of the 18% of respondents (n=235) who cited ‘other major areas of practice’ the most frequent mentions were the Statutory Accident Benefits Schedule and/or personal injury (28%), immigration, refugees, and citizenship (17%), working under a lawyer or with a law firm (12%), and Property Tax Assessment (11%). ³

Of the 13% of respondents (n=184) who cited ‘other tribunals’ among their major areas of practice, the most frequent mentions were the Assessment Review Board (25%), pension/disability issues (19%), the Ontario Labour Relations Board (14%), immigration/citizenship (11%) and the Social Benefits Tribunal (10%).

As Chart 6 shows, 40% of survey respondents indicated they are a sole practitioner in private practice, 26% are in private practice as an employee in a legal/paralegal practice, 4% are in private practice as an employee, and 4% are in private practice as an associate.

Among respondents who reported they were ‘otherwise employed’ 19% indicated other employment, 9% indicated government and 3% specified education.

³ The results reported for ‘other major areas of practice’ and ‘other tribunals’ are based on coding of survey respondents open-ended comments. Response categories have been selected by the researcher to capture a ‘basket’ of related words and phrases.
Among those who reported they were not employed at this time, 9% indicated ‘not employed in Ontario: unemployed at this time,’ 2% were retired and 1% resided outside Ontario.

4.2 Impressions of Regulation

4.2.1 Impact of Regulation on the Public

Five questions explored paralegals’ opinions regarding the impact of regulation on the Ontario public. Chart 7 shows responses to each, based on a five-point scale ranging from ‘not at all’ to ‘very much.’

Although 71% of respondents viewed regulation, overall, as beneficial (44% very much, 27% somewhat) mean response and ratio of positive to negative responses was lower for all four more specific questions, notably three questions about access to legal services, information, and awareness of paralegal services. On the latter issue a bare majority of 51% agreed that regulation had contributed very much (26%) or somewhat (26%) to increased awareness, whereas 24% viewed it as contributing not at all (9%) or not very much (15%).
The qualified endorsement of the benefits of regulation in the areas of access to services, information and particularly public awareness, is consistent with the views of some key informants and focus group participants who suggested that regulation has yielded only limited improvements in these areas. As one key informant observed the public is not yet “aware of the changes that have taken place,” and, consequently, has yet to fully benefit from the regulation of paralegal services.

4.2.2 Impact of Regulation on Paralegals

Six questions explored paralegals’ opinions about the impact of regulation on the paralegal profession. Results shown in Chart 8 indicate relatively broad agreement among survey respondents that paralegal regulation has had a positive impact on the profession. Notably, 71% of respondents (43% very much, 28% somewhat) felt regulation had been beneficial for the profession, 73% (38% very much, 35% somewhat) that regulation had improved overall standards of competence and conduct, and 70% (38% very much, 32% somewhat) that it had improved the competence and conduct of paralegals.
Interestingly, 62% (31% very much, 31% somewhat) endorsed the view that regulation had appropriately defined the permitted areas of practice compared to just 17% (6% not at all, 11% not much) who felt regulation had not appropriately defined permitted areas of practice. In some respects these results appear to be at variance with focus group findings, which suggested that a large proportion, perhaps a majority, viewed regulation as having unreasonably restricted the scope of practice for paralegals. Although scope of practice is clearly an important issue, it may not be a major concern for the majority of paralegals.

An open-ended question asked, ‘Are there any other effects of paralegal regulation that you feel are important to note?’ Among 420 responses, concern that regulation had imposed too limited a scope of practice for paralegals received the most mentions (17%). Other frequent mentions included concern that the cost of practising has increased due to membership fees associated with regulation (11%), that access to justice has been reduced for the lower income public (9%), and that unlicensed individuals continue to provide legal services (7%). These concerns all surfaced in focus group discussions.
4.3 Licensing

4.3.1 The Grandparenting Process

Paralegals who were licensed under the grandparenting provisions registered very high levels of satisfaction with the process. As Chart 9 shows, 84% were satisfied the process was fair (59% very, 25% somewhat), 80% were satisfied that it was transparent (53% very, 27% somewhat), and 80% were satisfied that it was objective (49% very, 30% somewhat).

Satisfaction with the grandparenting process was also evident in key informant interviews and focus groups discussions, in which even paralegals who had initially opposed regulation acknowledged that the process had been fair.

![Chart 9: Are you satisfied, now, that the grandparenting process by which you obtained your licence was... (Q10, n=631)](chart9.png)
4.3.2 College Programs

Among paralegals who were not licensed through the grandparenting process, and who were therefore required to meet specified pre-licensing educational requirements, 70% were satisfied that their college program was adequate preparation for the licensing examination (45% very, 25% somewhat), and 64% were satisfied that the college program was fair (36% very, 28% somewhat). However, just 50% were satisfied (25% very, 25% somewhat) that their college program was adequate preparation to practise as a paralegal, compared to 21% who were neither satisfied nor dissatisfied, and 26% who were dissatisfied (10% very, 16% somewhat) for a mean response of just 3.39.
4.3.3 The Licensing Exam

As Chart 11 shows, 84% of survey respondents were satisfied that the licensing examination was fair (55% very, 29% somewhat), 80% that it was objective (52% very, 28% somewhat), and 77% that the licensing examination process was transparent (50% very, 27% somewhat).
4.3.4 Good Character Requirement

Survey respondents also registered high levels of satisfaction with the good character requirement and process, with 79% satisfied that it was fair (52% very, 27% somewhat), 77% that it was objective (49% very, 28% somewhat) and 74% that it was transparent (47% very, 27% somewhat).

![Chart 12](chart.png)

4.3.5 Additional Comments Regarding the Licensing Process

Respondents who had participated in the grandparenting process were asked, ‘Do you have anything else you’d like to say about the grandparenting process, licensing exam or good character requirement?’ Among those who answered the question (n=189 or 30% of grandparented respondents) the most frequently mentioned issues were: the good character requirement in the licensing process had been inefficient or lax (13%), the grandparenting,
licensing and good character requirements were thorough/satisfying (11%), and the licensing examination was too easy (7%). Another 6% described the licensing examination as unbalanced and/or lacking some elements, and 6% characterized the grandparenting process as not wholly effective or thorough.

Respondents who had not participated in the grandparenting process were asked, ‘Do you have anything else you’d like to say about the college program, licensing exam, or good character requirements?’ Those who answered the question (n=244 or 36% of non-grandparented respondents) generated a different list of concerns than their grandparented colleagues. In this group the most frequently mentioned issues were: the college program does not prepare students for real life practice (16%), mentoring/apprenticeship/articling should be longer (13%), training should be more hands on/less theoretical (11%), and training and education quality should improve (10%). Another 8% suggested training should be focused/specialized on the scope of practice, and 5% recommended that accreditation of courses/colleges should be more strict. This constellation of issues related to education and training also preoccupied focus group participants who offered various (and sometimes contradictory) recommendations for how the education and training of paralegals could be modified to more effectively prepare paralegals for ‘real-life practice.’
4.4 Competence, Conduct and Discipline

All survey respondents were asked about satisfaction with the Paralegal Rules of Conduct, the Continuing Professional Development (CPD) requirements and the practice audit process. As Chart 13 shows, 84% of respondents were satisfied (51% very, 33% somewhat) with the Paralegal Rules of Conduct, whereas just 3% were dissatisfied (1.3% very, 1.4% somewhat). This very high level of satisfaction was also evident in the focus group discussions where paralegals expressed enthusiasm for the importance and benefits of having the paralegal profession governed by standards of professional conduct consistent with the rules of conduct governing lawyers. As one focus group participant put it: “You have to have standards. If you have standards for lawyers you have to for paralegals too. [You] can’t have a lesser standard.”

With respect to CPD requirements 65% were satisfied (very 37%, somewhat 28%) and 13% were dissatisfied (6% very, 7% somewhat).

Regarding the practice audit process, 59% were satisfied (33% very, 26% somewhat) and just 5% were dissatisfied (1% very, 4% somewhat). An additional 21% of respondents answered
‘don’t know,’ which may be explained by the fact that less than one-tenth of respondents reported having been audited. Interestingly, among the 9% of respondents (n=115) who reported having had direct experience with the practice audit process, satisfaction rose to 77% (47% very, 30% somewhat).

4.5 Governance and the Law Society as Regulator

4.5.1 The Law Society as Regulator

A majority of survey respondents (51%) viewed the Law Society as ‘definitely’ the appropriate choice of regulator, 23% viewed it as ‘probably’ the appropriate choice, 17% indicated they were ‘not sure of the alternatives’ and 9% answered ‘no.’

Survey results shown in Chart 14 are consistent with the results of key informant interviews and focus groups. In both cases a majority shared the view that the Law Society had proven to be the best choice to regulate paralegals.
This included some paralegals who admitted to having been initially opposed to regulation by the Law Society. Whereas, some paralegals viewed alternatives to regulation by the Law Society as an option for the future, only a small proportion viewed the Law Society as an inappropriate choice in the past or for the present.

Sixty-eight percent of respondents indicated overall satisfaction with the Law Society’s regulation (34% very, 34%), whereas 10% were, overall, dissatisfied (3% very, 7% somewhat) (Chart 15).

![Chart 15: Overall, how satisfied are you with the Law Society's regulation of paralegals? (Q18)](chart.png)

As asked about specific aspects of regulation, 62% of survey respondents were satisfied (31% very 31% somewhat) with the how the Law Society responds to requests for information and general inquiries, 61% were satisfied (32% very, 29% somewhat) with the manner in which the Law Society enforces ethical and professional standards and 59% were satisfied (27% very, 32% somewhat) with how the Law Society regulates levels of competence among paralegals (Chart 16).
A narrow majority (54%) indicated they were satisfied (26% very, 28% somewhat) with the extent and variety of CPD programs, whereas 20% were dissatisfied (7% very, 13% somewhat). The comparatively low ratio of satisfaction to dissatisfaction and corresponding low mean response (3.56) on this question may reflect some differences in needs and expectations among paralegals. For example, in focus group discussions some experienced paralegals suggested that the course offerings were too limited and too introductory to meet their professional needs. One participant recommended “more in-depth courses,” that are more closely adapted to practical professional needs. On the other hand, some less experienced paralegals expressed enthusiasm for the CPD course offerings. One recently licensed paralegal commented: “I just got notice of upcoming courses for paralegals and I think it’s great. ‘Mediation for paralegals,’ that’s something I could use and learn more about.”

Just 32% of respondents were satisfied (10% very, 22% somewhat) that the annual fees they pay to the Law Society are reasonable, whereas 39% were dissatisfied with the annual fees (18% very, 21% somewhat). Response to this question generated the lowest mean response of any of the more than 30 statements tested on a five-point scale (mean=2.83). The issue of
annual fees was one of very few aspects of regulation tested in this survey where the negative response was stronger than the positive.

4.5.3 Governance

As Chart 17 shows, 27% of respondents endorsed the view that paralegals are adequately represented in the governance structures of the Law Society, 39% that paralegals are not adequately represented, and 34% indicated they don’t know or are unsure about the adequacy of paralegal representation.

Results shown in Chart 17 reinforce results of the key informant and focus group process. Although paralegals in both contexts emphasized the overall fairness of the Law Society’s approach to regulation, they nevertheless took the view that paralegals should have stronger representation within the governance structure of the Law Society.
4.5.4 Further Comments on Law Society Regulation

A final open-ended question asked, ‘In your view, what specific steps would make paralegal regulation by the Law Society more effective?’ Of those who answered the question (n=470 or 36% of all respondents) the most frequently mentioned issues were: the Paralegal Standing Committee should be made up of mainly licensed paralegals; it is a conflict of interest for lawyers to regulate paralegals (32%), widen the scope of practice for paralegals (10%), help change the hierarchical relationship between paralegals and lawyers (9%), and toughen enforcement and eradicate illegal practices (7%). All of these themes surfaced in focus group discussions.

4.6 The Complaint Process

Chart 18 presents results of a bank of four questions which explored satisfaction with the complaint process among the 13% of survey respondents (n=166) who had been contacted by the Law Society regarding a complaint made against them.

Seventy-three percent of survey respondents reported overall satisfaction (51% very, 22% somewhat) with the way the Law Society had handled the complaint against them, 68% were satisfied the process was fair and reasonable (49% very, 19% somewhat), and 67% were satisfied that the process was transparent (46% very, 21% somewhat).

Sixty-three percent of respondents were satisfied with the timely resolution of the process (45% very, 18% somewhat), compared to 17% who were dissatisfied (11% very, 6% somewhat). As noted in the focus group report a few individuals had reported a very positive experience with the Law Society’s complaint process, while also noting that the lengthy duration of the process contributed to the stress of the experience.
Chart 18: How satisfied are you with the way the Law Society handled the complaint against you: (Q23, n=166)

Q23a. Overall

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<th>3</th>
<th>4</th>
<th>5</th>
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Q23b. ... that the process was fair and reasonable?

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<th>3</th>
<th>4</th>
<th>5</th>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

Q23c. ... that it was a transparent process?

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<th>4</th>
<th>5</th>
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Q23d. ... that there was a timely resolution of the matter?

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<th>4</th>
<th>5</th>
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<tr>
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</table>
5.0 Users of Paralegal Services: The Experience of Regulation

5.1 Survey Respondents: Some Demographic Characteristics

The Ontario-wide sample of 1,001 included 28% of respondents from Toronto, 29% from the GTA outside Toronto, 40% from Central and Southern Ontario, and 3% from Northern Ontario.

Survey respondents were comprised of 38% women and 62% men, including 38% under 35, 26% who were 35 to 49, 26% who were 50 to 65, and 7% over 65 years of age.

Fifty-six percent of respondents reported they are employed full-time, 8% are employed part-time and 13% own a business or are self-employed. Others reported they were not currently employed (8%), students (5%), or retired (10%).

Twenty-five percent reported an annual household income of more than $100k, 17% reported $80-100K, 19% reported $60-80K and $40-60K, and 20% reported an income of less than $40k.

5.2 Contact with Paralegal Services

5.2.1 Reasons for Choosing Paralegal Services

Survey participants were drawn from an online panel which included 57% who reported having used paralegal services on one occasion, 35% who used paralegals on two to four occasions, and 8% who had used paralegals services on five or more occasions during the past two years.

Respondents listed traffic ticket/traffic violation (40%), Small Claims Court (21%), landlord/tenant disputes (18%), and Workplace Safety and Insurance Board (10%) among the most frequently used types of legal services they had received from paralegals (Chart 19).
CHART 19: What types of legal services have you received from a paralegal? (Q3)

Of the 28% of respondents (n=277) who included ‘other mentions’ on the list of legal services they had received from a paralegal, the most frequently mentioned services received included: buying/selling a house/property/real estate (19%), advice for estate/will/testament/paperwork (19%), family/family court/family law (6%) and advice/assistance for divorce/separation (6%).

Lower cost was cited by 46% of survey respondents among the reasons they had decided to use the services of a paralegal (Chart 20). This was followed by: simple matter/not requiring a lawyer (41%), the perception that the paralegal selected had the right experience or specialization required (33%), that it was easier to hire/manage a paralegal than a lawyer (23%), and that the respondent had a personal relationship with the paralegal (15%).
Among the 8% of respondents (n=76) who indicated other reasons for using the services of a paralegal the most frequent mention was that the paralegal was working as an assistant with/for the respondent’s lawyer (n=20).

When asked, ‘How did you choose the services you eventually decided on?’ 49% of respondents cited recommendations from friends, coworkers or family. This was followed by: referral from a lawyer (19%), website (16%), advertisement (15%), referral by a paralegal (9%), referral by an insurance company (6%) and news story (3%). Among the 9% of respondents (n=91) who answered ‘other’ 25% reported employed a paralegal who was a friend or an acquaintance.
These results reinforce the findings of focus group research, which suggested the search for paralegal services is often informal, based on information or advice provided by family, friends and associates. In focus group discussion some participants described informal referrals leading to appropriate and satisfactory legal services, while others described a more complicated process leading to less satisfactory outcomes. For example, one Toronto participant described two experiences of relying on friends for legal services related to separation and divorce, only to learn after the fact that the legal services provided may not have been within the legal scope of practice for paralegals.

5.2.2 Finding Paralegal Services and Information

Two questions explored the experience of respondents in locating a paralegal that suited their needs and finding information related to using paralegal services. As Chart 22 shows, 69% of respondents found it easy (41% very, 28% somewhat) to locate the paralegal that suited their needs, 62% found it easy (28% very, 34% somewhat) to find the information they needed about a paralegal service provider, and 61% found it easy (26% very, 35% somewhat) to find the information needed to manage their legal matter with the paralegal service provider.
Two open-ended questions explored respondents’ use of the internet to find paralegal services and related information. The first question asked, ‘Which internet resources have you used to find a paralegal?’ Over 1,000 individual responses were coded and grouped in 52 categories, over 30 of which referred to general or specific internet resources. Apart from Google Search, mentioned by 34% of respondents, other search engines or specific sites received only a handful of mentions, including 12 mentions of the Law Society (1.2%) and 7 mentions of the Paralegal Society of Ontario (0.7%). These results suggest that although survey respondents are using the internet to seek paralegals, that search is largely random and most individuals may be unaware of specialized sources of information or advice.

A second open-ended question which asked, ‘What internet resources have you used to find information that helped manage your relationship with the paralegal service provider?’ yielded similar results. In addition to Google Search (22%), more than two dozen other search engines or specific sites each received only a handful of mentions, including the Law Society (5 mentions or 0.5%) and the Paralegal Society of Ontario (4 mentions or 0.4%). Here again, results suggest that survey respondents may be using the internet to seek relevant legal information but may not be having much success in finding the information they are seeking.
Asked if they had done anything to confirm that they had chosen a paralegal with sufficient experience and credentials, 38% of respondents answered ‘yes’ and 62% answered ‘no, not really’ (Chart 23).

Among the 38% of respondents (n=378) who took specific steps to confirm their choice of paralegal service, 47% sought assurance from a friend, coworker or family member, 44% asked the paralegal service directly to explain their credentials/experience, 33% searched the internet for reviews, comments or online chat about the services they had chosen, and 24% checked with the Law Society (Chart 24). Among the 10% of respondents who specified other (n=39), ‘checked with my lawyer’ was the most frequently mentioned source (n=8).
5.3 The Experience of Using Paralegal Services

5.3.1 Satisfaction with Paralegal Services

Asked about the outcome of their legal case when they had last used paralegal services, 59% of respondents reported a favourable outcome (35% very, 24% somewhat) and 13% reported an unfavourable outcome (7% very, 6% somewhat). A further 14% reported the outcome was neither favourable nor unfavourable, and 12% indicated it was ‘still in process’ (Chart 25).

A follow-up question explored satisfaction with paralegal services ‘regardless of the outcome of your case.’ As Chart 26 shows, 74% of respondents reported being satisfied (40% very, 34% somewhat) and just 9% reported being dissatisfied (3% very, 6% somewhat).
CHART 25: On the occasion that you most recently used the services of a paralegal, how favourable or unfavourable were the results of the case, from your point of view? (Q11)

CHART 26: Regardless of the outcome of your case, were you satisfied or dissatisfied with the paralegal services you received/are receiving? (Q12)
Results shown in Chart 26, notably the high ratio of overall satisfaction to dissatisfaction (roughly 8:1) confirmed the conclusions from the focus groups, which suggested there is substantial overall satisfaction with paralegal services in Ontario.

Nine questions explored respondents’ satisfaction with aspects of the paralegal services they used, and the results are reported in the two charts that follow.

Chart 27 presents results of the five questions that generated the highest levels of satisfaction. As it shows, more than seven-tenths of respondents were satisfied and less than one-tenth dissatisfied with five aspects of paralegal services. At the top of this list of issues 79% were satisfied (49% very, 30% somewhat) that their paralegal behaved in a professional manner, 75% were satisfied (38% very, 37%) that their paralegal had sufficient knowledge of the law and jurisdiction of the tribunal/board hearing their case. A strong majority were also satisfied that the paralegal had respected their decisions about their legal matter (69%), knew how to do their job and did it well (73%), and explained their fees and provided an estimate of the cost (71%).
Chart 27a presents the remaining results from the bank of nine questions. Seventy percent of respondents were satisfied (35% very, 35% somewhat) that their paralegal had explained his/her general approach to their legal matter, 68% were satisfied (35% very, 33% somewhat) that their paralegal had explained the range of possible outcomes in their case, 66% were satisfied (31% very, 35% somewhat) that their paralegal had kept them informed of the progress of their legal matter, and 63% were satisfied (28% very, 35% somewhat) that their paralegal had given them an accurate estimate of time for the case. Less than one-tenth of respondents indicated dissatisfaction with their paralegal’s performance in any of these areas.

Consistent with comparatively high levels of overall satisfaction with the paralegal services they had received, 68% of survey respondents rated those services as very good value (32%) or good value (36%) for the fees charged, whereas just 8% characterized the services they had received as very poor value (3%) or poor value (5%) for the fees charged.
CHART 28: Overall, when you most recently used paralegal services, was it good value or poor value for the fees charged? (Q14)

- Very good value: 32%
- Good value: 36%
- Neutral: 20%
- Poor value: 5%
- Very poor value: 3%
- Don’t know: 3%

CHART 29: Would you use similar paralegal services again, if you encounter a similar situation? (Q15)

- Yes, definitely: 41%
- Yes, probably: 47%
- No, probably not: 9%
- No, definitely not: 3%
Asked if they would use similar paralegal services again in a similar situation, 88% of survey respondents indicated they would definitely (47%) or probably (41%) do so, whereas 12% indicated they would definitely not (3%) or probably not (9%) use similar services again (Chart 29).

Respondents who indicated they would not use similar paralegal services in the future (n=120) were asked ‘Why do you say that?’ Most frequent mentions were cost (11%), paralegal did not do their job well/properly (10%), could have done it myself/gone to court myself (9%) and poor customer service (9%). Other responses were related to complaints about poor communication, professional performance and the competence of the paralegal.

5.3.2 Awareness and Use of the Complaint Process

A majority of survey respondents (55%) indicated they were aware that they could make a formal complaint to the Law Society if they had a concern about the paralegal services they received, and 31% indicated they were also aware of how the complaint process works (Chart 30).

Chart 31 shows that 80% of all survey respondents indicated they had no specific concerns with the paralegal services they had used and hence no reason to consider making a formal complaint, 11% indicated they had some concerns but did not consider making a complaint, and 5% considered making a complaint but did not follow through. Among those who initiated a complaint, 2% (n=15) reported having made a complaint and completed the process, 1% (n=6) had made a complaint and were still involved in the unfinished complaints procedure, and 1% (n=12) had made a complaint but had not completed the process (n=12).
CHART 30: Are you aware of the complaint process and how it works? (Q16b, Q17)

Q16b. Are you aware that you could make a formal complaint to the Law Society in case you have a concern about the paralegal's services you receive?

- Yes, I am aware: 55%
- No, I am not aware: 45%

Q17. Are you aware of how the complaint process works?

- Yes, I am aware: 31%
- No, I am not aware: 69%

CHART 31: As a result of your most recent use of paralegal services, please choose one of the following statements (Q18):

1. I have no specific concerns and have no reason to consider making a formal complaint to the Law Society. - 80
2. I have concerns about the service but did not consider making a formal complaint to the Law Society. - 11
3. I considered making a complaint but did not follow through. - 5
4. I made a complaint and have completed the procedure. - 1
5. I made a complaint but did not complete the process. - 1
6. I made a complaint and am still involved in the unfinished complaints procedure. - 1
5.4 The Impact of Paralegal Regulation

5.4.1 Paralegal Regulation and the Justice System

As chart 32 illustrates, respondents were most likely to opt for a qualified positive or negative response with almost three-quarters choosing the somewhat fair/somewhat unfair response option. The distribution of opinion was similar in the focus group discussions, where only a handful of participants would unequivocally characterize the justice system as either fair or unfair. Echoing many comments that focused on the complexity of the legal system, one participant commented: “I think the legal system is too complicated. It seems to me that you should be able to streamline the process. Forget the law; it just seems the whole process is so complicated.”

Survey respondents were equivocal on the issue of whether the justice system was improved as a result of having regulated licensed paralegals. Fifty-three percent agreed that regulation made the justice system much better (20%) or somewhat better (33%). But just 5% indicated
that regulation made the justice system much worse (2%) or somewhat worse (3%), 32% opted for neither worse nor better and 10% didn’t know.

In line with these results, some focus group participants expressed doubts about whether and to what extent paralegal regulation had improved the legal system in Ontario. However, a larger number viewed paralegal regulation as beneficial to the justice system in Ontario; helping to “speed up the system,” reducing the cost of legal services, and making greater comfort and support available for individuals dealing with complicated matters. Commented one participant: “I think having the services of paralegals really levels the playing field.”

As Chart 34 shows, 52% of respondents were very satisfied (18%) or somewhat satisfied (34%) with their access to information about legal services in Ontario. Although just 12% indicated they were somewhat (9%) or very (3%) dissatisfied a further 31%, almost one-third of respondents, indicated they were neither satisfied nor dissatisfied. This comparatively low level of satisfaction with access to information would appear to be further confirmation that many individuals who use paralegal services are neither confident about where to go for information about legal services nor satisfied with the information they have managed to find.
5.4.2 Benefits of Paralegal Regulation

As asked which of two statements was closer to their view, 59% of survey respondents endorsed the view that regulation protects the public from incompetent and unethical paralegals, whereas 18% endorsed the view that regulation contributes to bureaucracy, and 23% indicated that ‘neither view is close to mine.’ Opposition to regulation on the grounds it would impose unnecessary bureaucracy and raise costs was also voiced by some focus group participants, a few of whom suggested that market mechanisms and consumer demand would more effectively regulate the provision of legal services. More typically, focus group participants shared the view of many paralegals that regulation is a necessary and obvious step in regulating the paralegal profession and establishing higher standards of consumer protection.
Asked about the impact of regulation on the competence and professional standards of paralegals, 51% indicated that regulation made the profession much more (18%) or somewhat more (33%) professional. Whereas only 5% of respondents believed regulation had a negative impact on the competence and professionalism of paralegals, 44% offered a neutral response (27% no difference, 17% don’t know).

The distribution in Chart 36 is similar to the pattern of response to several general questions which asked respondents for their opinion about the impact of regulation on the legal system or the paralegal profession. Although a very small percentage of respondents viewed the impact of regulation as negative, a large minority remained uncertain about the general benefits of regulation, opting for a neutral response or a qualified endorsement.

Asked if regulation would contribute to competent standards of paralegal services, 80% of survey respondents indicated they were very confident (21%) or somewhat confident (59%) that the regulatory system would ensure that they received competent services from paralegals in the future.
CHART 36: Do you believe the services paralegals provide are more competent and professional, or less competent and professional as a result of being regulated? (Q22b)

- Much more - 5
- 4
- No difference - 3
- 2
- Much less - 1
- Don’t know

CHART 37: Are you very confident, somewhat confident, or not confident that the regulatory system will ensure that you receive competent service from paralegals in the future? (Q23)

- Somewhat confident - 59
- Very confident - 21
- Not confident - 12
- Don’t know - 8
As Chart 38 shows, 45% of survey respondents feel that regulation of paralegal services increases access to justice a lot (14%) or somewhat (31%), whereas 42% indicated it would make no difference, and 8% don’t know. Here again very few respondents identified a negative impact, leaving opinion divided between moderate positive responses and neutral options. In this instance, fully half of the survey respondents opted for a neutral response category (no difference, don’t know).
Report to the
Attorney General
of Ontario
Pursuant to Section 63.1
of the Law Society Act
How to apply for ABS licensure

An ABS is an entity that provides legal services and has nonlawyer ownership, managers, or decision maker business. Nonlawyers could have economic ownership (an equity stake) in the business, but only lawyers or individuals licensed or certified by the Arizona Supreme Court are permitted to provide legal services.


Now Accepting Applications!

ABS Authorized (Entity) Application (http://ports/0/ABS/Applications/Authorized Person (Entity) Application (2020-12-16-125540-780)

For questions relating to ABS applications, please email Suzanne Porter at porter@courts.az.gov (mailto:porter@courts.az.gov?subject=ABS Program ).
Alternative Business Structures (ABS) Questions & Answers

The Supreme Court unanimously adopted changes to its rules to encourage business innovation in providing legal services at affordable prices. It further adopted modifications to the court rules regulating the practice of law and eliminating the rule prohibiting fee sharing and prohibiting nonlawyers from having economic interests in law firms. The regulatory framework addressing this change requires businesses, called “Alternative Business Structures,” to be licensed. The changes are effective January 1, 2021.

The Committee on Alternative Business Structures will review applications for licensure under Arizona Supreme Court Rule 33.1 and Arizona Administrative section 7-209 and will make licensure recommendations to the Supreme Court.

The Court unanimously adopted the elimination of Rule 5.4. What does this allow?

Nonlawyers may partner with lawyers. Nonlawyers may own, have an economic interest in, manage, or make decisions in, an Alternative Business Structure that provides legal services. Lawyers will be permitted to split fees.

What is an Alternative Business Structure (ABS)?

An ABS is an entity that provides legal services and has nonlawyer ownership, managers, or decision makers in the business. Nonlawy economic ownership (an equity stake) in the business, but only lawyers and other individuals licensed or certified by the Arizona Supreme Court permitted to provide legal services.

What are the advantages of allowing the formation of an ABS?

- It will allow for greater technological innovations in the delivery of legal services to the public.
- It will provide additional capital to be infused in legal firms.
- It will allow firms to attract the best and brightest nonlawyer partners (as they desire equity in a firm just as lawyers want to be firm partners).
- It will allow for “one stop shops” to be able to provide legal and non-legal services to a client.

Does the public support the proposal to allow nonlawyers to partner in or own a law firm?

Yes. A poll of Arizona voters and non-voters across ages and political preferences showed 62.3% support for the proposal.
Can my firm or I apply for an ABS license?

Yes. On August 27, 2020 the Court took the first step in creating the ABS licensing program by adopting rule changes to remove the bar to having an economic interest in law firms. In October 2020, the Arizona Judicial Council (AJC) reviewed and adopted Arizona C-Administration section 7-209 setting forth the regulatory and licensing structure for ABSs, effective January 1, 2021. The basic requirements for the application process appear in Code section 7-209(E) and (G)(1). The application form is available on the Alternative Business Structures page and the "Licensing & Regulation" tab and Alternative Business Structure.

What are the costs to apply for an ABS license?

The fees and costs associated with all aspects of the licensing process are set out in Code section 7-209(J).

How will an ABS be approved?

The Supreme Court established a Committee on ABSs, like the current Character and Fitness committee. The Committee will recommend a denial of the application to the Supreme Court and the Court will grant or deny the applications. See Arizona Supreme Court Rule 33.1(a)(4).

Will the ABS committee be looking at the purposes of the ABS (such as requiring that it offer low cost legal service)?

Yes, the Committee's decision is based on the regulatory factors listed in newly adopted Arizona Supreme Court Rule 33.1(b) and in Code § 209(E).

Can an ABS be composed of all nonlawyers?

No. At least one lawyer licensed to practice law in Arizona must be appointed by the ABS to serve as its compliance lawyer.

Must the compliance lawyer be an Arizona lawyer?

Yes, per Arizona Supreme Court Rule, any person who is not admitted to practice in Arizona and who provides legal advice or services is not an authorized practice of law.

What are the requirements for the ABS Compliance Lawyer?

The Compliance Lawyer's duties and responsibilities are in ACJA section 7-209(G)(3) and include ensuring that the ABS complies with requiring policies and procedures to prevent nonlawyers in the business from interfering with lawyers' ethical duties to clients.

Will the application require certification that the compliance lawyer attests to the statements about his/her qualifications?

Yes. All application forms require attestations. Forms are available on the Alternative Business Structures page.

Can a disbarred lawyer or a person who has been refused admission due to the character and fitness process own or be a partner?

No.

Will the application require the disclosure of the names and identities of all nonlawyer investors – even those with less than a 10% interest?

Not necessarily. Code section 7-209(E) describes the persons within an applicant ABS who must complete related "authorized person" appl An "authorized person" is defined in Code section 7-209(A) as a person with an economic interest equal to or more than 10%, and someone right to exercise decision-making authority on behalf of the ABS.

For all disclosed nonlawyer investors, what information besides crimes/licenses/court sanctions will be required?

Currently, the application package requires disclosure of other ownership interests and businesses and application forms are required from the lawyer, designated principal, and authorized person(s), and a form providing information about the applicant ABS entity. The application form the requirements in Code sections 7-209(E) and (G) for authorized persons and the entity and in Code section 7-209(G)(3) for compliance in

Will the application require disclosure of how much money/capital is being contributed by nonlawyers?


All disclosure will be guided by Code section 7-209.

If 20% of the ownership of an ABS is through a trust, LLC, etc., will the application require disclosure of the beneficial owners/indirect control of the trust, LLC, etc.?

Applicants should anticipate that any individual or business that meets the “authorized person,” “economic interest,” and “decision-making authority” definitions in Code section 7-209(A) are required to complete application forms and be subject to the investigative process.

Will the application require disclosure of lawyer owners?

Yes. All persons and entities that meet the “authorized person,” “economic interest,” and “decision-making authority” definitions in Code sect required to complete application forms and be subject to the investigative process.

Will the application require disclosure of the ABS’s practice areas?

Yes, the Committee’s decision will be based on a number of factors, including the regulatory objectives listed in newly adopted Arizona Supr 33.1(b) and Code section 7-209(E).

Are all parts of the ABS application open to the public?

No. While public access to the application is generally permitted under Rule 123 of the Rules of the Supreme Court of Arizona, certain exce; open records policy include records that are:

- Confidential by Rule or Law
- Proprietary Applicant Records
- Social Security and Bank Account numbers
- Protected by Attorney Client Privilege

How will complaints against an ABS be handled?

Complaints will be taken, investigated and prosecuted by the State Bar of Arizona in the same manner as a complaint against a lawyer. Each an annual registration fee which will include monies paid into the Client Protection Fund.

Where can I get more information?

Contact the Certification and Licensing Division at 602-452-3378 or email ABSProgram@courts.az.gov
See Task Force on the Delivery of Legal Services Report and Recommendations
See Alternative Business Structures

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: )
) ARIZONA CODE OF JUDICIAL ) Administrative Order
ADMINISTRATION § 7-209: ) No. 2020 - 173
ALTERNATIVE BUSINESS )
STRUCTURES )

The above-captioned provision having come before the Arizona Judicial Council on October 22, 2020 and having been approved and recommended for adoption,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above-captioned provision, attached hereto, is adopted as section of the Arizona Code of Judicial Administration, effective January 1, 2021.

Dated this 4th day of November, 2020.

ROBERT BRUTINEL
Chief Justice
Arizona Code of Judicial Administration
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7-209: Alternative Business Structures

A. Definitions.

“Alternative business structure” ("ABS") is a business entity that includes nonlawyers who have an economic interest or decision-making authority in the firm and provides legal services in accord with Supreme Court Rules 31 and 31.1(c).

“Authorized person” means a person possessing:
1. An economic interest in the alternative business structure equal to or more than 10 percent of all economic interests in the alternative business structure; or
2. The legal right to exercise decision-making authority on behalf of the alternative business structure. Examples may include: a sole proprietor of a sole proprietorship, a manager of a limited liability company, an officer of a corporation, a general partner of a general or limited partnership, or a person possessing comparable rights by operation of law or by agreement.

“Compliance lawyer” means an active member of the State Bar of Arizona in good standing who, pursuant to Supreme Court Rule 42, ER 5.3(d) and subsection (G)(3)(b) of this section, is responsible for ensuring compliance with the rules governing ABSs, Supreme Court Rule 42, and the regulatory requirements of this section.

“Decision-making authority” in an ABS means the authority, by operation of law or by agreement, to directly or indirectly:
1. Legally bind the ABS;
2. Control or participate in the management or affairs of the ABS;
3. Direct or cause the direction of the management and policies of the ABS; or
4. Make day-to-day or long-term decisions on matters of management, policy, and operations of the ABS.

“Director” means the administrative director of the courts or the director’s designee.

“Economic interest” means (1) a share of a corporation’s stock, a capital or profits interest in a partnership or limited liability company, or a similar ownership interest in any other form of entity, or (2) a right to receive payments for providing to or on behalf of the entity management services, property, or the use of property (including software and other intangible personal property) that is based, in whole or in part, on the firm’s gross revenue or profits or any portion thereof. Notwithstanding the foregoing, “economic interest” does not mean employment-based compensation pursuant to a plan qualified under the Internal Revenue Code of 1986, as hereafter may be amended, or any successor rule, or discretionary bonuses paid to employees.

"Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative
association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, or government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

B. Applicability. This section governs the administration, licensing and regulation of alternative business structures, and shall be read with the supreme court rules governing the practice of law.

C. Purpose. This section is intended to result in the effective administration of the alternative business structures licensing program.

D. Administration

1. Role and Responsibilities of the Supreme Court. The supreme court is authorized to regulate the practice of law as a function of its responsibility to administer an integrated judiciary, pursuant to article VI, §§ 1 and 3 of the Arizona Constitution.

2. Establishment and Administration of Fund. The state treasurer shall establish an Alternative Business Structures Fund consisting of monies received for licensure fees, costs, and civil penalties. The Administrative Office of the Courts shall administer the fund and shall receive and expend monies from the fund for ABS program operations, including disciplinary operations by the State Bar of Arizona.

3. Role and Responsibilities of the Director. As designated by article VI, § 7 of the Arizona Constitution, the director:

   a. Shall:

      (1) Develop policies and procedures in conformity with this section;
      (2) Appoint and supervise all division staff;
      (3) Approve or disapprove all budgetary matters;
      (4) Ensure implementation of the applicable laws and this section; and
      (5) Develop policies and procedures regarding the processing of applications for licensing by division staff.

   b. May:

      (1) Direct division staff to conduct an investigation into alleged acts of misconduct or violations in relation to initial licensure, renewal of a license or licensure after a period of revocation; and
      (2) Refer a complaint to the state bar.

      (3) Initiate a compliance audit of a license holder to determine if the license holder is in compliance with statutes, court rules, administrative orders, court orders, local rules, the ACJA, and any other legal or ethical requirement relating to the license holder’s ABS license. The following provisions apply to audits:

         (a) Timeframes. The director shall develop timeframes and procedures for division
staff conducting compliance audits.

(b) Confidentiality.

(i) Working papers associated with the compliance audit maintained by division staff are not public records and are not subject to disclosure, except to court staff in connection with their official duties, the state bar, the attorney general, county attorney, public regulatory entities, or law enforcement agencies.

(ii) Upon completion of an audit the final report issued to the affected party is a public record subject to public inspection.

(c) Subpoena. The director may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the audit.

(d) Referral. The director may refer the audited license holder to the state bar for investigation of alleged acts of misconduct or violations of statutes, court rules, administrative orders, court orders, local rules, the ACJA, and any other legal or ethical requirement relating to the license holder’s ABS license.

(e) Violations or Noncompliance. Willful violation of or willful noncompliance with an order of the director regarding the audit, or willful noncompliance with a corrective action plan resulting from an audit, may result in an order directing the license holder to comply. The director may forward a copy of the order or report to the superior court and request the superior court issue an order to require the appearance of a person or business, compliance with the director’s order, or both. The superior court may treat the failure to obey the order as contempt of court and may impose penalties as though the license holder had disobeyed an order issued by the superior court.

4. Role and Responsibilities of Division Staff.

a. The director shall designate the division director and other division staff to assist in the administration of the ABS licensing program pursuant to article VI, § 7 of the Arizona Constitution.

b. Division staff shall:

(1) Submit completed applicant fingerprint cards and applicable fees to the Arizona Department of Public Safety, in accordance with A.R.S. § 41-1750 and Public Law 92-544, pursuant to subsection (E)(1)(c);

(2) Make recommendations to the committee on all application and licensing matters and any other matters regarding applicants and license holders;

(3) Provide updates to the committee on program activities;

(4) Maintain a list of license holders and post the list on the applicable website and make the list available to the public;

(5) Conduct compliance audits and monitoring as required by this section; and

(6) Conduct pre-licensure investigations of allegations of acts of misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA by applicants or authorized persons and report the findings to the committee.

(7) Submit a quarterly report to the court and the state bar of current license holders.
5. Role and Responsibilities of Committee on Alternative Business Structures.

a. Appointment of Members. Pursuant to Rule 33.1, the court shall appoint members to initial varying terms of one, two, and three years to encourage continuity of the committee. Other appointment details are contained in Supreme Court Rule 33.1(a)(2) and (3). The members shall assist division staff in the recruitment of committee members.

b. Duties of the Committee. In addition to Supreme Court Rule 33.1(a)(4) – (6) and (b):

(1) The committee shall:
   (a) Make recommendations to the supreme court or the Arizona Judicial Council regarding rules, policies, and procedures for regulating ABSs, including:
       (i) applicant qualifications;
       (ii) fees;
       (iii) a code of conduct; and
       (iv) any other matter pertaining to ABSs.
   (b) Recommend whether to license an applicant for initial licensure;
   (c) Examine license renewal applications and grant or deny renewal; and
   (d) Order a summary suspension of a license.

(2) The committee may:
   (a) Hold interviews of applicants regarding initial licensure; and
   (b) Hold interviews of license holders regarding renewal of licensure;

d. In addition to the requirements of subsection (D), and except as otherwise provided herein, committee members must abide by ACJA § 7-201(I)(2) through (7).

e. On or before April 1 of each year the committee shall file a report with the supreme court describing the status of the ABS program. The report shall include, but is not limited to, the following information:

   (1) The number of applications granted and declined during the previous calendar year;
   (2) The number of licensed ABSs as of December 31 of the previous calendar year;
   (3) The number of charges filed against ABSs and ABS compliance lawyers during the previous calendar year and the nature of the charge(s);
   (4) The number of complaints initiated by the State Bar during the previous calendar year and the nature of the complaint;
   (5) Discipline imposed during the previous calendar year, the nature of conduct leading to the discipline and the discipline imposed; and
   (6) Recommendations concerning modification or improvements to the ABS program.

f. The state bar shall provide the committee with the following information:

   (1) On a calendar quarter basis:
(a) The number of charges filed against ABSs during the previous calendar quarter and the nature of the charge;
(b) The number of complaints initiated by the state bar during the previous calendar quarter and the nature of the complaint; and
(c) Discipline imposed during the previous calendar quarter, the nature of the conduct leading to the discipline and the discipline imposed.

(2) On or before January 31, on an annual basis:
(a) The number of licensed ABSs as of December 31st; and
(b) Recommendations concerning modifications or improvements to the ABS program.

(3) Such other information as the committee may request to prepare the report described in section (D)(5)(e) herein.

6. Role and Responsibility of the State Bar of Arizona. The State Bar of Arizona is responsible for receiving, processing, investigating, seeking interim suspension of, and prosecuting disciplinary matters against ABSs and an ABS’s members, and shall carry out this responsibility according to supreme court rules and this code section.

7. Computation of Time. For the purposes of this section, the computation of days pursuant to Rule 6(a), Rules of Civil Procedure is calculated as follows:

(1) Day of the Event Excluded. Exclude the day of the act, event, or default that begins the period.
(2) Exclusions if the Deadline is Less Than 11 Days. Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.
(3) Last Day. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.
(4) Next Day. The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

E. Licensure.

1. Application for Initial Licensure.

a. Forms. An applicant, including all authorized persons, shall apply for licensure on approved forms and file them with division staff.

   (1) Division staff shall conduct a preliminary review of the submitted application and determine if the application is deficient, the required supporting documents are deficient, fees are deficient, or a combination of these requirements are deficient.
   (2) Division staff shall advise the applicant of the deficiencies.
   (3) The applicant shall provide the information and a written response to correct or explain the deficiencies, or otherwise remedy the defects in the application, supporting documents or fees.
(4) Division staff may require the applicant to provide additional information or an explanation reasonably necessary to determine if the applicant meets the required qualifications specified in this section.

(5) Upon receipt of a complete application, division staff may conduct a personal credit review and review records regarding an application for initial licensure, consistent with the policies and procedures developed by the director.

(6) The applicant shall notify division staff of any changes relevant to the application for licensure within five days of the change.

(7) Upon a final review of the application, division staff shall prepare and forward to the committee a written recommendation regarding the applicant’s qualifications and eligibility for licensure.

(8) Division staff shall advise the committee in any written recommendation regarding licensure of an applicant, of any complaints alleging acts of misconduct or violations of statute, court rules or order, or this section, if the allegations occurred during the time the applicant held an active license and were received after the applicant’s licensure expired.

(9) Division staff’s written recommendation to the committee shall note any deficiencies in the application. A deficient application for initial licensure is lacking one or more of the following requirements:
   (a) An explanation or correction of any deficiencies, pursuant to subsection (E)(1)(a)(4);
   (b) Payment of all appropriate fees, pursuant to subsection (E)(1)(b); or
   (c) Necessary information or documents to complete a criminal background check, including a readable fingerprint card or affidavit in lieu of a fingerprint card, pursuant to subsection (E)(1)(c).

(10) The committee, upon review of the division staff recommendation, may request an informal interview with an applicant, pursuant to subsection (D)(5)(c)(2)(a), to establish if:
   (a) Additional information is needed to determine if the applicant meets all qualifications in this section;
   (b) An explanation of the information provided by the applicant is needed to determine if the applicant meets all qualifications in this section; or
   (c) Any complaints, regarding allegations of misconduct or violations of the statutes, court rules, or applicable sections of the ACJA, received after the applicant’s original licensure expired, require investigation by division staff pursuant to subsection (E)(1)(a)(4).

b. Fees. The applicant shall submit with the application, an application fee, initial licensure fee, and any other fees required as specified in subsection (J). Fees are not refundable or waivable. An applicant shall make the payment for any fee payable to the Arizona Supreme Court. An application submitted without fees is deficient. In addition to the fees described in subject J, if the cost of the investigation exceeds $1,500, or division staff expends more than 80 hours performing the investigation, applicant shall pay the additional investigation cost and division staff additional investigation time at $100 per hour.
c. **Fingerprinting.** If required, an authorized person shall submit with the application, a full set of fingerprints, with the fee established by law, for the purpose of obtaining a state and federal criminal records check. An application submitted without a fingerprint card, if required, is deficient.

(1) The authorized person shall provide a readable and complete fingerprint card. The authorized person shall pay any costs attributable to the original fingerprinting or subsequent re-fingerprinting due to unreadable fingerprints and any fees required for the submission or resubmission of fingerprints.

(2) If after two attempts, the FBI determines the fingerprints provided are not readable, the authorized person shall submit a written statement, under oath, that the authorized person has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application.

(3) Division staff shall submit completed fingerprint cards and the applicable fees to the Arizona Department of Public Safety, pursuant to A.R.S. § 41-1750, Public Law 92-544, and subsection (D)(4)(b)(1).

2. **Decisions Regarding Licensure.**

   a. In determining whether to recommend to the supreme court a grant of licensure, the committee shall take into consideration Supreme Court Rule 33.1(b), which states:

   Decision Regarding Licensure. The Committee shall recommend approval of applications if the requirements in this rule and in ACJA are met by the applicant. The Committee’s recommendation shall state the factors in favor of approval.

   (1) Decisions of the Committee must take into consideration the following regulatory objectives:

      (A) protecting and promoting the public interest;
      (B) promoting access to legal services;
      (C) advancing the administration of justice and the rule of law;
      (D) encouraging an independent, strong, diverse, and effective legal profession; and
      (E) promoting and maintaining adherence to professional principles.

   (2) The Committee shall examine whether an applicant has adequate governance structures and policies in place to ensure:

      (A) lawyers providing legal services to consumers act with independence consistent with the lawyers’ professional responsibilities;
      (B) the alternative business structure maintains proper standards of work;
      (C) the lawyer makes decisions in the best interest of clients;
      (D) confidentiality consistent with Supreme Court Rule 42 is maintained; and
      (E) any other business policies or procedures do not interfere with a lawyers’ duties and responsibilities to clients.
b. Notification of Licensure. Upon the supreme court’s order approving a license, division staff shall promptly notify qualified applicants of licensure in writing. Each qualified ABS shall receive a document evidencing licensure, stating the applicant’s name, date of licensure, license number, and expiration date of the license. Each license shall expire as provided in (F)(1).

c. License Status. All licenses are valid until expired, voluntarily surrendered, suspended or revoked.

d. Denial of Initial License.

(1) The committee shall recommend to the supreme court denial of licensure if the applicant does not meet the qualifications or eligibility requirements at the time of the application described in this section; or has not submitted a complete application with all deficiencies corrected, the required documents and fees.

(2) The committee may recommend denial of licensure if the committee finds, with respect to the applicant or any authorized person, one or more of the following:

(a) Has committed material misrepresentation, omission, fraud, dishonesty, or corruption in the application form;
(b) Has committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters;
(c) Has conduct showing the applicant or an authorized person of the applicant is incompetent or a source of injury and loss to the public;
(d) Has a conviction by final judgment of a felony, regardless of whether civil rights have been restored;
(e) Has a conviction by final judgment of a misdemeanor if the crime has a reasonable relationship to the practice of law or the delivery of legal services to be provided by the ABS, regardless of whether civil rights have been restored;
(f) Has been disbarred from, or denied admission to, the practice of law or the equivalent of disbarment or denial in this state or any other jurisdiction;
(g) Is currently suspended from the practice of law in this state or any jurisdiction;
(h) Has a denial, revocation, suspension, or any disciplinary action of any professional or occupational license or certificate;
(i) Has a censure, probation, or any other disciplinary action of any professional or occupational license or certificate by other licensing or regulatory entities if the underlying conduct is relevant to licensure under this section;
(j) Has a termination, suspension, probation, or any other disciplinary action regarding past employment if the underlying conduct is relevant to licensure under this section;
(k) Has been found civilly liable in an action involving misrepresentation, material omission, fraud, misappropriation, theft, or conversion;
(l) Is currently on probation or parole;
(m) Has violated any decision, order, or rule issued by a professional regulatory entity;
(n) Has violated any order of a court, judicial officer, administrative tribunal, or the
committee;
(o) Has made a false or misleading statement or verification in support of an application for licensure filed by another person;
(p) Has made a false or misleading oral or written statement to division staff or the committee;
(q) Failed to disclose information on the application subsequently revealed through the background check;
(r) Failed to respond or furnish information to division staff or the committee when the information is legally requested and is in the applicant’s control or is reasonably available to the applicant and pertains to licensure or investigative inquiries; or
(s) If the applicant’s business has a record of conduct constituting dishonesty or fraud on the part of an employee, authorized person, or the business.

(3) The committee may consider any or all of the following criteria when reviewing the application of an applicant with a misdemeanor or felony conviction, pursuant to subsection (E)(2)(d)(2)(d) or (e):
(a) The applicant’s age at the time of the conviction;
(b) The applicant’s experience and general level of sophistication at the time of the pertinent conduct and conviction;
(c) The degree of violence, injury or property damage and the cumulative effect of the conduct;
(d) The applicant’s level of disregard of ethical or professional obligations;
(e) The reliability of the information regarding the conduct;
(f) If the offenses involved fraud, deceit, or dishonesty on the part of the applicant resulting in harm to others;
(g) The recency of the conviction;
(h) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;
(i) The relationship of the conviction to the purpose of licensure;
(j) The relationship of the conviction to the practice of law or the delivery of legal services to be provided by the ABS;
(k) The applicant’s candor during the application process;
(l) The significance of any omissions or misrepresentation during the application process; and
(m) The applicant’s overall qualifications for licensure separate from the conviction.

(4) Upon the committee’s decision to recommend denial of licensure, division staff shall notify each applicant of the reasons for the denial and the right of the applicant to a hearing, pursuant to subsection (E)(2)(d)(5). The division staff shall provide the notice in writing and shall send the notice within 10 days after the committee’s decision.

(5) An applicant is entitled to a hearing on the decision to recommend denial of licensure, if the disciplinary clerk receives a written request for a hearing within fifteen days after division staff mails the notice of the denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of ACJA § 7-201(H)(12) through (23) apply regarding procedures for the hearing and appeal.
(6) An applicant denied licensure by a final decision of the supreme court, whether or not a hearing was requested and held, may reapply for licensure, pursuant to subsection (E), under the following circumstances:
(a) It has been twelve months since the final decision by the supreme court;
(b) The applicant shall present new documentation to address the original issues resulting in denial including all of the following:
   (i) Demonstration of acceptance of responsibility for the conduct leading to the denial by the committee; and
   (ii) Establishes purpose of business meets the regulatory objective of Supreme Court Rule 33.1(b)(1) and subsection (E)(2)(a)(1).
(c) In determining whether the applicant has established that the purpose of business meets the regulatory objective of Supreme Court Rule 33.1(b)(1) and subsection (E)(2)(a), the committee shall conduct an informal interview with the applicant no later than 60 days after the applicant has submitted a completed application.

3. Time Frames for Licensure.

   a. The director shall develop time frames for the processing of applications by division staff, pursuant to subsection (D)(3)(a)(5).

   b. An applicant shall respond timely to requests for information from division staff pertaining to the applicant’s application. Unless the applicant can show good cause as to why the committee should grant additional time, the committee shall not approve any applicant unless the applicant successfully completes all requirements within 90 days from the date division staff received the original initial application for licensure.

   c. If an applicant needs additional time to comply with division staff requests or to complete the application process within the time frames specified in this subsection, the applicant shall file a written request for an extension with division staff. The request shall state the reasons for additional time to comply with time frames and licensure requirements. The applicant shall file the request for additional time to complete the initial application at a minimum, 10 days prior to the 90-day deadline, unless the applicant makes a showing of good cause. Failure to complete the application process or file a written request for an extension of time within this time period shall nullify and void the original application and supporting documents, including fingerprints and fees.

   d. Division staff shall forward the written request for an extension of time to the committee at the next scheduled committee meeting.

   e. If the applicant fails to meet the 90-day deadline or is not granted additional time by the committee to complete the initial licensure process, the applicant is considered a new applicant. The applicant shall submit a new application including a fingerprint card and fees.
4. Records of Applicants for Licensure and License Holders shall be governed by the provisions of Supreme Court Rule 123, except as otherwise provided in Arizona Rules of Court. Division staff shall retain applicant and license holder records for a period of five years from the last activity in the record. Division staff shall take appropriate methods to ensure the confidentiality of any destroyed records.

5. Unlawful Use of Designation or Abbreviation.

a. An ABS who has received a license is authorized to utilize the designation of “Arizona licensed” in connection with their title or name and may use any appropriate abbreviation connected with this licensure. No other business shall assume or use the title, designation, or abbreviation, or any other title, designation, sign or card, the use of which is reasonably likely to induce others to believe the business holds a valid ABS license issued by the Arizona Supreme Court. The license holder shall not sell, transfer, or assign its license to any other business.

b. The committee, upon completion of an investigation may issue a cease and desist order. A hearing officer or a superior court judge, upon petition by the committee, may enter an order for an individual or business to immediately cease and desist conduct constituting engagement as an ABS without the required license.

6. Voluntary Surrender. A license holder in good standing may surrender its license to the committee. However, the surrender is not valid until accepted by the committee. The committee or division staff may require additional information reasonably necessary to determine if the license holder has violated any provision of the statutes, court rules, and this section. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered license holder occurring prior to the surrender.

a. Division staff shall present the surrendered license to the committee at the next available committee meeting after receiving notice of the surrender. Upon the committee’s acceptance of the voluntary surrender, division staff shall designate the license of the license holder as a “surrendered license holder in good standing.” Division staff shall notify the license holder in writing within 10 days after the committee’s acceptance of the surrender.

b. The committee shall not accept the surrender if there is a complaint pending against the license holder.

c. The committee shall, within 90 days of the receipt of the surrendered license by division staff, either accept the surrender or, based upon the recommendations of division staff, await the outcome of the pending disciplinary proceedings. If the supreme court, hearing panel or presiding disciplinary judge subsequently imposes a sanction upon the license of the surrendered license holder, division staff shall change the status of the license holder from “surrendered license holder in good standing” to that of an ABS so disciplined.
d. An ABS who is granted voluntary surrender must comply with the requirements of subsections (H)(4)-(6).

**F. Renewal of Licensure.**

1. **Expiration Date.** Licenses expire on February 1 of each year, except as otherwise provided in this section. All licenses shall continue in force until expired, voluntarily surrendered, suspended, or revoked.

2. **Application.** A license holder is responsible for applying for a renewal license. The license holder shall apply for renewal of licensure on the form provided by division staff. The committee shall set a renewal application deadline, in advance of the expiration date, to allow a reasonable time frame for processing the renewal application.

   a. When a license holder has filed a timely and complete renewal application, the existing license does not expire until the administrative process for review of the renewal application has been completed.

   b. When a license holder requests to file an untimely renewal application, the division director may process the untimely application and recommend to the committee to renew a license if the untimely renewal applicant demonstrates to the director good cause for the untimely filing. In addition, the following shall apply:

      (1) The applicant shall submit a complete renewal application and applicable fees, and any other documentation requested by division staff to verify the grounds for the good cause exception requested.

      (2) The applicant shall not provide legal services:

         (a) Until the director decides in writing based on good cause to process the application; or

         (b) If the director decides not to process the untimely application, until an initial application is processed, and the applicant is granted a license renewal pursuant to this section.

   c. When a timely renewal application is denied, the existing licensure does not expire until the last day for seeking a hearing on the denial decision pursuant to subsection (E)(2)(d)(5); or if a hearing is requested, until the final decision is made on an appeal of the denial by the committee pursuant to ACJA § 7-201(H)(25).

   d. The committee may request an informal interview with the applicant for renewal, pursuant to subsection (D)(5)(c)(2)(b), to establish if additional information or an explanation of the information provided by the applicant is needed to determine if the applicant continues to meet the qualifications for licensure in this section.

   e. The license of a license holder who does not supply a complete renewal application and payment of the renewal fee in the specified time and manner to division staff shall
expire as of the expiration date. Division staff shall treat any renewal application received after the expiration date as a new application, except when the license holder requests to file an untimely renewal application pursuant to subsection (F)(2)(b).

3. Additional Information. Before renewal of licensure, division staff may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section, which may include:

a. Background information, pursuant to subsection (E)(1)(a); and

b. Fingerprinting pursuant to subsection (E)(1)(c).

4. Decision Regarding Renewal.

a. The committee may renew a license if the license holder:

(1) meets all requirements for renewal as specified in this section;
(2) submits a completed renewal application;
(3) pays the renewal fees on or before the expiration date as specified by this section; and
(4) meets the regulatory objectives and governance structures and policies of section (E)(2)(a).

b. Division staff shall promptly notify the applicant in writing of the committee’s decision to renew the applicant’s license. Each renewed applicant shall receive a document evidencing renewal of licensure, stating the applicant’s name, date of licensure, license number and expiration date.

c. The committee may deny renewal of licensure for any of the reasons stated in subsection (E)(2)(d). Division staff shall promptly notify the applicant, in writing, within 10 days of the committee’s decision to deny renewal of licensure. The notice shall include the committee’s reasons for the denial of renewal of licensure and the right of the applicant to a hearing, pursuant to subsection (F)(4)(d).

d. An applicant is entitled to a hearing, on the decision to deny renewal of licensure if the disciplinary clerk receives a written request for a hearing within fifteen days after the date of the notice of denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of ACJA § 7-201(H)(12) through (23) and (H)(25) through (27) apply regarding procedures for hearing and appeal.

G. Role and Responsibilities of Licensed Alternative Business Structures and Compliance Lawyers.

1. Initial Licensure. In addition to the requirements of subsection (E)(1), each applicant for licensure as an ABS must meet the following requirements:
a. Submit completed applications for the alternative business structure and each authorized person.

b. Submit a prescribed indemnification statement and conflict of interest statement signed by each authorized person.

c. Fully disclose all relationships to any parent company or organization, and currently paid or unpaid officers, directors, owners, and boards of directors, and any and all company subsidiary dba’s operating in any state.

d. Declare a statutory agent in Arizona.

e. Obtain any necessary federal and state tax identification numbers as required by law.

f. Designate a principal with whom division staff may communicate on any administrative, procedural, or operational issues.

g. Submit articles of incorporation and letters of good standing from the Arizona Corporation Commission or otherwise demonstrate authorization to do business in the State of Arizona.

h. Demonstrate the business meets objectives identified in Supreme Court Rule 33.1(b) and subsection (E)(2)(a) herein.

i. Submit the prescribed acknowledgement form that the ABS and its members are subject to the regulatory and discipline authority as set forth in the supreme court rules and this section.

j. Insurance Disclosure

   (1) Each ABS shall certify to the state bar on an annual form prescribed by the state bar on or before February 1 of each year whether the ABS is currently covered by professional liability insurance. Each ABS who reports being covered by professional liability insurance shall notify the state bar in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. An ABS who acquires professional liability insurance after February 1 shall advise the state bar of the change of status in coverage.

   (2) The state bar shall make the information submitted by ABSs pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

   (3) Any ABS who fails to comply with this section in a timely fashion may be summarily suspended by the Committee on Alternative Business Structures. Supplying false information in complying with the requirements of this section shall subject the ABS to appropriate disciplinary action.

2. Roles and Responsibilities of ABSs. Each ABS shall:
a. Adhere to the Rules of Arizona Supreme Court and the standards in the code of conduct in subsection (K) herein.

b. Maintain a statutory agent in Arizona.

c. Notify division staff of any change in designated principal, compliance lawyer, or authorized person or any change in the telephone number, business address, mailing address, or home address of principals, compliance lawyers, and authorized persons, or any other required database information within 3 business days of the change. The designated principal of the ABS shall notify division staff of changes through the ABS regulation email system or in writing, utilizing the form provided by division staff.

d. Maintain the confidentiality of all records regarding any person receiving legal services.

e. Notify division staff in writing within 30 days of a change in designated principal or compliance lawyer.

f. Any ABS that ceases doing business must adhere to the requirements of subsections (H)(4) through (6).

g. Any ABS subject of an acquisition or merger with another business entity, regardless of whether the other business entity is also an ABS, must prior to merger or acquisition:

   (1) Submit on the form prescribed notice of impending merger or acquisition; and
   (2) Comply with the requirements of subsections (G)(1)(a) through (c), and (j).

3. Compliance lawyer. Each ABS must designate a compliance lawyer whose qualifications and responsibilities are as follows:

a. Qualifications. The compliance lawyer shall:

   (1) Meet the requirements of Supreme Court Rule 31(a) and (b);
   (2) Be a manager or employee of the ABS;
   (3) Consent to the designation;
   (4) Not have been subject to discipline by the State Bar of Arizona or any similar agency in any other jurisdiction during the past 10 years; and
   (5) Possess credentials and experience in the legal field to ensure that ethical obligations, protection of the public, and standards of professionalism are adhered to.

b. Responsibilities. The compliance lawyer shall take all reasonable steps to:

   (1) Ensure compliance with the ethical and professional responsibilities of lawyers in the ABS providing legal services;
   (2) Ensure compliance by the ABS’s authorized persons;
(3) Ensure the ABS’s authorized persons and others employed, associated with, or engaged by the ABS do not cause or substantially contribute to a breach of the regulatory requirements of this code or the ethical and professional obligations of lawyers;

(4) Ensure that a prompt report is made to the state bar of any facts or matters reasonably believed to be a substantial breach of the regulatory requirements of this code or the ethical and professional obligations of lawyers;

(5) Ensure that the state bar is promptly informed of any fact or matter that reasonably should be brought to its attention in order that the state bar may investigate whether a breach of regulatory or ethical requirements has occurred; and

(6) Notify division staff and the state bar in writing within 3 days when the compliance lawyer has ceased to be the compliance lawyer for the ABS.

c. Violations. Any compliance lawyer who fails to comply with this section, including any failure to report any facts or matters reasonably believed to amount to a substantial breach of the regulatory requirements of this code or the ethical and professional obligations of lawyers, in addition to other possible sanctions, may be suspended on an interim basis pursuant to Rule 61, Rules of Supreme Court.

H. Discipline.

1. Rules. The supreme court rules governing complaints, investigations, and disciplinary proceedings against Arizona licensed attorneys are applicable to alternative business structures and its members under this section, except as otherwise stated in this section.

2. Sanctions. Misconduct by an ABS or its members shall be grounds for imposition of one or more of the following types of sanctions:

a. Revocation. Revocation of an ABS’s license may be imposed by judgment and order entered by the supreme court, a hearing panel, or the presiding disciplinary judge. Any order of revocation must state a fixed period of time a license is revoked before an ABS can seek re-licensure.

b. Suspension. Suspension of an ABS may by imposed by judgment and order entered by the supreme court, a hearing panel, or the presiding disciplinary judge for an appropriate fixed period of time not to exceed 3 years. Suspension of an ABS license prohibits the ABS from accepting new legal services clients and requires notification pursuant to subsection (H)(4). An order of the supreme court, a hearing panel, or the presiding disciplinary judge may specify additional restrictions on the activities of an ABS during the term of suspension. An ABS whose activities are suspended shall remain suspended until the court enters an order reinstating the ABS to its full business capacity in Arizona or upon order of the presiding disciplinary judge pursuant to subsection (E)(8)(b).

c. Reprimand. A reprimand may be imposed by judgment and order entered by the supreme court, a hearing panel, or the presiding disciplinary judge.
d. Admonition. An admonition may be imposed by judgment and order entered by the supreme court, a hearing panel, the presiding disciplinary judge, or the Attorney Discipline Probable Cause Committee.

e. Probation. Probation may be imposed by judgment and order entered by the supreme court, a hearing panel, the presiding disciplinary judge, or the Attorney Discipline Probable Cause Committee as follows:

(1) Probation shall be imposed for a specified period not in excess of one year but may be renewed for an additional one-year period.
(2) Probation may be imposed only in those cases in which there is little likelihood that the respondent ABS or its members will harm the public during the period of probation and the conditions of probation can be adequately supervised. The conditions of probation shall be stated in writing, shall be specific, understandable and enforceable, and may include restitution, disgorgement, and assessment of costs and expenses.
(3) The presiding disciplinary judge may appoint a monitor to supervise the ABS during a period of probation. The cost of the monitor shall be paid by the ABS.
(4) The monitor shall report to the state bar, which shall be responsible for supervising the respondent ABS during the probationary period. Bar counsel shall report material violations of the terms of probation to the presiding disciplinary judge by filing a notice of noncompliance with the disciplinary clerk and serving respondent with a copy of the notice. The notice of noncompliance shall include verification or separate affidavit upon personal knowledge stating sufficient facts to support the allegations of material violations of the terms of probation. Respondent shall have 10 days after service of the notice to file a response. Upon filing the notice of noncompliance, the presiding disciplinary judge may (a) issue an order declining to proceed with the notice; (b) issue an order setting the matter for status conference; or (c) issue an order setting a hearing within 30 days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, the state bar must prove a violation by preponderance of the evidence. At the end of the probation term, bar counsel shall prepare and forward a notice to the presiding disciplinary judge regarding the respondent’s completion or non-completion of the imposed terms.

f. Monetary Penalties. The supreme court, a hearing panel, or the presiding disciplinary judge may order the license holder to pay any of the following monetary obligations:

(1) Restitution or refund (disgorgement) may be ordered to persons financially injured, including reimbursement to the State Bar Client Protection Fund. Restitution or refund and the amount thereof must be proven by a preponderance of the evidence;
(2) A civil fine in an amount not to exceed $1,000,000. Civil fines collected pursuant to this section shall be deposited in the Alternative Business Structure Fund.
g. Assessment of Costs and Expenses. An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon an ABS pursuant to Supreme Court Rule 60(d).

3. Enforcement. Execution and other post-judgment remedies shall be governed by Supreme Court Rule 60(d).

4. Notice to Clients and Adverse Parties. Within 10 days after the date of an order or judgment issued by the presiding disciplinary judge, a hearing panel, or the supreme court imposing discipline and sanctions, or the date of surrender of license, an ABS whose license was revoked or suspended or who has surrendered its license, shall notify the following persons by registered or certified mail, return receipt requested, of the order of judgment or surrender, and of the fact that the ABS is disqualified from providing legal services after the effective date of same:

   a. All legal services clients represented by ABS legal service providers in pending matters;
   
   b. Any co-counsel in pending matters;
   
   c. Any opposing counsel in pending matters, or in the absence of such counsel, the adverse parties; and
   
   d. Each court or tribunal in which the ABS’s legal service providers have any pending matter, whether the matter is active or inactive.

5. Duty to Withdraw. In the case of a suspension for longer than 90 days, or a suspension of 90 days or less when any client does not consent to the association of counsel, and in all cases of revocation of licensure, it shall be the responsibility of the assigned lawyer in the ABS to move in the court or agency in which any proceeding is pending for leave to withdraw in the event the client does not obtain substitute counsel before the effective date of the suspension or revocation.

6. Return of Client Property. Respondent shall deliver to all clients being represented in pending legal matters any papers or other property to which they are entitled and shall notify them, and any counsel representing them, of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property. The respondent shall deliver all files and records in pending legal matters to the client, notwithstanding any claim of outstanding payment for services.

7. Effective Date of Order; Pending Matters. Judgments imposing suspension or revocation shall be effective 30 days after entry, unless the presiding disciplinary judge, hearing panel, or the supreme court specifies an earlier date. Judgments and orders imposing other sanctions are effective immediately upon entry. Respondent, after entry of a judgment of revocation or suspension, shall not provide legal services, except that during the period between entry and the effective date of the order, respondent may complete on behalf of
any client all matters that were pending on the entry date. If a judgment or order permits
the ABS to provide legal services under supervision of the state bar, respondent may only
provide those services allowed by the judgment or order. Respondent shall refund any part
of fees paid in advance which have not been earned.

8. Affidavit Filed with Presiding Disciplinary Judge and Court. Within 10 days after the
effective date of the judgment of revocation or suspension, respondent shall file with the
disciplinary clerk and with the supreme court an affidavit showing:

a. Respondent has fully complied with the provisions of the order and with this section;

b. An agent of record and other addresses where communications may thereafter be
directed; and

c. Respondent has served a copy of such affidavit upon bar counsel.

9. Duty to Maintain Records. An ABS whose license has been revoked or suspended shall
keep and maintain records constituting proof of compliance with this section. Proof of
compliance, which shall include copies of the notice sent pursuant to subsection (H)(4) and
signed returned receipts, shall be provided to chief bar counsel. Proof of compliance is a
condition precedent to any application for reinstatement or licensing.

10. Contempt. Failure to comply with the provisions of this section may be punishable by
contempt.

I. Reinstatement after Suspension or Revocation. An alternative business structure license
holder whose license was suspended or revoked by the supreme court may apply for
reinstatement under the following conditions:

1. If an ABS’s license has been revoked the ABS may, after a period of 3 years, apply for
reinstatement of licensure in accordance with the requirements for initial licensure herein.
In addition, an applicant is subject to the requirements of subsection (3) below and shall
pay the initial licensure and reinstatement fees.

2. An ABS whose license has been suspended 90 days or less may apply for reinstatement no
sooner than 10 days before the expiration of the period of suspension by filing with the
disciplinary clerk and serving on the state bar an affidavit for reinstatement. The affidavit
shall include an avowal that the ABS has fully complied with the requirements of the
suspension judgment or order, and has paid all required fees, costs, expenses, and fines. If
an affidavit is not filed within 60 days after expiration of the period of suspension, the
reinstatement procedure set forth in subsection (3) below shall apply.

3. An ABS whose license has been suspended for more than 90 days may apply for
reinstatement no sooner than 90 days prior to the expiration of the period of suspension set
forth in the judgment but may not be reinstated until the full period of suspension has been
served. An applicant for reinstatement shall file a written application for reinstatement

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with the disciplinary clerk, which shall be verified by the applicant, and accompanied by
the appropriate fees and proofs of payment required by subsection (4) below of this section.
The applicant shall file with the application for reinstatement a written release or
authorization for the state bar to obtain documents or information in the possession of any
third party. The application shall contain the following information and be accompanied
by the following documents:

a. A copy of the final order of suspension;

b. An affidavit from the state bar stating whether any further investigations or formal
proceedings alleging misconduct have been filed or are pending against the ABS, any
authorized person, and any lawyer the ABS will employ, associate with, or engage to
provide legal services;

c. A statement of the offense or misconduct upon which the suspension was based,
together with the dates of suspension;

d. The names and addresses of all complaining witnesses in discipline proceedings that
resulted in suspension and the names of the hearing officer or presiding judge before
whom the discipline proceedings were heard;

e. A concise statement of facts claimed to support reinstatement of licensure. An ABS
must show by clear and convincing evidence that the basis for suspension has been
overcome;

f. A detailed description of any ABS activities during the period of suspension, if allowed
by the judgment or order of suspension;

g. A description of the occupation and income, during the period of suspension, for all
authorized persons and any lawyers the ABS will employ, associate with, or engage to
provide legal services;

h. A statement covering the period of suspension showing the dates, general nature and
final disposition of every civil action against the ABS or in which any authorized
person and any lawyer the ABS will employ, associate with, or engage to provide legal
services, was either a plaintiff or defendant;

i. A statement covering the period of suspension showing dates, general nature and
ultimate disposition of every matter involving the arrest or prosecution of any
authorized person and any lawyer the ABS will employ, associate with, or engage to
provide legal services;

j. A statement showing whether or not any applications were made by any authorized
person and any lawyer the ABS will employ, associate with, or engage to provide legal
services, requiring proof of good moral character for its procurement, and as to each
application, the dates, the name and address of the authority to whom it was addressed
and the disposition thereof;

k. A statement covering the period of suspension setting forth any procedure or inquiry
concerning the standing as a member of any profession or organization, or any holder
of any license or office, which involved the reprimand, removal, suspension, revocation
of any authorized person, and any lawyer the ABS will employ, associate with, or
engage to provide legal services, together with the dates, facts and disposition thereof, and the name and address of the authority in possession of the record thereof;

l. A statement of any charges of fraud made or claimed against the ABS, or any authorized person, and any lawyer the ABS will employ, associate with, or engage to provide legal services, whether formal or informal, together with the dates, names, and addresses of persons making such chargers;

m. Copies of all prior applications for reinstatement, including all findings, decisions or orders entered;

n. A list of all authorized persons, the designated principal, and compliance lawyer. Any changes to who is an authorized person, principal, or compliance lawyer must be noted. The following documentation shall accompany the list:

1. application form for any newly identified authorized persons;
2. form designating a principal for any newly identified principal; and
3. form designating a compliance lawyer for any newly identified compliance lawyer; and

o. Any further information or documents as requested by the state bar.

4. Application Fee. As a prerequisite to filing and before investigation of the application, every applicant for reinstatement shall pay to the records manager of the state bar an application fee, as set forth in section (J) herein, along with the state bar’s estimate of the costs of its investigation and the costs and expenses of all related proceedings before the presiding disciplinary judge, a hearing panel, or the supreme court. The state bar may contract with an outside agency to perform all or part of the investigation. If the applicant’s payment is less than the actual cost of investigation and subsequent proceedings, the applicant shall be required to satisfy such deficiency before the application is reviewed by the court. Any excess costs advanced shall be promptly refunded to the applicant at the conclusion of proceedings. Any subsequent costs or expenses incurred shall be paid by the applicant before the ABS’s license is reinstated.

5. Costs and Expenses of Disciplinary Proceedings. Prior to filing the application for reinstatement, the applicant shall pay all outstanding costs and expenses of any disciplinary proceeding. Verification of such payment in the form of an affidavit from the records manager of the state bar must accompany the application.

6. Amounts Owing to the Client Protection Fund. Prior to filing an application for reinstatement, the applicant shall cause all state bar members to pay sums owed to the client protection fund due prior to reinstatement proceedings. Verification of such payment in the form of an affidavit from the Administrator of the Client Protection Fund must accompany the application.

7. Annual or Other Licensure Fees. No reinstatement shall become effective until payment of all licensing fees and other charges accruing after the application for reinstatement has been granted.
8. Successive Applications. No application for reinstatement shall be filed within one (1) year following the denial of a request for reinstatement.

9. Withdrawal of Application. An applicant may withdraw an application at any time before the filing of the hearing panel report.

10. Reinstatement Proceedings. Reinstatement hearings shall be governed by Supreme Court Rule 65(b).

J. Fee Schedule.

1. Definitions. The following definitions apply to this schedule:

   a. “International” means the ABS has one or more physical locations outside the United States.

   b. “Large – Non-law Firm” means an ABS that has 100 or more full- or part-time employees and is not a traditional law firm as that term is defined herein.

   c. “Small – Non-law Firm” mean an ABS that has fewer than 100 full- or part-time employees and is not a traditional law firm as that term is defined herein.

   d. “Non-profit - Not Arizona” mean an ABS that is a nonprofit corporation in good standing that is not incorporated in Arizona.

   e. “Non-profit – Arizona” is an ABS that is a nonprofit corporation in good standing that is incorporated in Arizona.

   f. “Traditional Law Firm” is an ABS whose primary business is provision of legal services with nonlawyer economic interest holders.

2. Initial Licensure

   a. International $12,000

   b. Large – Non-law Firm $10,000

   c. Small – Non-law Firm $ 6,000

   d. Non-profit - Not Arizona $ 5,000

   e. Non-profit – Arizona $ 2,000

   f. Traditional Law Firm $ 6,000
3. Renewal Licensure
   a. International $6,000
   b. Large - Non-law Firm $5,000
   c. Small – Non-law Firm $3,000
   d. Non-profit - Not Arizona $2,500
   e. Non-profit – Arizona $1,000
   f. Traditional Law Firm $3,000

4. Miscellaneous Fees.
   a. Replacement of License or Name Change. $25
   b. Merger or Acquisition Fee
      (1) International $12,000
      (2) Large – Non-law Firm $10,000
      (3) Small – Non-law Firm $6,000
      (4) Non-profit – Not Arizona $5,000
      (5) Non-profit – Arizona $2,000
      (6) Traditional Law Firm $6,000
   c. Public Record Request Per Page Copy $ .50
   d. Certificate of Correctness of Copy of Record $18
   e. Reinstatement Application (after suspension or revocation)
      (1) International $12,000
      (2) Large – Non-law Firm $10,000
      (3) Small – Non-law Firm $6,000
      (4) Non-profit - Not Arizona $5,000
      (5) Non-profit – Arizona $2,000
      (6) Traditional Law Firm $6,000
   f. Extraordinary investigation assessment based on actual costs; (see section (E)(1)(b) herein)

K. Code of Conduct. The following code of conduct describes the expectations and standards that an ABS is expected to maintain as a provider of legal services. A failure to meet these standards or a breach of regulatory requirements are grounds for disciplinary action against an
ABS itself, or its non-lawyer members, who each have the same responsibility for ensuring ethical legal services for clients. Members of an ABS who are members of the state bar bear the responsibility of the ethical and professional obligations of the profession as well as the standards stated herein. An individual failure or breach may warrant action itself or as a pattern of conduct.

1. Code of Conduct for ABS’s. In addition to the requirements of subsection (G)(2), each ABS and its authorized persons must adhere to the following minimum standards of conduct.

   a. Shall not allow the legal representation of clients, if the representation involves a conflict of interest as governed by Supreme Court Rule 42, ERs 1.7, 1.8, 1.9, 1.10, 1.11, 1.13 and 1.18.

   b. Shall not take any action or engage in activity that interferes with the professional independence of lawyers or others authorized to provide legal services.

   c. Shall ensure that legal services are delivered with reasonable diligence and promptness.

   d. Shall not take an action or engage in any activity that misleads or attempts to mislead a client, a court, or others, either by the ABS’s own acts or omissions, or those of its members or employees, or by allowing or being complicit in the acts or omissions of others.

   e. Shall maintain effective governance structures, arrangements, systems, and controls to ensure:

      (1) Compliance with the requirements of supreme court rules and this section; and
      (2) Managers, economic interest holders, decision-makers, employees, or anyone employed, associated with, or engaged do not cause or substantially contribute to a breach of the ethical rules of Supreme Court Rule 42 or this section.

   f. Must maintain records to demonstrate compliance with its obligations under the supreme court rules and this section.

   g. Must monitor financial stability and business viability. When an ABS becomes aware it will cease to operate, it must affect an orderly wind-down of business activities and comply with the requirements for surrender of an ABS license in this section.

   h. Must monitor and manage all material risks to the business, including those which arise from connected businesses or connected services.

   i. Must hold property of legal services clients separate from the property of the ABS. The requirements of Supreme Court Rules 42, ER 1.15 and Rule 43 are applicable to all legal services-related client property.
j. An ABS, its members and employees must cooperate with the Administrative Office of Courts, Committee on Alternative Business Structures, the State Bar of Arizona, the presiding disciplinary judge, and any court who oversees and investigates concerns related to its delivery of legal services.

k. Must respond promptly to the Administrative Office of Courts, Committee on Alternative Business Structures, the state bar, the presiding disciplinary judge, and the supreme court and provide full and accurate information and documentation in response to any request or investigation.

l. Shall not attempt to prevent any person from providing information or documents in response to any request or investigation.

m. Must act promptly to take any remedial action requested by the state bar, the Administrative Office of Courts, the presiding disciplinary judge, and the supreme court.

n. Shall assure that all authorized persons and employees, in matters pertaining to legal services, perform all duties and functions in the manner ethically required of a lawyer pursuant to Supreme Court Rule 42.

2. Code of Conduct for Authorized Persons, Managers, Economic Interest Holders, and Decision-Makers. An authorized person, including any manager, economic interest holder, or decision-maker in an ABS is individually responsible for compliance by the ABS with this code of conduct. Failures or breaches of this responsibility may subject any authorized person, including any manager, economic interest holder, or decision-maker of an ABS to discipline.

3. Code of Conduct for Compliance Lawyers. In addition to the requirements of subsection (G)(3)(b) and Supreme Court Rule 42, a designated compliance lawyer is responsible individually for compliance by the ABS and authorized persons, including any managers, economic interest holders, or decision-makers of the ABS, with this code of conduct. Failures or breaches of this responsibility may subject a compliance lawyer to discipline.

4. As to matters involving legal services, in the event of a conflict between this code of conduct, Supreme Court Rule 42, and other professional codes of conduct (e.g., AICPA Code of Professional Conduct), this code of conduct and Rule 42 shall govern.
Committee on Alternative Business Structures  
Members as of December 2020

Chair: The Honorable Scott Bales (Retired)

Former Chief Justice Bales earned a J.D. from Harvard Law School, *magna cum laude* in 1983 and was admitted to the practice of law in Arizona in 1985 after completing Clerkships with Justice Sandra Day O’Connor, U.S. Supreme Court, and Judge Joseph T. Sneed, III, U.S. Court of Appeals, Ninth Circuit. He served as the Chief Justice of the Arizona Supreme Court from July 2014 to July 2019. Former Chief Justice Bales has supported the reform of the regulation of legal services in Arizona and recently served as Executive Director of the Institute for the Advancement of the American Legal System (IAALS), the Committee on Judicial Education and Training (2006-2014), the Commission on Technology – AJC (2012-2014), and the Judicial College of Arizona – AJC (2006-2013) among many others.

Katie Bryant

Ms. Bryant has been in the legal management profession for over 20 years and has extensive experience in the management and supervision of operations for various sized law firms. Ms. Bryant has served several years as an Association of Legal Administrators volunteer and was awarded as the volunteer of the year in 2019.

Angela Garmon

Ms. Garmon is a Business Strategist and consultant. She is the immediate past President of the National Association of Women Business Owners – Phoenix and continues to serve on the executive board.

Judge Charles Harrington (Retired)

Former Judge Harrington earned a J.D. from Gonzaga University School of Law in 1984 and was admitted to the practice of law in Arizona in 1986. Mr. Harrington served as a Superior Court Judge in Pima County for over twenty years and recently retired in October 2019. He has served on the Court Interpreter Program Advisory Committee (2015-2017), the Committee on Civil Justice Reform (2015-2017), the Committee on Superior Court-AJC (2002-2020), the Judicial Ethics Advisory Committee (2012-2016), and the Committee to Study Complex Litigation- AJC (2001-2002).

John Hay

Mr. Hay earned an LL.B/ J.D. from the University of Colorado Law School in 1964 and was admitted to the practice of law in Colorado in 1964, Arizona in 1965 and District of Columbia in 1970. Mr. Hay was on the Commercial Arbitration Panel of the American Arbitration Association and served as an arbitrator for business and commercial matters from 1975 to 2019. During his 55 years of practice he represented small and medium sized businesses of all kinds and specialized in corporate matters. Mr. Hay retired from the practice of law in January 2020.
Clarence McAllister
Mr. McAllister earned a master’s in business from Nova Southeastern University in 1995 and a master’s in electrical engineering from Arizona State University in 1997. Mr. McAllister is the CEO and founder of 3D Construction, LLC and Fortis and is currently a chairman of the Board of rare earth metals mine in the Opportunity Zone in Arizona.

Carlos Ruiz
Mr. Ruiz is the founder and owner of HT Metals in Tucson, Arizona. He attended the University of Arizona where he earned a BS in Material Science and Engineering followed by a successful career in raw material Supply Chain Management. He is an active member and former Chairman of the Tucson Hispanic Chamber of Commerce.

Martin Shultz
Mr. Schultz is a retired officer and executive with Pinnacle West Capital Corp/Arizona Public Service. He previously served on the Committee to Study Family Issues in the Courts (1997-1998), and the Judicial Oversight Council of the LJC of Maricopa County (2002-2007).

James Summers
Mr. Summers is an Information Technology business owner and former Executive VP at Booz, Allen, Hamilton responsible for the firm’s cybersecurity operations. Prior to that, Mr. Summers worked for SafeNet, Inc. where he specialized in securitizing voice and data communications for the US Department of Defense.

Anna Thomasson
Ms. Thomasson has been a public member of the AZ State Bar Board of Governors since 2015 and as a member she has participated in many discussions regarding changing the practice of law and focused on providing access to justice for all. Ms. Thomasson is also a mentor to graduate and undergraduate students at Arizona State University’s WP Carey Business School.

Alex Vakula
Mr. Vakula has practiced law throughout the State of Arizona for over 30 years. His practice emphasis is in the areas of real estate, finance, business, and investment matters. He has represented business and institution clients in a variety of transactions and hearings and trials before the Arizona Superior Court, the American Arbitration Association, Financial Industry Regulatory Authority, and other private tribunals.

Michael Widener
Mr. Widener was admitted to the practice of law in Arizona in 1983. Over his 37 years of law practice, he has set-up, advised, dissolved and represented numerous small businesses. Mr. Widener has experience working with paralegals and understands the skill sets and training needed to be qualified to serve the public.
COMMITTEE ON ALTERNATIVE BUSINESS STRUCTURES

Meeting Agenda – Tuesday, December 8, 2020
Arizona Supreme Court -1501 West Washington Street
Phoenix, Arizona 85007 – 9:00 A.M. – Conference Room 101
General Inquiries Call: (602) 452-3378 (Certification and Licensing Division Line)
Members of the Public May Attend Meeting in Person

For any item listed on the agenda, the Committee may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration § 1-202(C).

CALL TO ORDER…………………………………………………..Hon. Scott Bales (Ret.), Chair

1) WELCOME TO NEW MEMBERS………………………………….Hon. Scott Bales (Ret.) Chair

1-A: Committee on Alternative Business Structures Member Introductions

2) REFORMS TO DELIVERY OF LEGAL SERVICES…..Vice Chief Justice Timmer

2-A: Overview of Recommendations of the Task Force on the Delivery of Legal Services

3) UNDERSTANDING THE JUSTICE GAP…………………..Professor Rebecca Sandefur

3-A: Presentation by Professor Sandefur, “Understanding the Justice Gap and New Services’ Role in Bridging It”

4) COURT’S AUTHORITY AND COMMITTEE PROCESS……………………Dave Byers

4-A: ABS Committee Orientation by Dave Byers with overview of the Court’s authority and the role of the Committee.

4-B: Review of the purpose of Arizona Supreme Court Rule 33.1 and Arizona Code of Judicial Administration § 7-209, Jennifer Albright

5) RESPONSIBILITIES OF COMMITTEE MEMBERS…………….Division Staff

5-A: Review and discussion of requirements of Arizona Supreme Court Rules 123 and 33.1, and Arizona Code of Judicial Administration §§ 7-201(l)(2) and 7-209(D)(5).

5-B: Review and discussion of ACJA § 7-209(E), application forms and Committee review of applications for license as Alternative Business Structure.

CALL TO THE PUBLIC…………………………………………………..Hon. Scott Bales (Ret.), Chair

ADJOURN …………………………………………………………………Hon. Scott Bales (Ret.), Chair
WHY SHOULD I BECOME A NC CERTIFIED PARALEGAL?

Establishing minimum educational and continuing educational standards for paralegals in North Carolina has enhanced the quality of the support services that paralegals provide to the lawyers who employ them. This, in turn, improves the quality of client representation by those lawyers. Certification highlights the importance of paralegals in the practice of law and is the hallmark of professionalism. Becoming a NC Certified Paralegal is the next step in your professional career.

- It demonstrates your commitment to the paralegal profession.
- It is a recognition of the high professional standards you have satisfied.
- It enhances the quality of the legal support services that you provide to lawyers.
- It helps you stay current in the legal field.
- It makes the hiring process easier – your credentials are already verified.
27 NCAC 01G .0101 PURPOSE
The purpose of this plan for certification of paralegals (plan) is to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer, and including any individual who may be otherwise authorized by applicable state or federal law to provide legal services directly to the public; and to improve the competency of those individuals by establishing mandatory continuing legal education and other requirements of certification.

History Note: Authority G.S. 84-23; Eff. October 6, 2004.

27 NCAC 01G .0102 JURISDICTION: AUTHORITY
The Council of the North Carolina State Bar (the council) with the approval of the Supreme Court of North Carolina hereby establishes the Board of Paralegal Certification (board), which board shall have jurisdiction over the certification of paralegals in North Carolina.

History Note: Authority G.S. 84-23; Eff. October 6, 2004.

27 NCAC 01G .0103 OPERATIONAL RESPONSIBILITY
The responsibility for operating the paralegal certification program rests with the board, subject to the statutes governing the practice of law, the authority of the council and the rules of governance of the board.

History Note: Authority G.S. 84-23; Eff. October 6, 2004.

27 NCAC 01G .0104 SIZE AND COMPOSITION OF BOARD
The board shall have nine members, five of whom must be lawyers in good standing and authorized to practice law in the state of North Carolina. One of the members who is a lawyer shall be a program director at a qualified paralegal studies program. Four members of the board shall be paralegals certified under the plan, provided, however, that the paralegals appointed to the inaugural board shall be exempt from this requirement during their initial and successive terms but each such member shall be eligible, during the shorter of such initial term or the alternative qualification period, for certification by the board upon the board's determination that the member meets the requirements for certification in Rule .0119(b).

History Note: Authority G.S. 84-23; Adopted Eff. October 6, 2004; Amended Eff. March 2, 2006.

27 NCAC 01G .0105 APPOINTMENT OF MEMBERS; WHEN; REMOVAL
(a) Appointment. The council shall appoint the members of the board, provided, however, after the appointment of the initial members of the board, each paralegal member appointed for an initial term shall be selected by the council from two nominees determined by a vote by mail or online of all active certified paralegals in an election conducted by the board.

(b) Procedure for Nomination of Candidates for Paralegal Members.
   (1) Composition of Nominating Committee. At least 60 days prior to a meeting of the council at which one or more paralegal members of the board are subject to appointment for a full three year term, the board shall appoint a nominating committee comprised of certified paralegals as follows:
      (i) A representative selected by the North Carolina Paralegal Association;
      (ii) A representative selected by the North Carolina Bar Association Paralegal Division;
A representative selected by the North Carolina Advocates for Justice Legal Assistants Division;

Three representatives from three local or regional paralegal organizations to be selected by the board; and

An independent paralegal (not employed by a law firm, government entity, or legal department) to be selected by the board.

(2) Selection of Candidates. The nominating committee shall meet within 30 days of its appointment to select five certified paralegals as candidates for each paralegal member vacancy on the board for inclusion on the ballot to be mailed to all active certified paralegals.

(3) Vote of Certified Paralegals. At least 30 days prior to the meeting of the council at which a paralegal member appointment to the board will be made, a ballot shall be mailed or a notice of online voting shall be emailed or mailed to all active certified paralegals at each certified paralegal’s physical or email address of record on file with the North Carolina State Bar. The ballot or notice shall be accompanied by written instructions, and shall state how many paralegal member positions on the board are subject to appointment, the names of the candidates selected by the nominating committee for each such position, and when and where the ballot should be returned. If balloting will be online, the notice shall explain how to access the ballot on the State Bar’s paralegal website and the method for voting online. Write-in candidates shall be permitted and the instructions shall so state. Each ballot sent by mail shall be sequentially numbered with a red identifying numeral in the upper right hand corner of the ballot. Online balloting shall be by secure log-in to the State Bar’s paralegal website using the certified paralegal’s identification number and personal password. Any certified paralegal who does not have an email address on file with the State Bar shall be mailed a ballot. The board shall maintain appropriate records respecting how many ballots or notices are sent to prospective voters in each election as well as how many ballots are returned. Only original ballots will be accepted by mail. Ballots received after the deadline stated on the ballot or the email notice will not be counted. The names of the two candidates receiving the most votes for each open paralegal member position shall be the nominees submitted to the council.

(c) Time of Appointment. The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually at the quarterly meeting of the council occurring on the anniversary of the appointment of the initial board.

(d) Vacancies. Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the council, subject to the requirements of Rule .0105(a)1, at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term.

(e) Removal. Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

History Note: Authority G.S. 84-23; Adopted Eff. October 6, 2004; Amended Eff. March 6, 2014; August 25, 2011; March 11, 2010; March 8, 2007.

27 NCAC 01G .0106 TERM OF OFFICE
Subject to Rule .0107 of this Subchapter, each member of the board shall serve for a term of three years beginning as of the first day of the month following the date on which the council appoints the member.

History Note: Authority G.S. 84-23; Eff. October 6, 2004.

27 NCAC 01G .0107 STAGGERED TERMS
The members of the board shall be appointed to staggered terms such that three members are appointed in each year. Of the initial board, three members (one lawyer and two paralegals) shall be appointed to terms of one year; three members (two lawyers and one paralegal) shall be appointed to terms of two years; and three members (two lawyers and one paralegal) shall be appointed to terms of three years. Thereafter, three members (lawyers or paralegals as necessary to fill expired terms) shall be appointed in each year for full three year terms.
27 NCAC 01G .0108  SUCCESSION
Each member of the board shall be entitled to serve for one full three-year term and to succeed himself or herself for one additional three-year term. Each certified paralegal member shall be eligible for reappointment by the council at the end of his or her term without appointment of a nominating committee or vote of all active paralegals as would be otherwise required by Rule .0105 of this subchapter. Thereafter, no person may be reappointed without having been off of the board for at least three years.

History Note:  Authority G.S. 84-23;
               Adopted Eff. October 6, 2004;
               Amended Eff. March 6, 2014.

27 NCAC 01G .0109  APPOINTMENT OF CHAIRPERSON
The council shall appoint the chairperson of the board from among the lawyer members of the board. The term of the chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

History Note:  Authority G.S. 84-23;

27 NCAC 01G .0110  APPOINTMENT OF VICE-CHAIRPERSON
The council shall appoint the vice-chairperson of the board from among the members of the board. The term of the vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during his or her tenure on the board. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the board.

History Note:  Authority G.S. 84-23;

27 NCAC 01G .0111  SOURCE OF FUNDS
Funding for the program carried out by the board shall come from such application fees, examination fees, annual fees or recertification fees as the board, with the approval of the council, may establish.

History Note:  Authority G.S. 84-23;

27 NCAC 01G .0112  FISCAL RESPONSIBILITY
All funds of the board shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

(1) Maintenance of Accounts: Audit - The North Carolina State Bar shall maintain a separate account for funds of the board such that such funds and expenditures therefrom can be readily identified. The accounts of the board shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.

(2) Investment Criteria - The funds of the board shall be handled, invested and reinvested in accordance with investment policies adopted by the council for the handling of dues, rents and other revenues received by the North Carolina State Bar in carrying out its official duties.

(3) Disbursement - Disbursement of funds of the board shall be made by or under the direction of the secretary-treasurer of the North Carolina State Bar.
27 NCAC 01G .0113 MEETINGS
The board by resolution may set regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson. Notice of meeting shall be given at least one day prior to the meeting by mail, electronic mail, telegram, facsimile transmission, or telephone. A quorum of the board for conducting its official business shall be five or more of the members serving at the time of the meeting.

History Note: Authority G.S. 84-23; Eff. October 6, 2004.

27 NCAC 01G .0114 ANNUAL REPORT
The board shall prepare a report of its activities for the preceding year and shall present the same at the annual meeting of the council.

History Note: Authority G.S. 84-23; Eff. October 6, 2004.

27 NCAC 01G .0115 POWERS AND DUTIES OF THE BOARD
Subject to the general jurisdiction of the council and the North Carolina Supreme Court, the board shall have jurisdiction of all matters pertaining to certification of paralegals and shall have the power and duty
(1) to administer the plan of certification for paralegals;
(2) to appoint, supervise, act on the recommendations of, and consult with committees as appointed by the board or the chairperson;
(3) to certify paralegals or deny, suspend or revoke the certification of paralegals;
(4) to establish and publish procedures, rules, regulations, and bylaws to implement this plan;
(5) to propose and request the council to make amendments to this plan whenever appropriate;
(6) to cooperate with other boards or agencies in enforcing standards of professional conduct;
(7) to evaluate and approve continuing legal education courses for the purpose of meeting the continuing legal education requirements established by the board for the certification of paralegals;
(8) to cooperate with other organizations, boards and agencies engaged in the recognition, education or regulation of paralegals; and
(9) to set fees, with the approval of the council, and to, in appropriate circumstances, waive such fees.

History Note: Authority G.S. 84-23; Adopted Eff. October 6, 2004; Amended Eff. March 2, 2006.

27 NCAC 01G .0116 RETAINED JURISDICTION OF THE COUNCIL
The council retains jurisdiction with respect to the following matters:
(1) amending this plan;
(2) hearing appeals taken from actions of the board;
(3) establishing or approving fees to be charged in connection with the plan;
(4) regulating the conduct of lawyers in the supervision of paralegals; and
(5) determining whether to pursue injunctive relief as authorized by G. S. 84-37 against persons acting in violation of this plan.

History Note: Authority G.S. 84-23; Eff. October 6, 2004.

27 NCAC 01G .0117 CONFERRED AND LIMITATIONS IMPOSED
The board in the implementation of this plan shall not alter the following privileges and responsibilities of lawyers and their non-lawyer assistants.
No rule shall be adopted which shall in any way limit the right of a lawyer to delegate tasks to a non-lawyer assistant or to employ any person to assist him or her in the practice of law.

No person shall be required to be certified as a paralegal to be employed by a lawyer to assist the lawyer in the practice of law.

All requirements for and all benefits to be derived from certification as a paralegal are individual and may not be fulfilled by nor attributed to the law firm or other organization or entity employing the paralegal.

Any person certified as a paralegal under this plan shall be entitled to represent that he or she is a "North Carolina Certified Paralegal (NCCP)", a "North Carolina State Bar Certified Paralegal (NCSB/CP)" or a "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification."

History Note:  Authority G.S. 84-23;  

27 NCAC 01G .0118  CERTIFICATION COMMITTEE

(a) The board shall establish a separate certification committee. The certification committee shall be composed of seven members appointed by the board. At least two members of the committee shall be lawyers, licensed and currently in good standing to practice law in this state, and two members of the committee shall be certified paralegals. The remaining members of the committee shall be either lawyers, licensed and currently in good standing to practice law in this state, or certified paralegals. The paralegals appointed to the inaugural committee shall be exempt from the certification requirement during their initial term but each such member shall be eligible, during the shorter of such initial term or the alternative qualification period, for certification by the board upon the board’s determination that the committee member meets the requirements for certification in Rule .0119(b).

(b) The chair of the Board of Paralegal Certification shall appoint one member of the committee to serve for a one-year term as chair of the committee and one member of the committee to serve for a one-year term as vice chair of the committee. The chair and vice chair may be reappointed to multiple terms in these positions.

(c) Members shall hold office for three years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the board to staggered terms and the initial appointees shall serve as follows: two shall serve for one year after appointment; two shall serve for two years after appointment; and three shall serve for three years after appointment. Appointment by the board to a vacancy shall be for the remaining term of the member leaving the committee. All members shall be eligible for reappointment to not more than one additional three-year term after having served one full three-year term, provided, however, that the board may reappoint the chairperson of the committee to a third three-year term if the board determines that the reappointment is in the best interest of the program. Meetings of the certification committee shall be held at regular intervals at such times, places and upon such notices as the committee may from time to time prescribe or upon direction of the board.

(d) The committee shall advise and assist the board in carrying out the board’s objectives and in the implementation and regulation of this plan by advising the board as to standards for certification of individuals as paralegals. The committee shall be charged with actively administering the plan as follows:

(1) upon request of the board, make recommendations to the board for certification, continued certification, denial, suspension, or revocation of certification of paralegals and for procedures with respect thereto;

(2) draft and regularly revise the certification examination and

(3) perform such other duties and make such other recommendations as may be delegated to or requested by the board.

History Note:  Authority G.S. 84-23;  
Adopted by the Supreme Court October 6, 2004; 
Amendments Approved by the Supreme Court: March 2, 2006; March 6, 2014; September 20, 2018.

27 NCAC 01G .0119  STANDARDS FOR CERTIFICATION OF PARALEGALS

(a) To qualify for certification as a paralegal, an applicant must pay any required fee, and comply with the following standards:

(1) Education. The applicant must have earned one of the following:
(A) an associate's, bachelor's, or master's degree from a qualified paralegal studies program;

(B) a certificate from a qualified paralegal studies program and an associate's or bachelor's
degree in any discipline from any institution of post-secondary education that is accredited by
an accrediting body recognized by the United States Department of Education (an accredited
US institution) or an equivalent degree from a foreign educational institution if the degree is
determined to be equivalent to a degree from an accredited US institution by an organization
that is a member of the National Association of Credential Evaluation Services (NACES) or
the Association of International Credentials Evaluators (AICE); or

(C) a juris doctorate degree from a law school accredited by the American Bar Association.

(2) National Certification. If an applicant has obtained and thereafter maintains in active status at all times
prior to application (i) the designation Certified Legal Assistant (CLA)/Certified Paralegal (CP) from
the National Association of Legal Assistants; (ii) the designation PACE-Registered Paralegal
(RP)/Certified Registered Paralegal (CRP) from the National Federation of Paralegal Associations; or
(iii) another national paralegal credential approved by the board, the applicant is not required to satisfy
the educational standard in paragraph (a)(1).

(3) Examination. The applicant must achieve a satisfactory score on a written examination designed to test
the applicant’s knowledge and ability. The board shall assure that the contents and grading of the
examinations are designed to produce a uniform minimum level of competence among the certified
paralegals.

(b) Notwithstanding an applicant’s satisfaction of the standards set forth in Rule .0119(a), no individual may be certified
as a paralegal if:

(1) the individual's certification or license as a paralegal in any state is under suspension or revocation;

(2) the individual's license to practice law in any state is under suspension or revocation;

(3) the individual

(A) was convicted of a criminal act that reflects adversely on the individual's honesty,
trustworthiness, or fitness as a paralegal;

(B) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) engaged in the unauthorized practice of law; or

(D) has had a nonlegal state or federal occupational or professional license suspended or revoked
for misconduct; however, the board may certify an applicant whose application discloses
conduct described in Rule .0119(c)(3) if, after consideration of mitigating factors, including
remorse, reformation of character, and the passage of time, the board determines that the
individual is honest, trustworthy, and fit to be a certified paralegal; or

(4) the individual is not a legal resident of the United States.

(c) All matters concerning the qualification of an applicant for certification, including, but not limited to, applications,
examinations and examination scores, files, reports, investigations, hearings, findings, recommendations, and adverse
determinations shall be confidential so far as is consistent with the effective administration of this plan, fairness to the
applicant and due process of law.

(d) Qualified Paralegal Studies Program. A qualified paralegal studies program is a program of paralegal or legal
assistant studies that is an institutional member of the Southern Association of Colleges and Schools or other regional or
national accrediting agency recognized by the United States Department of Education, and is either

(1) approved by the American Bar Association;

(2) an institutional member of the American Association for Paralegal Education; or

(3) offers at least the equivalent of 18 semester credits of coursework in paralegal studies as prescribed by
the American Bar Association Guidelines for the Approval of Paralegal Education including the
equivalent of one semester credit in legal ethics.

(e) Designation as a Qualified Paralegal Studies Program. The board shall determine whether a paralegal studies
program is a qualified paralegal studies program upon submission by the program of an application to the board
provided, however, a paralegal studies program is not required to submit an application for qualification as long as the
program satisfies the requirements of Rule .0119(e)(1) or (2).

(1) A program designated by the board as a qualified paralegal studies program shall renew its application
for designation every five years.

(2) An applicant for certification who lists on a certification application a paralegal studies program that
does not satisfy the requirements of Rule .0119(e)(1) or (2) or that has not been designated by the
board as a qualified paralegal studies program shall be responsible for obtaining a completed
application for designation from the program or shall submit the information required on the application for determination that the program is a qualified paralegal studies program.

(3) Designation of a paralegal studies program as a qualified paralegal studies program under this section does not constitute an approval or an endorsement of the program by the board or the North Carolina State Bar.

History Note: Authority G.S. 84-23; Adopted by the Supreme Court October 6, 2004; Amendments Approved by the Supreme Court: March 2, 2006; March 8, 2007; February 5, 2009; March 11, 2010; March 6, 2014; March 5, 2015; June 9, 2016; April 5, 2018.

27 NCAC 01G .0120 STANDARDS FOR CONTINUED CERTIFICATION OF PARALEGALS
(a) The period of certification as a paralegal shall be one year. During such period the board may require evidence from the paralegal of his or her continued qualification for certification as a paralegal, and the paralegal must consent to inquiry by the board regarding the paralegal's continued competence and qualification to be certified. Application for and approval of continued certification shall be required annually prior to the end of each certification period. To qualify for continued certification as a paralegal, an applicant must demonstrate participation in not less than six hours of credit in board approved continuing legal education, or its equivalent, during the year within which the application for continued certification is made.

(b) Upon written request of the paralegal, the board may for good cause shown waive strict compliance by such paralegal with the criteria relating to continuing legal education, as those requirements are set forth in Rule .0120(a).

(c) A late fee of twenty-five dollars ($25.00) will be charged to any certified paralegal who fails to file the renewal application within 45 days of the due date; provided, however, a renewal application will not be accepted more than 90 days after the due date. Failure to renew shall result in lapse of certification.

History Note: Authority G.S. 84-23; Eff. October 6, 2004; Amended Eff. October 8, 2009.

27 NCAC 01G .0121 LAPSE, SUSPENSION OR REVOCATION OF CERTIFICATION
(a) The board may suspend or revoke its certification of a paralegal, after hearing before the board on appropriate notice, upon a finding that

(1) the certification was made contrary to the rules and regulations of the board;
(2) the individual certified as a paralegal made a false representation, omission or misstatement of material fact to the board;
(3) the individual certified as a paralegal failed to abide by all rules and regulations promulgated by the board;
(4) the individual certified as a paralegal failed to pay the fees required;
(5) the individual certified as a paralegal no longer meets the standards established by the board for the certification of paralegals;
(6) the individual is not eligible for certification on account of one or more of the grounds set forth in Rule .0119(c); or
(7) the individual violated the confidentiality agreement relative to the questions on the certification examination.

(b) An individual certified as a paralegal has a duty to inform the board promptly of any fact or circumstance described in Rule .0121(a).

(c) If an individual's certification lapses, or if the board revokes a certification, the individual cannot again be certified as a paralegal unless he or she so qualifies upon application made as if for initial certification and upon such other conditions as the board may prescribe. If the board suspends certification of an individual as a paralegal, such certification cannot be reinstated except upon the individual's application and compliance with such conditions and requirements as the board may prescribe.

History Note: Authority G.S. 84-23; Eff. October 6, 2004; Amended Eff. March 6, 2008.
(a) Lapsed Certification. An individual whose certification has lapsed pursuant to Rule .0120(c) of this subchapter for failure to complete all of the requirements for renewal within the prescribed time limit shall have the right to request reinstatement for good cause shown. A request for reinstatement shall be in writing, must state the personal circumstances prohibiting or substantially impeding satisfaction of the requirements for renewal within the prescribed time limit, and must be made within 90 days of the date notice of lapse is mailed to the individual. The request for reinstatement shall be reviewed on the written record and ruled upon by the board. There shall be no other right to review by the board or appeal to the council under this rule.

(b) Denial of Certification or Continued Certification. An individual who is denied certification or continued certification as a paralegal or whose certification is suspended or revoked shall have the right to a review before the board pursuant to the procedures set forth below and, thereafter, the right to appeal the board’s ruling thereon to the council under such rules and regulations as the council may prescribe.

(1) Notification of the Decision of the Board. Following the meeting at which the board denies certification for failure to meet the standards for certification, including failing the examination, denies continued certification, or suspends or revokes certification, the executive director shall promptly notify the individual in writing of the decision of the board. The notification shall specify the reason for the decision of the board and shall inform the individual of his or her right to request a review before the board.

(2) Request for Review by the Board. Except as provided in paragraph (e) of this rule, within 30 days of the mailing of the notice from the executive director described in paragraph (b) of this rule, the individual may request review by the board. The request shall be in writing and state the reasons for which the individual believes the prior decision of the board should be reconsidered and withdrawn. The request shall state whether the board's review shall be on the written record or at a hearing.

(3) Review by the Board. A three-member panel of the board shall be appointed by the chair of the board to reconsider the board's decision and take action by a majority of the panel. At least one member of the panel shall be a lawyer member of the board and at least one member of the panel shall be a paralegal member of the board. The decision of the panel shall constitute the final decision of the board.

(A) Review on the Record. If requested, the panel shall review the entire written record including the individual's application, all supporting documentation, and any written materials submitted by the individual within 30 days of mailing the request for review. The panel shall make its decision within sixty (60) days of receipt of the written request for review from the individual.

(B) Review Hearing. If requested, the panel shall hold a hearing at a time and location that is convenient for the panel members and the individual provided the hearing occurs within sixty (60) days of receipt of the written request for review from the individual. The hearing shall be informal. The Rules of Evidence and the Rules of Civil Procedure shall not apply. The individual may be represented by a lawyer at the hearing, may offer witnesses and exhibits, and may question witnesses for the board. The panel may ask witnesses to appear and may consider exhibits on its own request. Witnesses shall not be sworn. The hearing shall not be reported unless the applicant pays the costs of the transcript and arranges for the preparation of the transcript with the court reporter.

(C) Decision of the Panel. The individual shall be notified in writing of the decision of the panel and, if unfavorable, the right to appeal the decision to the council under such rules and regulations as the council may prescribe. To exercise this right, the individual must file an appeal to the council in writing within 30 days of the mailing of the notice of the decision of the panel.

History Note: Authority G.S. 84-23; Adopted by the Supreme Court October 6, 2004; Amendments Approved by the Supreme Court: March 8, 2007; February 5, 2009; March 8, 2013; August 27, 2013; September 20, 2018.
(a) Inactive Status. The board shall transfer a certified paralegal to inactive status upon receipt of a petition, on a form approved by the board, demonstrating hardship as defined in Paragraph (b) of this Rule and upon payment of any fees owed to the board at the time of the petition unless waived by the board.

(1) The period of inactive status shall be one year from the designated renewal date.

(2) On or before the expiration of inactive status, a paralegal on inactive status must file a petition for (continued) inactive status or seek reinstatement to active status by filing a renewal application pursuant to Rule .0120 of this Subchapter. Failure to petition for continued inactive status or renewal shall result in lapse of certification.

(3) A paralegal may be inactive for not more than a total of five consecutive years.

(4) During a period of inactive status, a paralegal is not required to pay the renewal fee or to complete continuing legal education.

(5) During a period of inactive status, a paralegal shall not be entitled to represent that he or she is a North Carolina certified paralegal or to use any of the designations set forth in Rule .0117(4) of this Subchapter.

(b) Hardship. The following conditions shall qualify as hardship justifying a transfer to inactive status:

(1) Financial inability to pay the annual renewal fee and to pay for continuing legal education courses due to unemployment or underemployment of the paralegal for a period of three months or more;

(2) Disability or serious illness for a period of three months or more;

(3) Active military service; and

(4) Transfer of the paralegal's active duty military spouse to a location outside of North Carolina.

(c) Reinstatement before Expiration of Inactive Status. To be reinstated as a certified paralegal, the paralegal must petition the board for reinstatement by filing a renewal application prior to the expiration of the inactive status period and must pay the annual renewal fee. If the paralegal was inactive for a period of two consecutive calendar years or more during the year prior to the filing of the petition, the paralegal must complete 12 hours of credit in board-approved continuing paralegal education, or its equivalent. Of the 12 hours, at least 2 hours shall be devoted to the areas of professional responsibility or professionalism, or any combination thereof.

(d) Certification after Expiration of Inactive Status Period. If the inactive status period expires before the paralegal petitions for reinstatement, certification shall lapse, and the paralegal cannot again be certified unless the paralegal qualified upon application made as if for initial certification.

History Note: Authority G.S. 84-23; Eff. August 24, 2012.

SECTION .0200 – RULES GOVERNING CONTINUING PARALEGAL EDUCATION

27 NCAC 01G .0201 CONTINUING PARALEGAL EDUCATION (CPE)

(a) Each active certified paralegal subject to these rules shall complete 6 hours of approved continuing education during each year of certification.

(b) Of the 6 hours, at least 1 hour shall be devoted to the areas of professional responsibility or professionalism or any combination thereof.

(1) A professional responsibility course or segment of a course shall be devoted to (1) the substance, the underlying rationale, and the practical application of the Rules of Professional Conduct; (2) the professional obligations of the lawyer to the client, the court, the public, and other lawyers, and the paralegal's role in assisting the lawyer to fulfill those obligations; (3) the effects of substance abuse and chemical dependency, or debilitating mental condition on a lawyer's or a paralegal's professional responsibilities; or (4) the effects of stress on a paralegal's professional responsibilities.

(2) A professionalism course or segment of a course shall be devoted to the identification and examination of, and the encouragement of adherence to, non-mandatory aspirational standards of professional conduct that transcend the requirements of the Rules of Professional Conduct. Such courses address principles of competence and dedication to the service of clients, civility, improvement of the justice system, advancement of the rule of law, and service to the community.

History Note: Authority G.S. 84-23; Adopted Eff. August 18, 2005;
27 NCAC 01G .0202   ACCREDITATION STANDARDS
The Board of Paralegal Certification shall approve continuing education activities in compliance with the following standards and provisions.

(a) An approved activity shall have significant intellectual or practical content and the primary objective of increasing the participant's professional competence and proficiency as a paralegal.

(b) An approved activity shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of paralegals.

(c) A certified paralegal may receive credit for continuing education activities in which live instruction or recorded material is used. Recorded material includes videotaped or satellite transmitted programs, and programs on CD-ROM, DVD, or other similar electronic or digital replay formats. A minimum of three certified paralegals must register to attend the presentation of a replayed prerecorded program. This requirement does not apply to participation from a remote location in the presentation of a live broadcast by telephone, satellite, or video conferencing equipment.

(d) A certified paralegal may receive credit for participation in a course online. An on-line course is an educational seminar available on a provider's website reached via the internet. To be accredited, a computer-based CPE course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and/or other participants.

(e) Continuing education materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity of the program and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.

(f) Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. These may include written materials printed from a computer presentation, computer website, or CD-ROM. A written agenda or outline for a presentation satisfies this requirement when written materials are not suitable or readily available for a particular subject. The absence of written materials for distribution should, however, be the exception and not the rule.

(g) Any continuing legal education activity approved for lawyers by the North Carolina State Bar's Board of Continuing Legal Education meets these standards.

(h) In-house continuing legal education and self-study shall not qualify for continuing paralegal education (CPE) credit.

(i) A certified paralegal may receive credit for completion of a course offered by an ABA accredited law school with respect to which academic credit may be earned. No more than 6 CPE hours in any year may be earned by attending such courses. Credit shall be awarded as follows: 3.5 hours of CPE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 hours of CPE credit for every semester hour of credit assigned to the course by the educational institution.

History Note: Authority G.S. 84-23; Adopted Eff. August 18, 2005; Amended Eff. March 8, 2013; March 11, 2010; March 2, 2006.

27 NCAC 01G .0203   GENERAL COURSE APPROVAL
(a) Approval – Continuing education activities, not otherwise approved or accredited by the North Carolina State Bar Board of Continuing Legal Education, may be approved upon the written application of a sponsor, or of a certified paralegal on an individual program basis. An application for continuing paralegal education (CPE) approval shall meet the following requirements:

(1) If advance approval is requested by a sponsor, the application and supporting documentation (i.e., the agenda with timeline, speaker information and a description of the written materials) shall be submitted at least 45 days prior to the date on which the course or program is scheduled. If advance approval is requested by a certified paralegal, the application need not include a complete set of supporting documentation.

(2) If more than five certified paralegals request approval of a particular program, either in advance of the date on which the course or program is scheduled or subsequent to that date, the program will not be accredited unless the sponsor applies for approval of the program and pays the accreditation fee set forth in Rule .0204.

(3) In all other cases, the application and supporting documentation shall be submitted not later than 45 days after the date the course or program was presented.
The application shall be submitted on a form furnished by the Board of Paralegal Certification.

The application shall contain all information requested on the form.

The application shall be accompanied by a course outline or brochure that describes the content, identifies the teachers, lists the time devoted to each topic and shows each date and location at which the program will be offered.

The application shall include a detailed calculation of the total continuing paralegal education (CPE) hours and the hours of professional responsibility for the program.

If the sponsor has not received notice of accreditation within 15 days prior to the scheduled date of the program, the sponsor should contact the Board of Paralegal Certification via telephone or e-mail.

(b) Announcement. Sponsors who have advance approval for courses from the Board of Paralegal Certification may include in their brochures or other course descriptions the information contained in the following illustration:

This course [or seminar or program] has been approved by the North Carolina State Bar Board of Paralegal Certification for continuing paralegal education credit in the amount of ____ hours, of which ____ hours will also apply in the area of professional responsibility. This course is not sponsored by the Board of Paralegal Certification.

History Note: Authority G.S. 84-23;
Adopted Eff. August 18, 2005;

27 NCAC 01G .0204 FEES
Accredited Program Fee - Sponsors seeking accreditation for a particular program (whether or not the sponsor itself is accredited by the North Carolina State Bar Board of Continuing Legal Education), that has not already been approved or accredited by the North Carolina State Bar Board of Continuing Legal Education, shall pay a non-refundable fee of $75. However, no fee shall be charged for any program that is offered without charge to attendees. All programs must be approved in accordance with Rule .0203(1). An accredited program may be advertised by the sponsor in accordance with Rule .0203(2).

History Note: Authority G.S. 84-23;
Eff. August 18, 2005;

27 NCAC 01G .0205 COMPUTATION OF HOURS OF INSTRUCTION
(a) Hours of continuing paralegal education (CPE) will be computed by adding the number of minutes of actual instruction, dividing by 60 and rounding the results to the nearest one-tenth of an hour.

(b) Only actual instruction will be included in computing the total hours. The following will be excluded:

   (1) introductory remarks;
   (2) breaks;
   (3) business meetings.

(c) Teaching – Continuing paralegal education (CPE) credit may be earned for teaching an approved continuing education activity. Three CPE credits will be awarded for each thirty (30) minutes of presentation. Repeat live presentations will qualify for one-half of the credit available for the initial presentation. No credit will be awarded for video replays.

(d) Teaching at a Qualified Paralegal Studies Program – Continuing paralegal education (CPE) credit may be earned for teaching a course at a qualified paralegal studies program, which program shall be qualified pursuant to Rule .0119(a) of this subchapter. Two CPE credits will be awarded for each semester credit (or its equivalent) awarded to the course.

History Note: Authority G.S. 84-23;