

COMMITTEE TO STUDY REGULATORY REFORM

Zoom Conference Call

September 2, 2020

2:00pm to 4:00pm

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 Reform 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 July 27, 2020 Minutes
- III. Brief Update on Regulatory Reform Efforts
 - a. Utah – Regulatory Sandbox Approved by Utah Supreme Court (“Office of Legal Services Innovation”); Rule Amendments Approved
 - b. Illinois – Chicago Bar Association Task Force on the Sustainable Practice of Law & Innovation Releases Report
- IV. Discussion with Representatives of the Legal Services Community in North Carolina
 - a. George Hausen – Legal Aid of North Carolina
 - b. Jennifer Lechner – North Carolina Equal Access to Justice Commission
 - c. Ken Schorr – Charlotte Center for Legal Advocacy
- V. Goals for Next Quarter
- VI. Adjourn

Minutes of the Meeting of the Subcommittee to Study Regulatory Change July 27, 2020

The Issues Committee's Subcommittee to Study Regulatory Change met by Zoom videoconference on July 27, 2020. Mark Henriques, the chair of the subcommittee, presided. The following members of the subcommittee were present: Heidi Bloom; A. Todd Brown; Ashley Campbell; Barbara R. Christy, State Bar President-Elect; Warren Hodges; Jeff Kelly; Joshua Malcolm; Dewitt F. McCarley; Camille Stell; and Jeff Summerlin-Long. Also present was Past-President G. Gray Wilson. William D. Henderson, the Stephen F. Burns Professor of Law from the Maurer School of Law at Indiana University, was present as a guest. 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.

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 Jun 4, 2020. Upon motion duly made and seconded, those minutes were approved.

Next, Mr. Henriques called on Mr. Oten to provide the subcommittee with an update on two matters of interest to the subcommittee regarding other jurisdictions' efforts in regulatory change. Mr. Oten informed the subcommittee of Washington State's termination of its Limited License Legal Technician (LLLT) Program; and the initiation by New York to develop a comprehensive vision for its future court system, including regulatory change and technology implementation efforts.

Mr. Henriques then introduced Professor William Henderson. Professor Henderson has been and remains a national leader on the topic of regulatory change and access to justice in the United States; notably, Professor Henderson authored the Legal Market Landscape Report commissioned by the State Bar of California and published in July 2018, upon which many of California's current regulatory change efforts are based. Professor Henderson was invited to present his findings and perspective on this topic to the subcommittee. Over the following nearly two hours, Professor Henderson gave his presentation and answered a variety of questions from subcommittee members. The presentation was engaging, and the discussion was robust. Topics covered during the presentation included: the evolution of legal service delivery from a "one-to-one" model to a "one-to-many" model whereby a single lawyer can provide services to multiple clients with ease and within a small timeframe; decreases in money spent by individuals on legal services over time; concerns regarding the Rules of Professional Conduct impacting the structure of the legal market (namely, Rules 5.4, 5.5, 7.2, and 7.3); the potential need to explore entity regulation; and concerns regarding scaling and maintaining a human touch on legal services. Professor Henderson's presentation slides are attached to these minutes.

After Professor Henderson's presentation, and with the scheduled end of the meeting approaching, Mr. Henriques suggested that the subcommittee continue its efforts to hear from different perspectives on North Carolina's access to justice concerns at its next meeting. Mr. Henriques noted that he planned to invite members from the legal services community to the next subcommittee meeting to learn about the needs and concerns experienced by members of this community. The subcommittee members agreed with this proposal.

There being no further business to come before the subcommittee, the meeting was adjourned.

Brian Oten, Subcommittee Staff Counsel

The Future of Legal Services

William D. Henderson

Professor, Indiana University Maurer School of Law

Editor, Legal Evolution

Co-Founder, Institute for the Future of Law Practice

Presented to

North Carolina State Bar

Committee to Study Regulatory Reform

July 27, 2020

86%

of low-income Americans with a civil legal problem receive inadequate or no legal help

LEGAL SERVICES CORPORATION,
THE JUSTICE GAP (2017)

76%

of all civil cases in state courts have at least one self-represented litigant

NATIONAL CONFERENCE OF STATE
COURTS, THE LANDSCAPE OF CIVIL
LITIGATION IN STATE COURTS (2015)

2=2

The typical small firm lawyer spends almost as much time per day looking for legal work (2.0 hours) as performing legal work (2.3 hours)

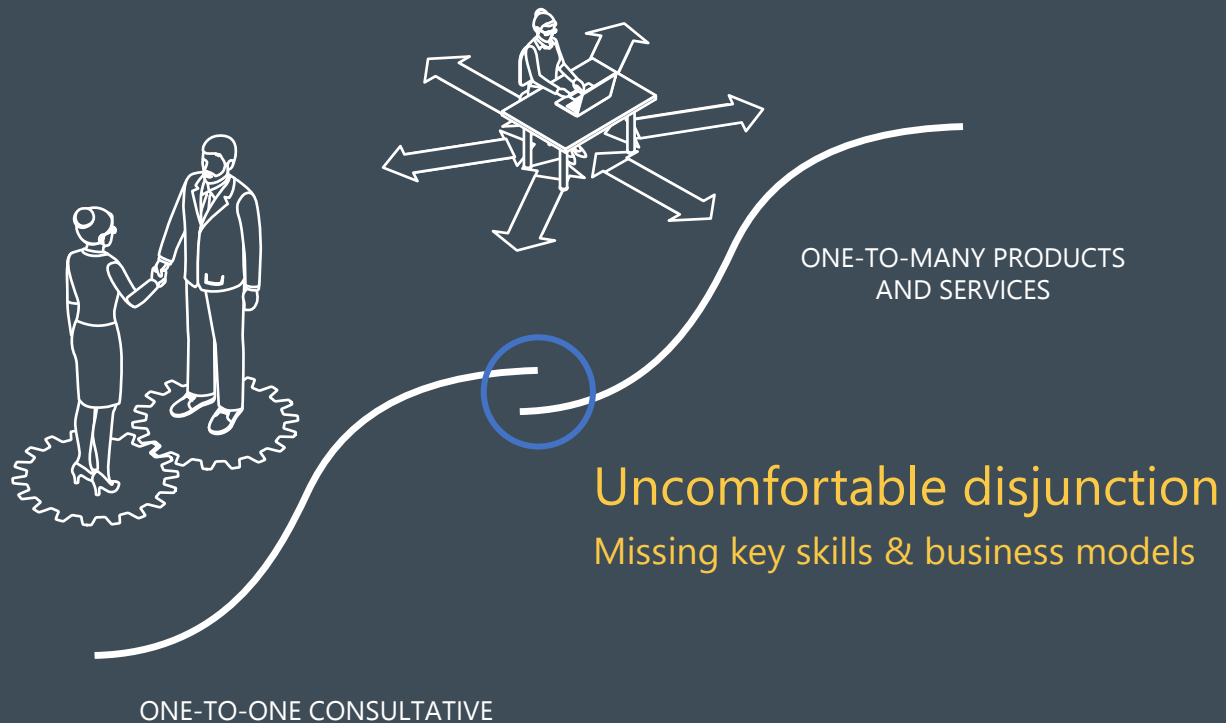
CLIO, LEGAL TRENDS REPORT (2017)



Lawyers and law firms are caught in a pattern of “consensual neglect” where no one takes responsibility for the industry’s bleak statistics

THOMSON REUTERS, REPORT ON THE
STATE OF THE LEGAL MARKET (2018)

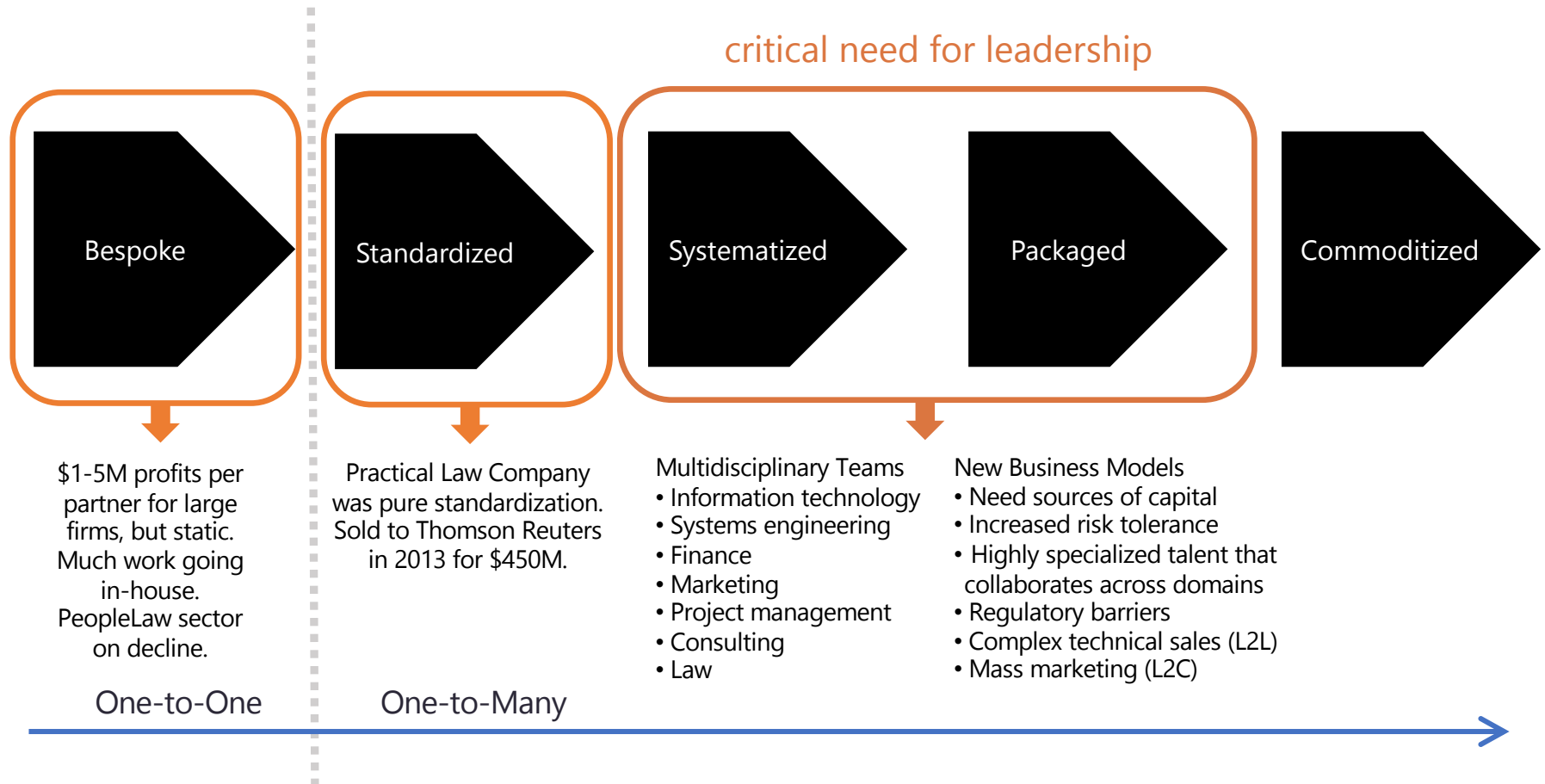
Our industry is evolving



Ethics rules shape and constraint legal market

- Rule 5.4 – who can own and invest
- Rule 5.5 – who can do the work
- Rules 7.2-7.3 – constraint marketing efforts

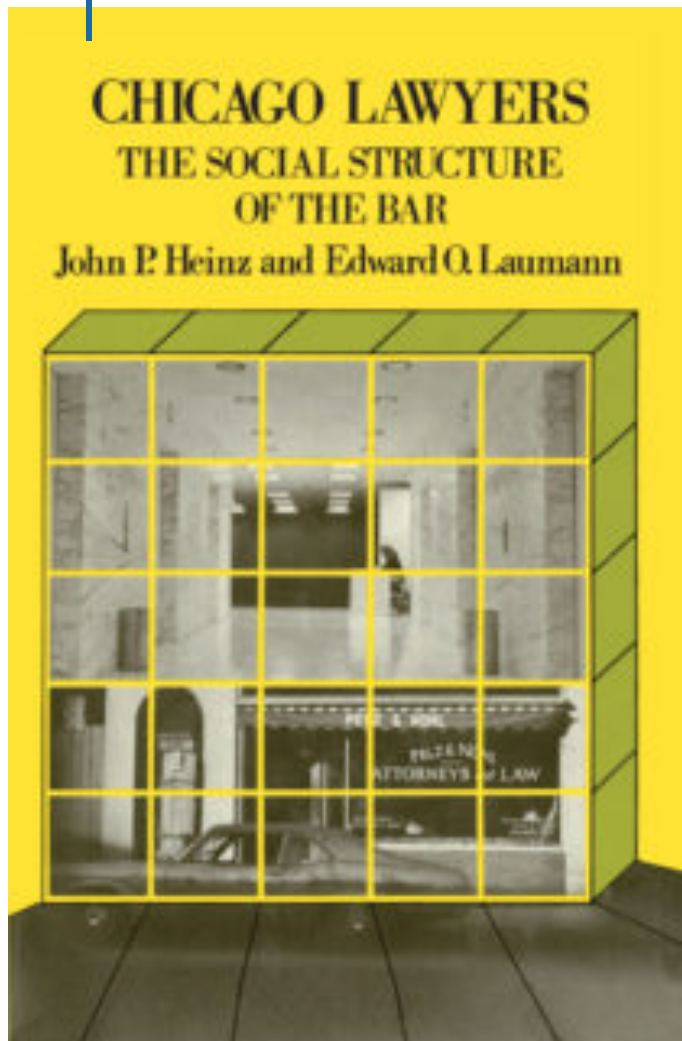
Susskind's five stages of Evolution



Two Market Segments

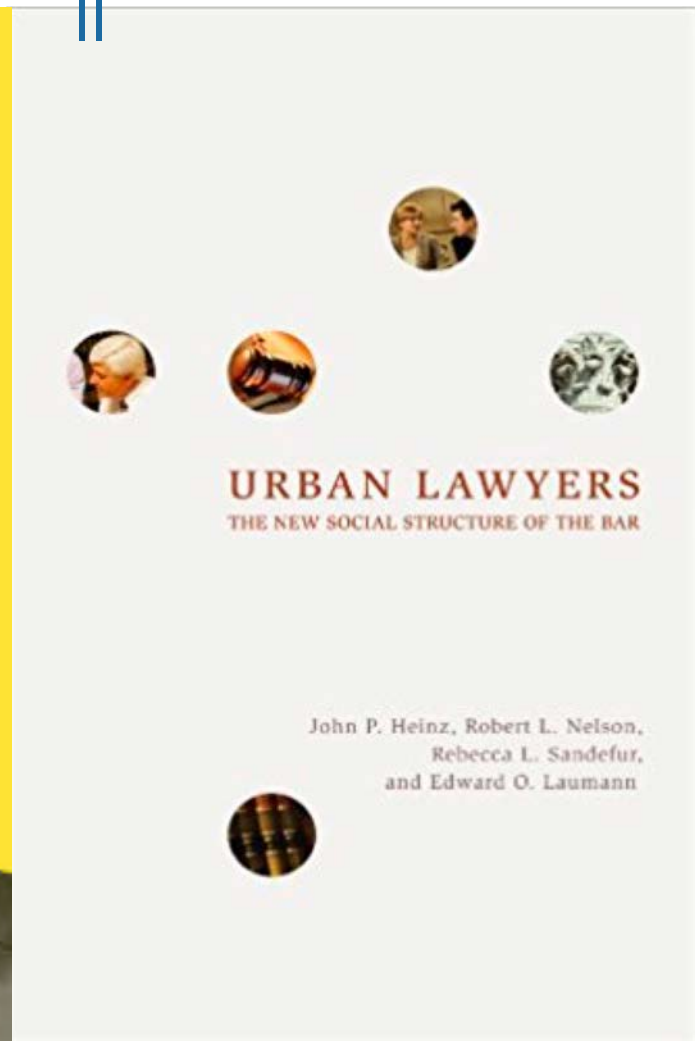
Chicago Lawyers

I

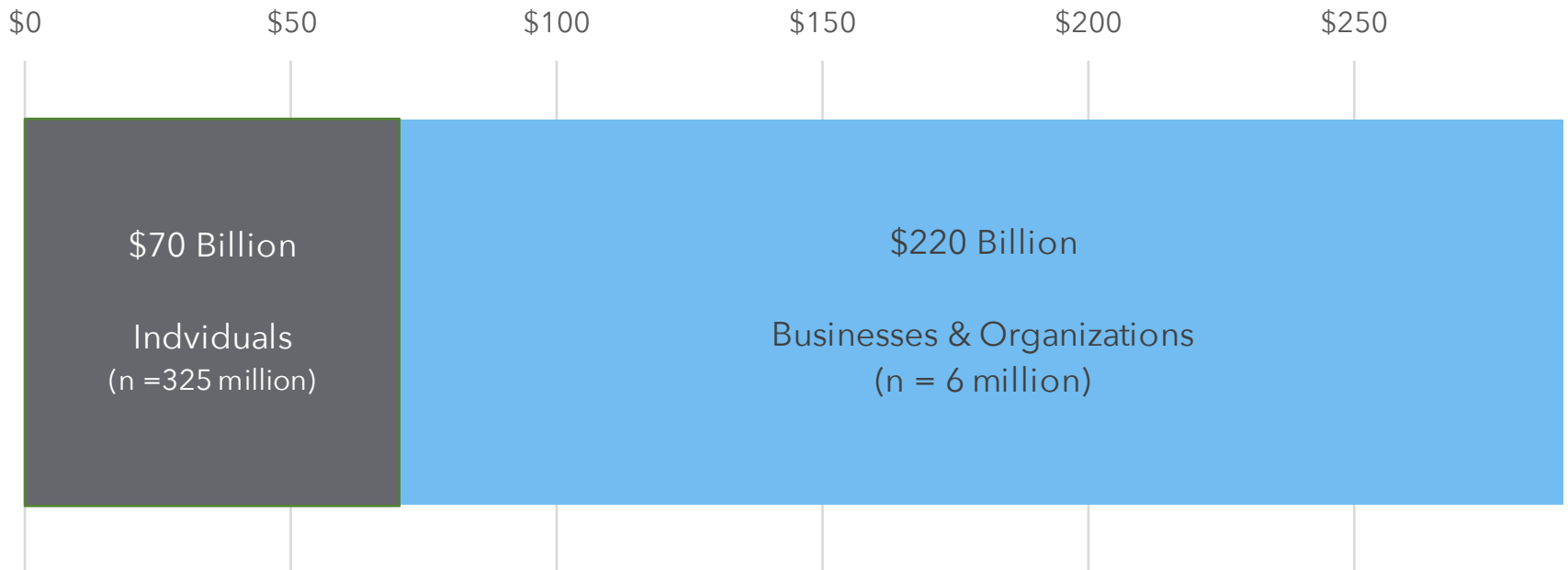


Chicago Lawyers

II

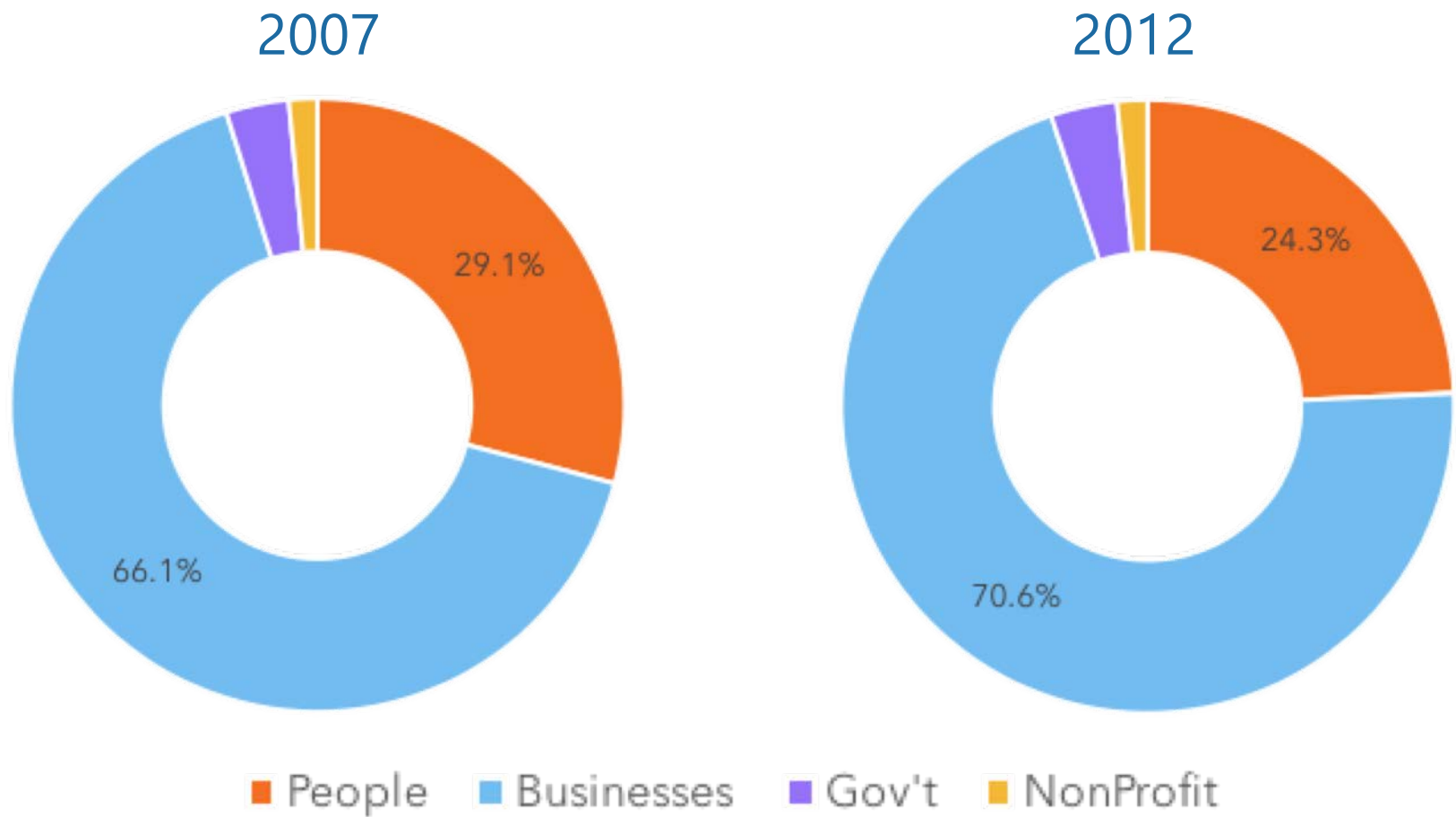


Estimate of Current U.S. Legal Services Market



Based 2012 Economic Census data adjusted upward based on growth in U.S. GDP

% of Law Office Revenue by Type of Client



SMALL FIRM LAWYERS SERVING PEOPLE ARE STRUGGLING TO EARN A LIVING .

2017 Clio Legal Trends Report



What went into the 2017 *Legal Trends Report*?

1,026,038 matters

10,981,286.13 hours billed

\$2,562,864,876.43 in billables

8 award-winning data scientists

Hourly Rate

**\$260/
Hour**

Hours

**2.3
Hours**

29% of 8
Hours

Billed

**1.9
Hours**

82% of Hours
Worked

Collected

**1.6
Hours**

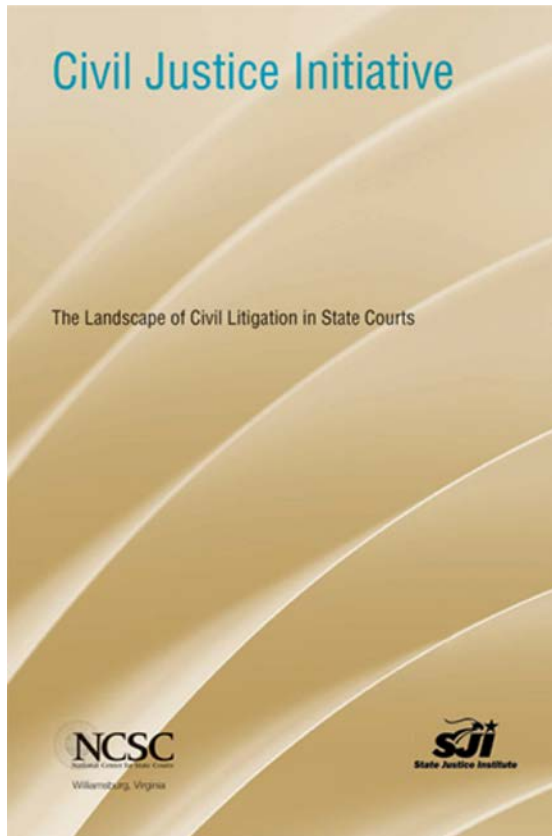
86% of Hours
Billed

Income

**\$422/
Day**

STATE COURTS ARE IN MELTDOWN – GLUTTED WITH SELF-REPRESENTED LITIGANTS.

NCSC The Landscape of Civil Litigation
in State Courts



“The picture of civil litigation that emerges from the Landscape dataset confirms the longstanding criticism that the civil justice system takes too long and costs too much.”

\$2,441

median judgment

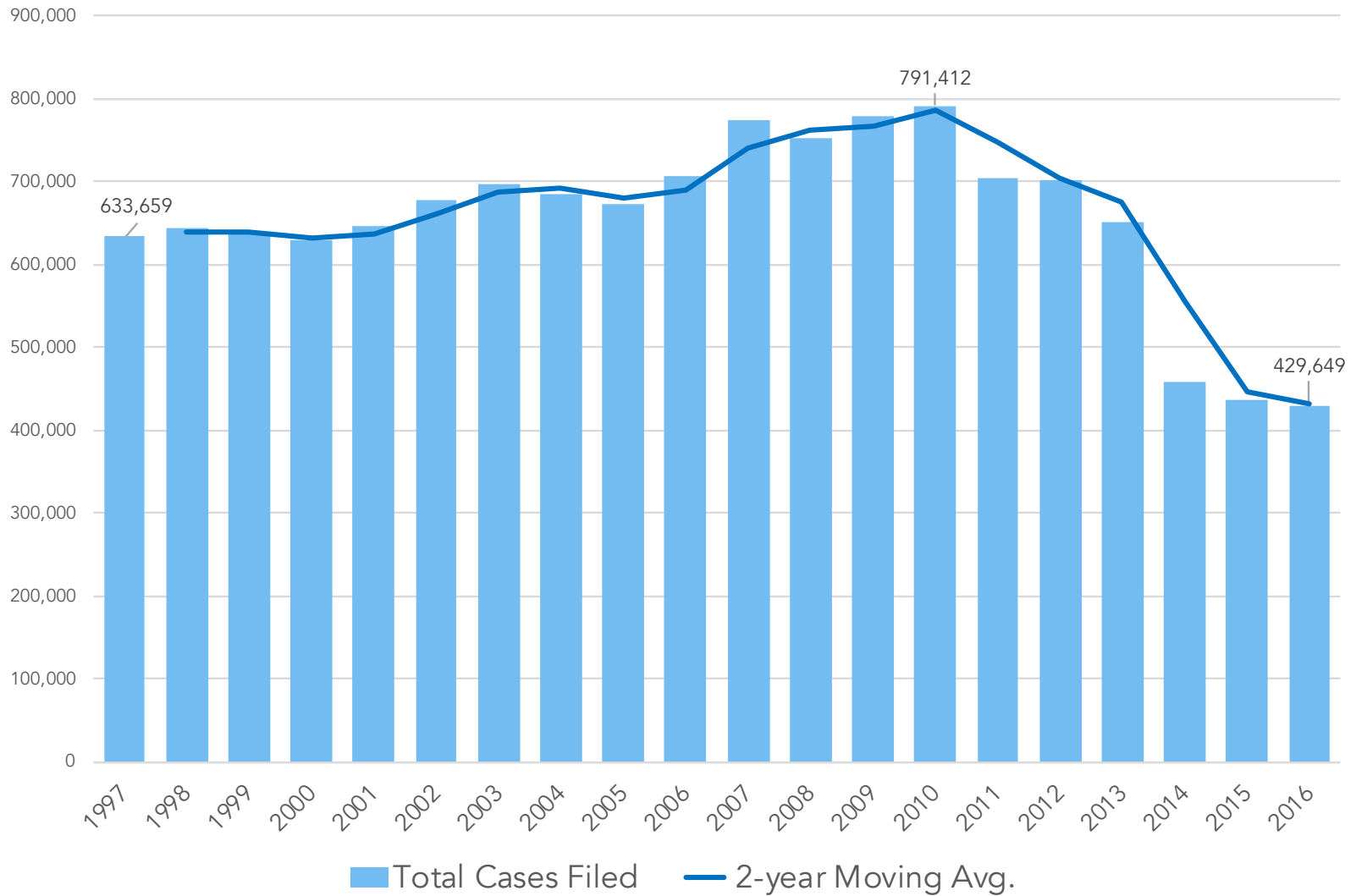
\$5,424

average judgment

75%

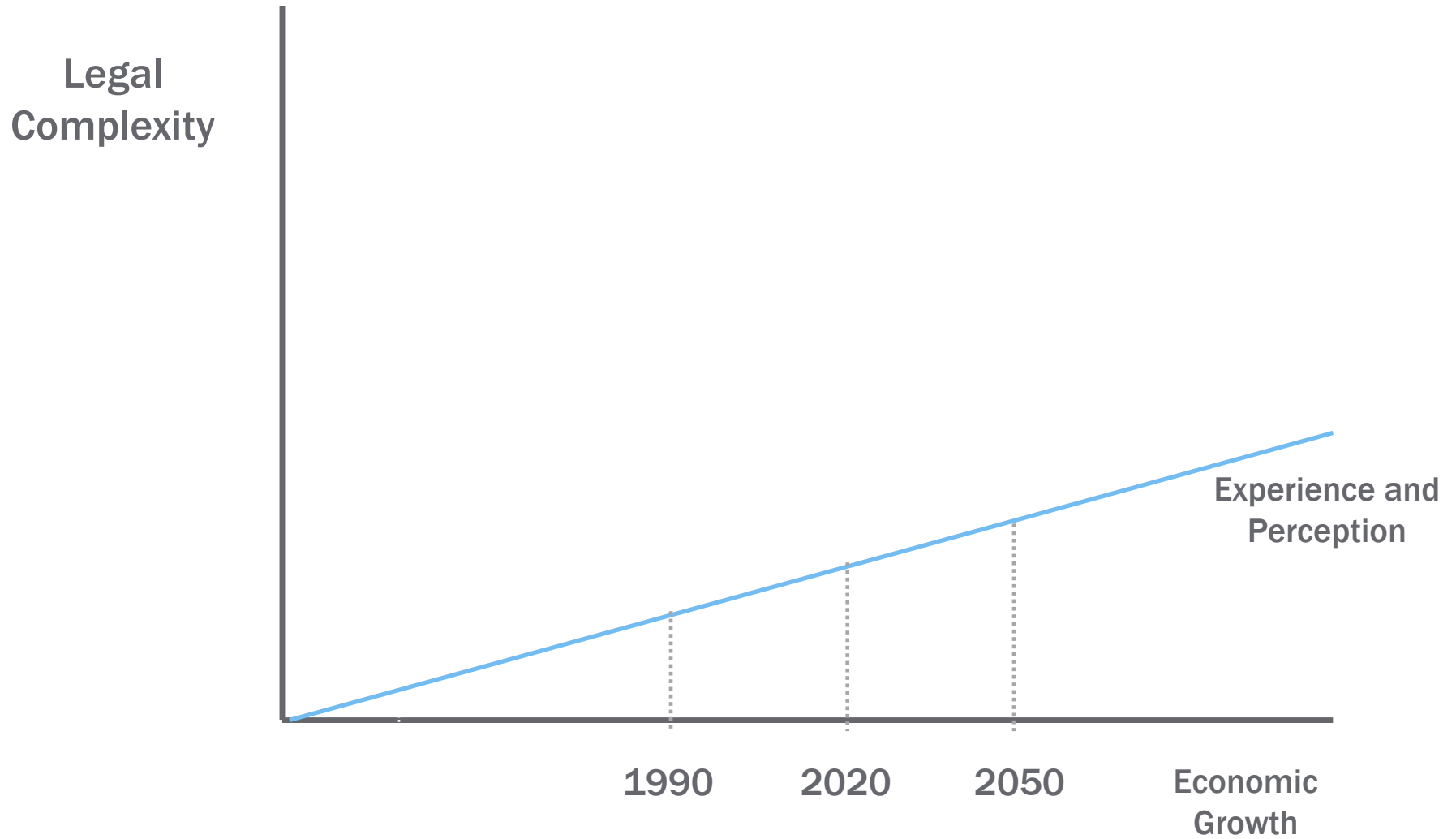
of cases had at least
one self-reported
party

Civil Case Filings in the Illinois Circuit Courts

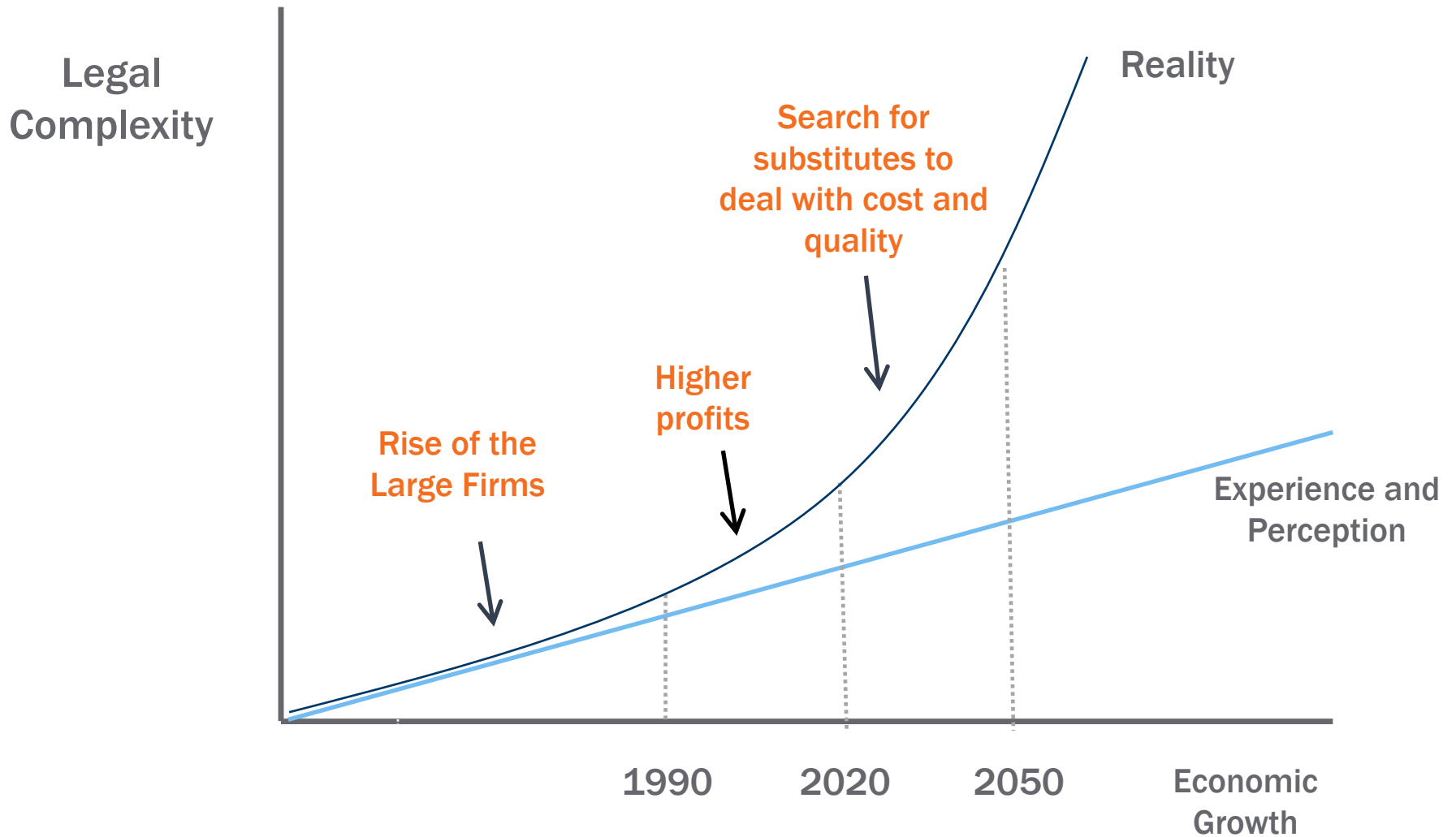


Source: data from the Annual Reports of the Illinois Courts, graph generated by Legal Evolution PBC

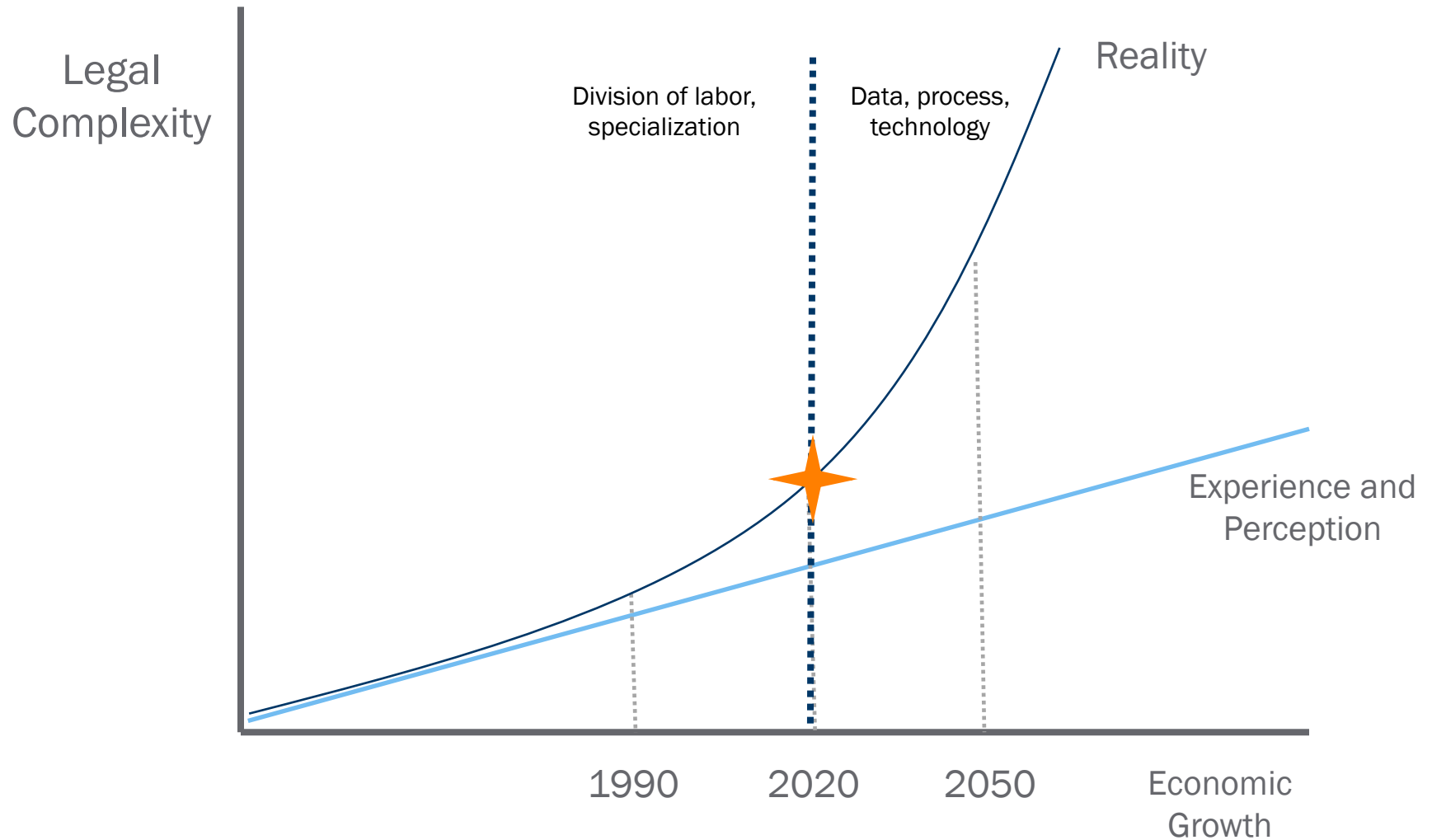
Complexity



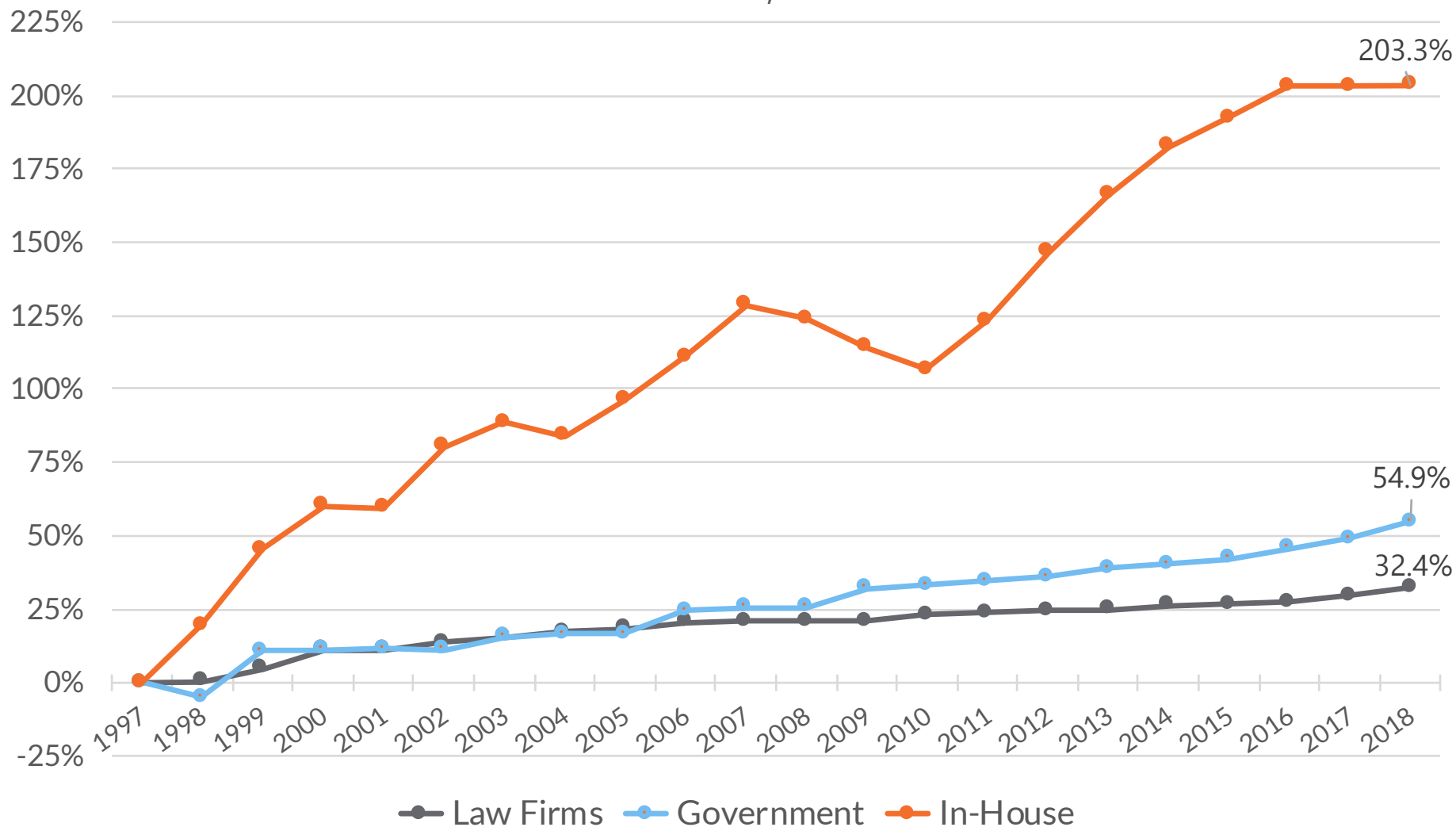
Complexity



Complexity



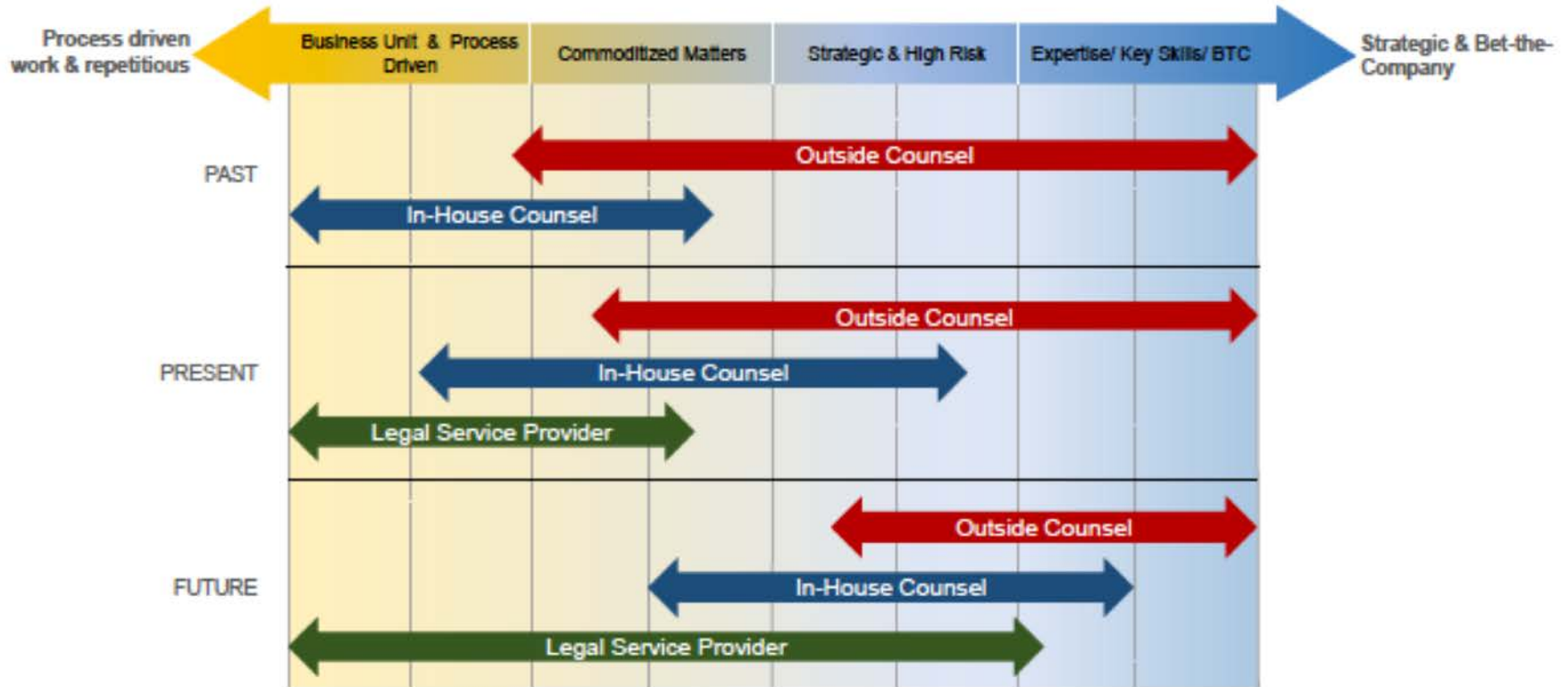
% CHANGE IN NUMBER OF EMPLOYED LAWYERS BY PRACTICE SETTING, 1997 TO 2018



LAW FIRM CLIENTS: SIX TYPES



Evolution of Litigation



Source: Alan Bryan, Senior Associate General Counsel - Legal Operations and Outside Counsel Management, Wal-Mart Stores, Inc.

Proliferation of Legal Tech Point Solutions

Smart Contracts



Communication & Collaboration



Document Analysis



Workflow



eDiscovery



Transaction Management



Business



Legal Research



Time & Billing



Document Management



Case Management



Document Automation

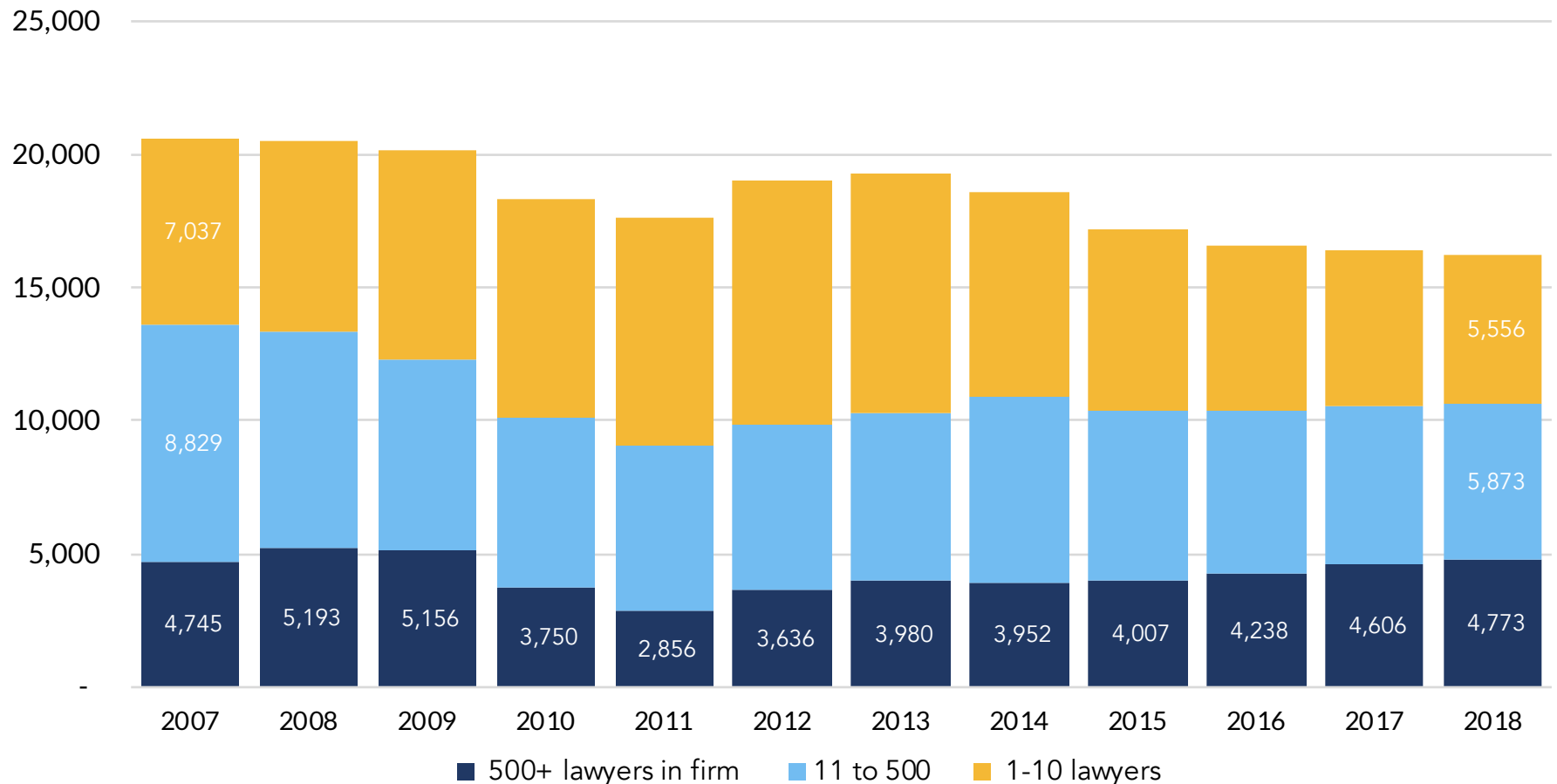


Security & Compliance



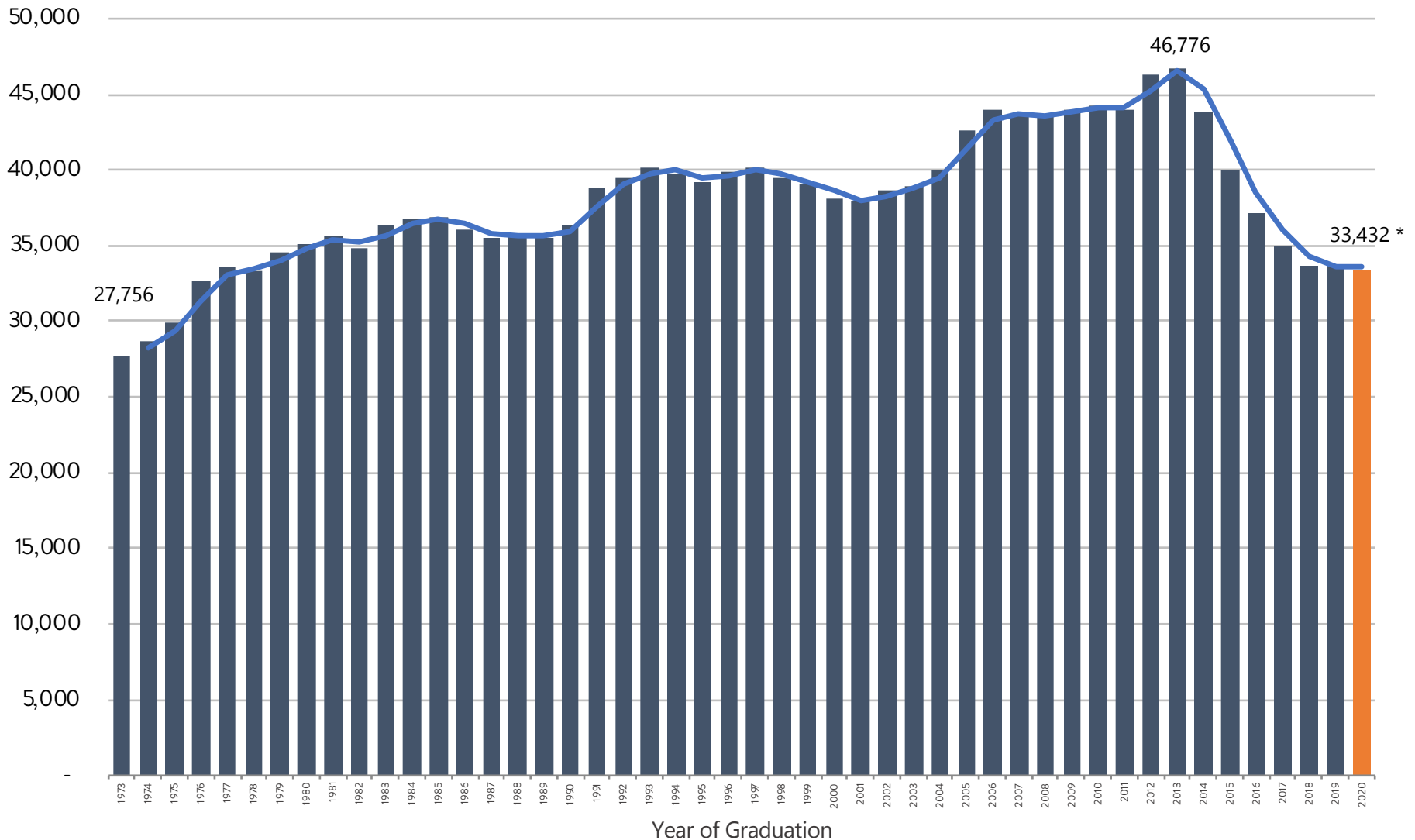
Impact on Entry-Level Private Practice Jobs

Number of Entry-Level Jobs in Private Practice by Law Firm Size

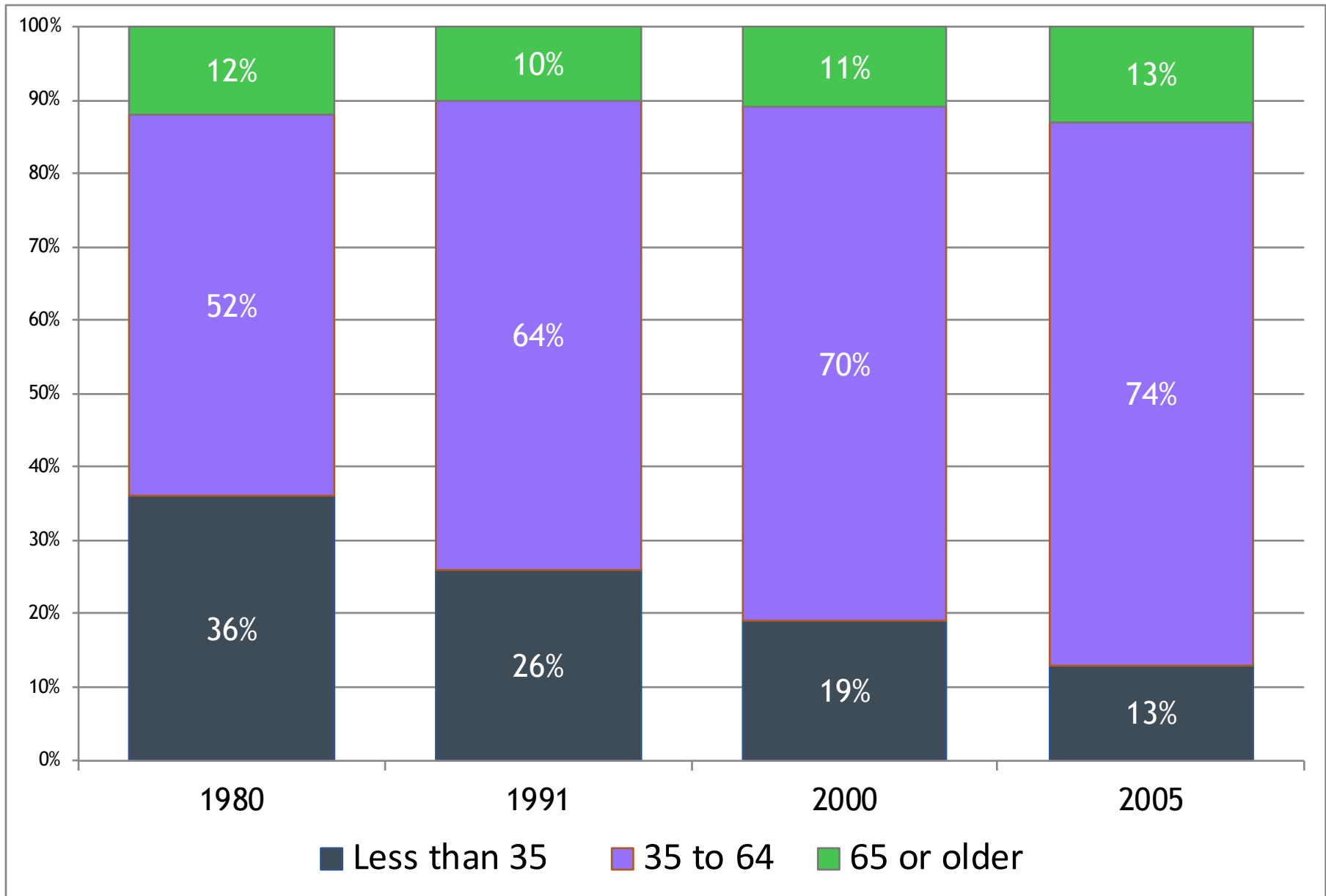


Static Learning → Poor Job Prospects → Massive Decline in Enrollment

Number of Law Graduates from ABA-Accredited Law Schools, 1973 to 2020



Demographics of Licensed Bar



Lagging Legal Productivity and "Cost Disease"



1997 Dodge Caravan



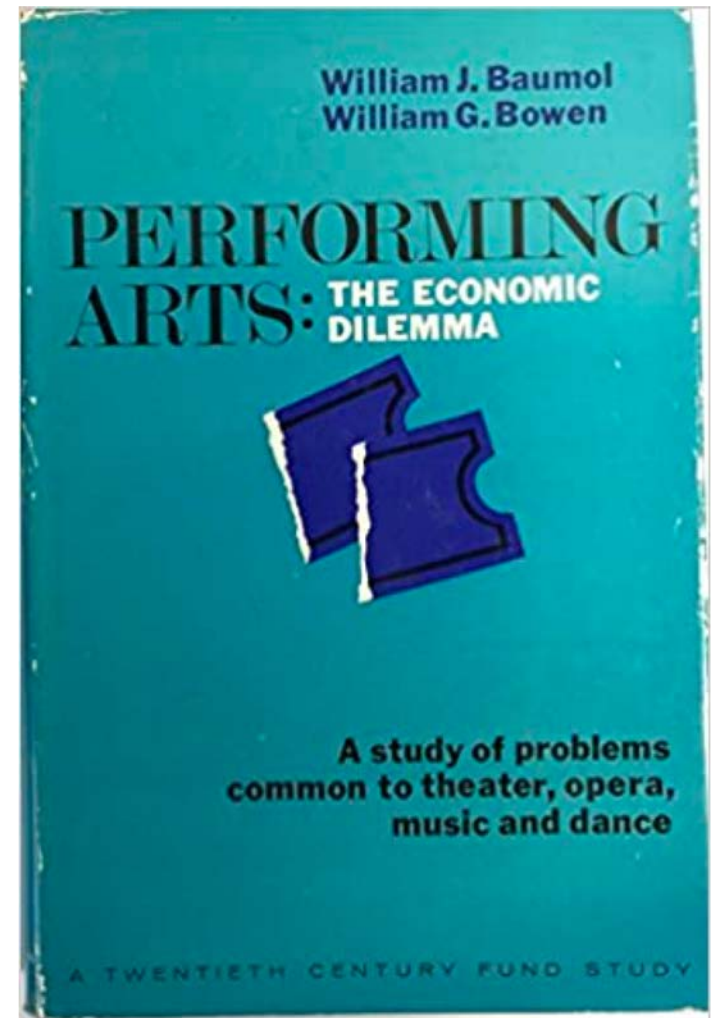
2003 VW Passat



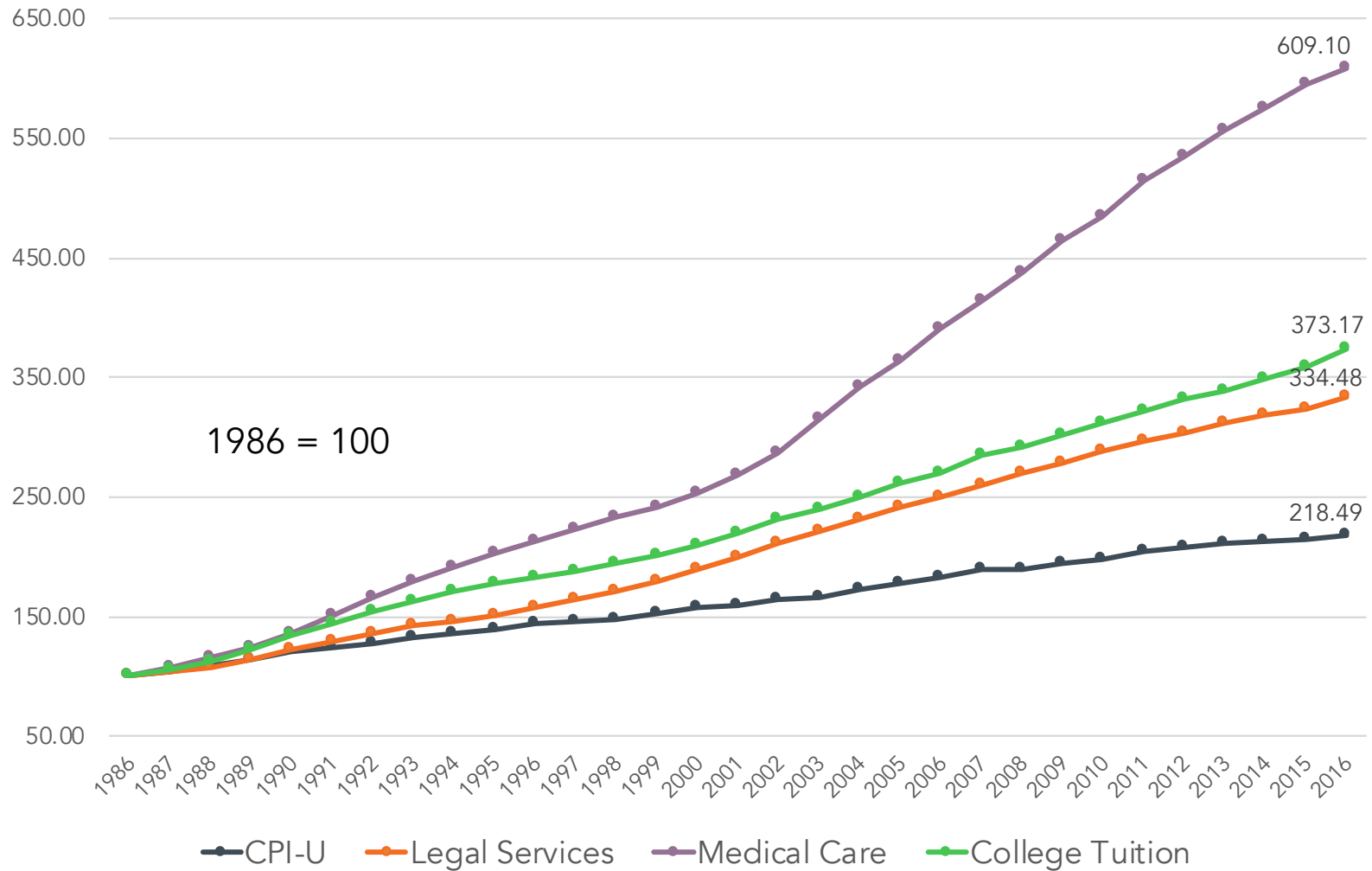
2014 Honda Accord

"Human ingenuity has devised ways to reduce the labor necessary to produce an automobile, but no one has succeeded in decreasing the human effort expended at a live performance of a 45-minute Schubert quartet to much below a total of 3 man-hours."

-- William J. Baumol & William G. Bowen, *Performing Arts: The Economic Dilemma* (1966)



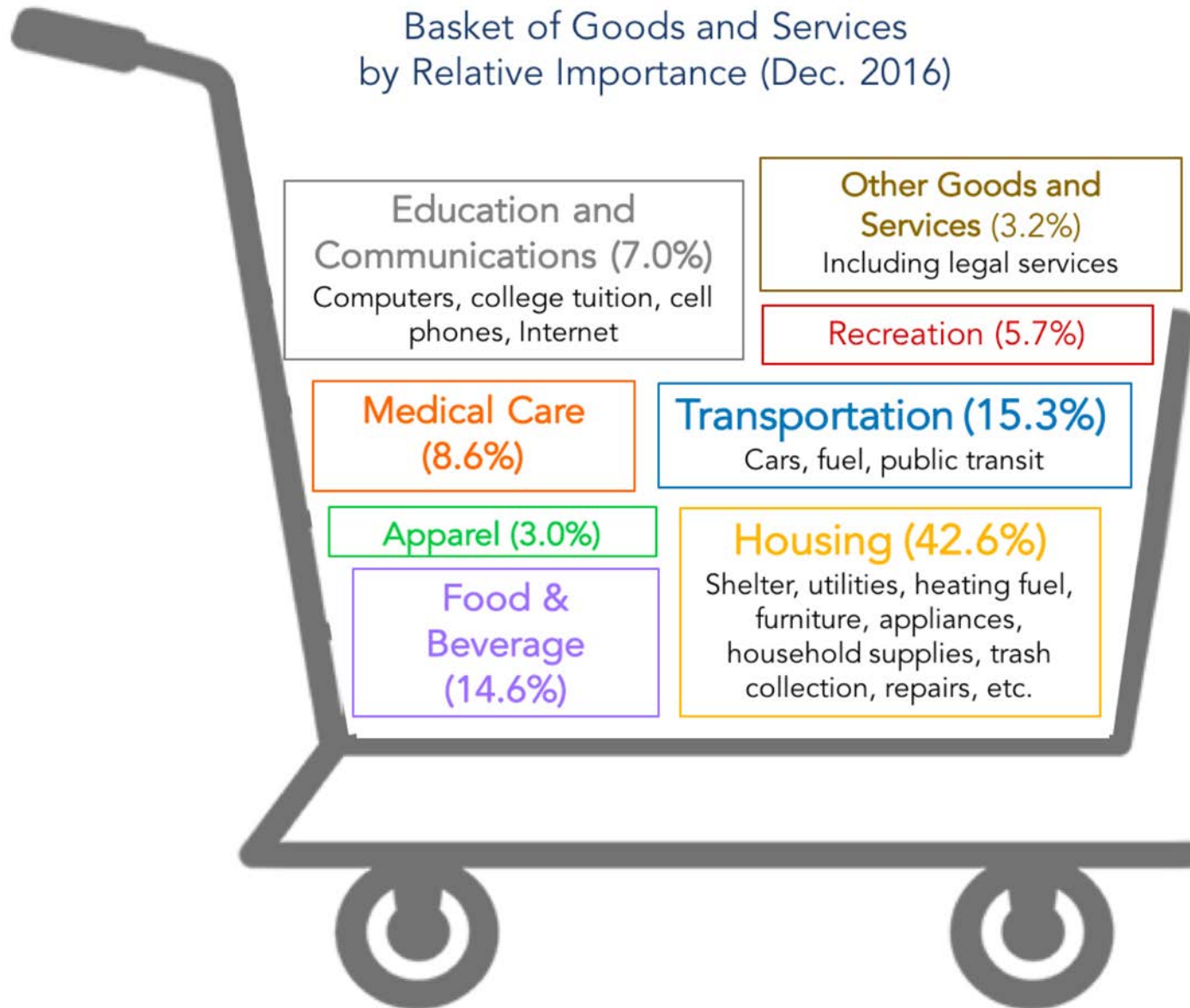
Cost of Legal Services, Medical Care, and College Tuition vs CPI-U 1986 to 2016



Source: Data from U.S. Bureau of Labor Statistics, calculations by Legal Evolution PBC

Consumer Price Index (CPI)

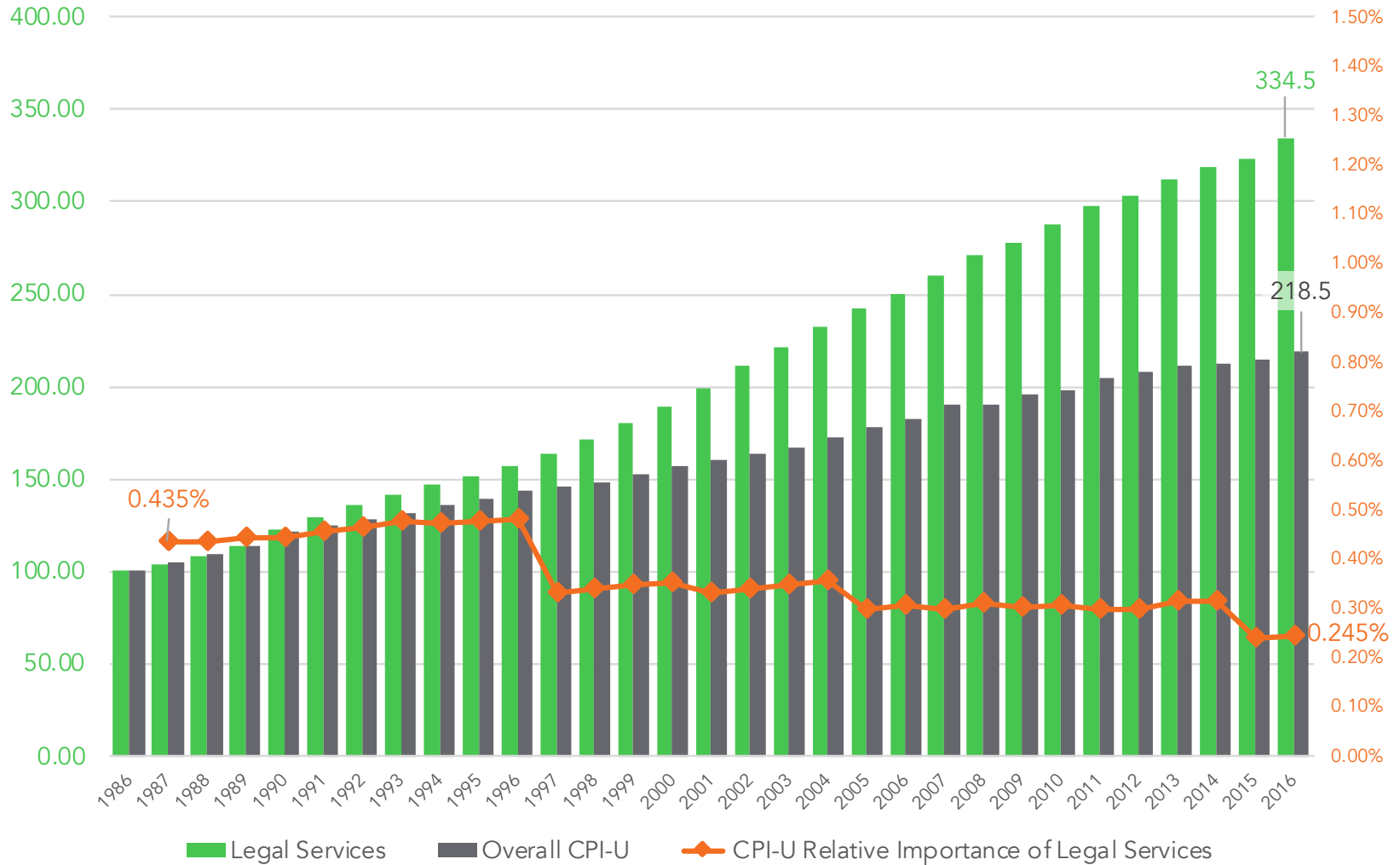
Basket of Goods and Services
by Relative Importance (Dec. 2016)



Source: Data from U.S. Bureau of Labor Statistics, graphic by Legal Evolution PBC

Legal Services Compared to Overall CPI-U, 1986 to 2016

Relative Importance of Legal Services in CPI Basket



Source: Data from U.S. Bureau of Labor Statistics, calculations by Legal Evolution PBC

The “DIY” (Do-It-Yourself) Legal Economy



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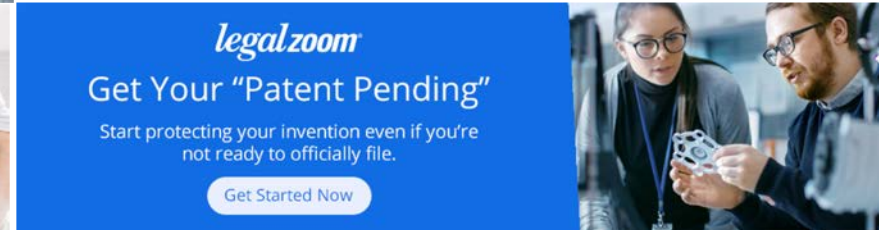
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RESPOND TO A DISPUTE

DISPUTE LOGIN



Civil Resolution Tribunal

ABOUT THE PROCESS ▾

ABOUT US ▾

RESOURCES ▾

FAQ

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BLOG

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**SOME THINGS IN
LIFE SHOULDN'T
BE HARD.**

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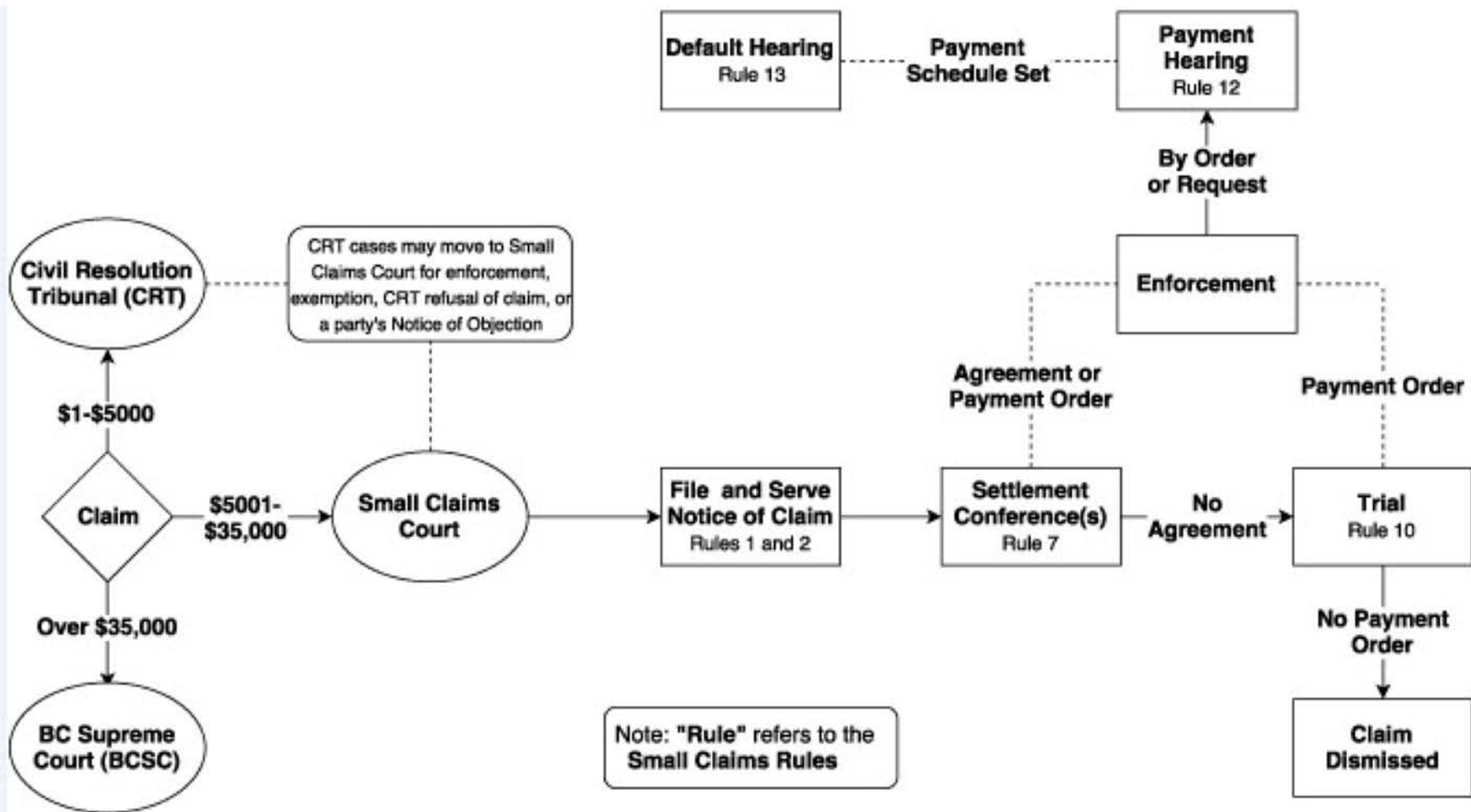


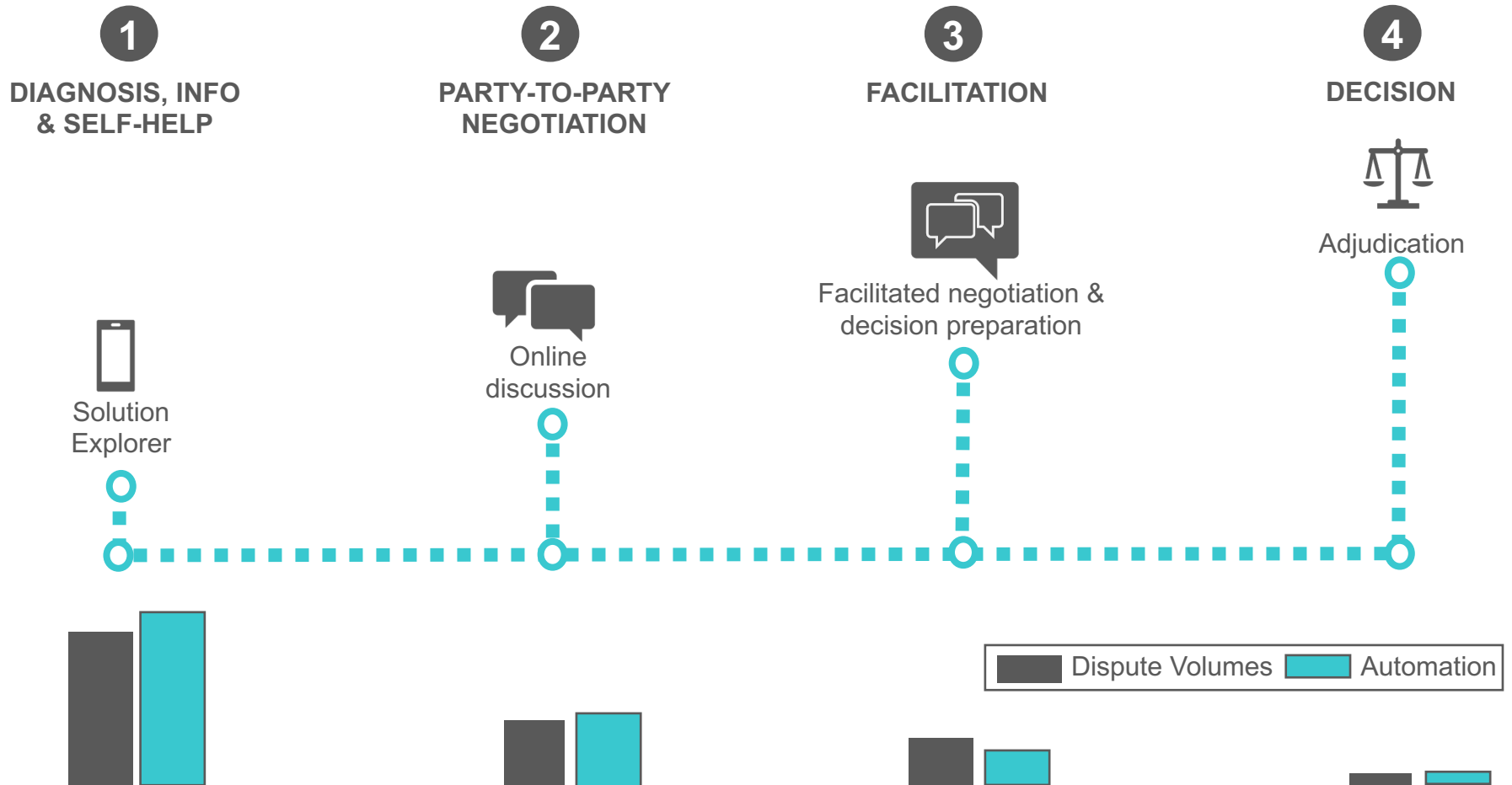
Civil Resolution Tribunal



Civil Resolution Tribunal







Seamless, Responsive Design





Civil Resolution Tribunal

Participant Satisfaction

CRT Participant Satisfaction Rates - March 2019 (to date)

Professional: 92% agreed that CRT staff were professional in each interaction.

Easy to use: 74% felt the CRT's online services were easy to use.

Informed: 82% agreed the CRT provided information that prepared them for dispute resolution.

Timely resolution: 78% feel their CRT dispute was handled in a timely manner.

Accessible: 70% found the CRT process easy to understand.

Fair treatment: 84% feel the CRT treated them fairly throughout the process.

84% are likely to recommend the CRT to others.

Failed Storefront Revolution

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of
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Jerry Van Hoy

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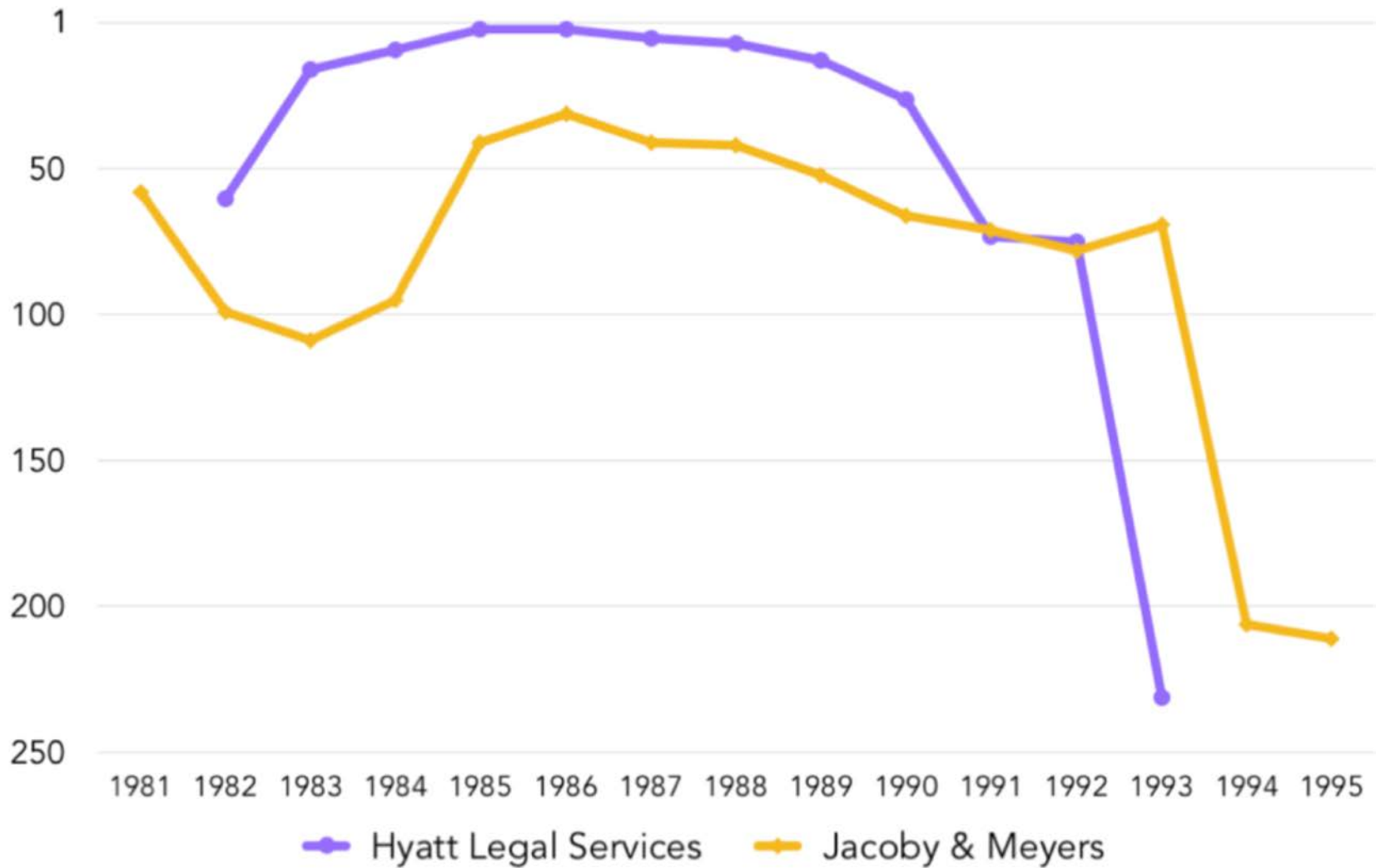


- Divorce or legal separation--uncontested
(both spouses sign papers)
\$175.00 plus \$20.00 court filing fee
- Preparation of all court papers and instructions on
how to do your own simple uncontested divorce
\$100.00
- Adoption--uncontested severance proceeding
\$225.00 plus approximately \$10.00 publication cost
- Bankruptcy--non-business, no contested proceedings
Individual
\$250.00 plus \$55.00 court filing fee
Wife and Husband
\$300.00 plus \$110.00 court filing fee
- Change of Name
\$95.00 plus \$20.00 court filing fee

Information regarding other types of cases
furnished on request

Legal Clinic of Bates & O'Steen
617 North 3rd Street
Phoenix, Arizona 85004
Telephone (502) 252-8838

National Law Journal 250 Rank

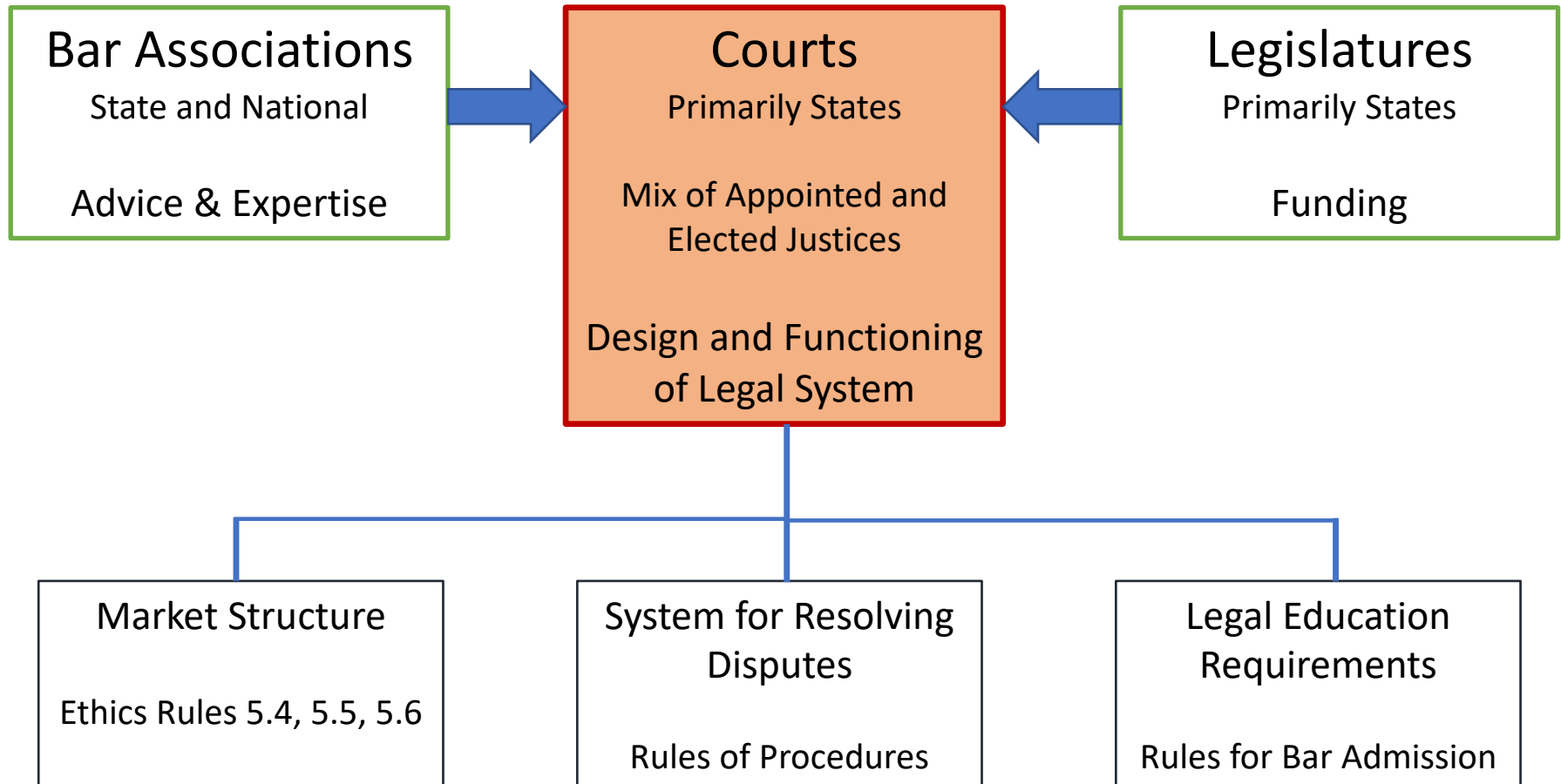



Source: National Law Journal, graphic generated by Legal Evolution PBC

The Legal Profession has
problems.

Who do we talk to?

Simplified Model of Legal Profession Regulation





In the USA, courts and lawyers see a fraction of people's actual justice problems—14 to 24%.

“The definition of the [access to justice] crisis as one of unmet legal need comes from the bar. Lawyers’ myopic focus on legal services is understandable. Judges and lawyers work at the top of an enormous iceberg of civil-justice activity, most of which is invisible to them and handled without their involvement. ...

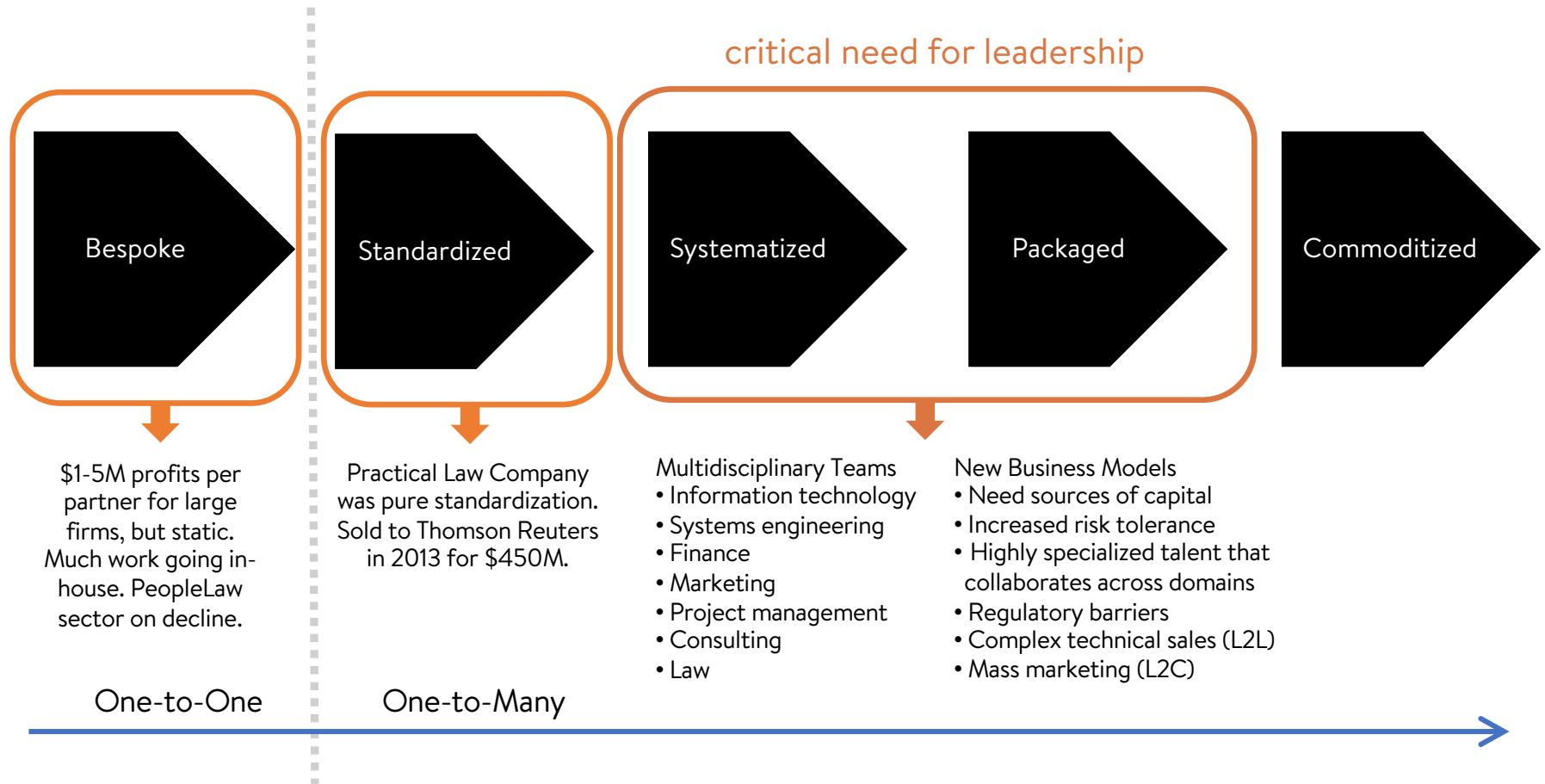
The bar’s account dominates the discussion because it is simple and sounds reasonable, not because it is accurate.”

| Rebecca L. Sandefur, *Access to What?*, DAEDALUS (Winter 2019)

Rule Makers versus Risk Takers (140) Legal Evolution, March 15, 2020

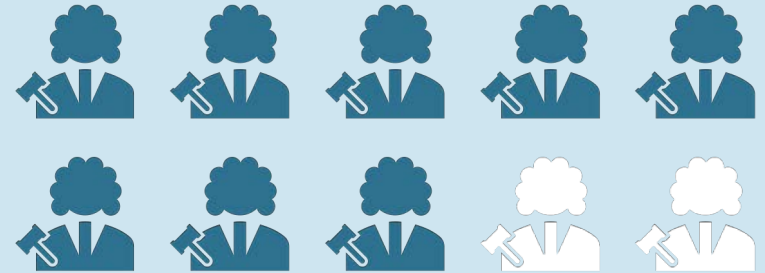
<https://www.legalevolution.org/2020/03/rule-makers-versus-risk-takers-140/>

Susskind's five stages of Evolution





1 in 10 US healthcare workers
have a medical degree



8 in 10 US legal service workers
have a law degree

Healthcare workers occupy well-developed career paths along the entire educational spectrum.



High School Diploma + On The Job Training

Nursing Assistants	1,450,960
Other Healthcare Sup Workers	88,990
Opticians, Dispensing	72,250
Psychiatric Aides	56,910
Medical Equipment Preparers	55,610
Ophthalmic Medical Technicians	52,890
Orderlies	50,100
Physical Therapist Aide	47,260
Occupational Therapy Aides	7,700
Hearing Aid Specialists	7,680

Associates Degree

LP & LV Nurses	701,690
Medical Assistants	673,660
EMTs & Paramedics	257,210
Medical Records & Health Info Techs	208,650
Radiologic Technologists	205,590
Phlebotomists	125,280
Other Health Technologists	125,270
Surgical Technologists	110,160
Massage Therapists	105,160
Physical Therapy Assistants	94,250
Psychiatric Technicians	71,360
Diagnostic Medical Sonographers	71,130
Cardiovascular Technologists & Techs	56,560
Medical Transcriptionists	53,730
Occ. Therapy Assistants	42,660
MRI Technologists	38,540
Dietetic Techs	33,540
Other Healthcare Practitioners & Techs	32,680
Nuclear Medicine Technologists	18,810
Radiation Therapists	18,260
Therapists, All Other	11,950
Respiratory Therapy Techs	9,090

Bachelors Degree

Registered Nurses	2,951,960
Clinical Lab. Technologists Techs	321,220
Occ. Health & Safety Specialists	88,390
Athletic Trainers	26,890
Recreational Therapists	18,840
Occ. Health & Safety Tech.	18,020
Exercise Physiologists	6,740

Masters or Doctorate

Physical Therapists	228,600
Nurse Practitioners	179,650
Speech-Language Pathologists	146,900
Occupational Therapists	126,900
Physician Assistants	114,710
Nurse Anesthetists	43,520
Other Diagnosing Practitioners	36,680
Audiologists	13,300
Podiatrists	9,500
Orthotists and Prosthetists	8,830
Nurse Midwives	6,250
Genetic Counselors	2,640

MD or DO Degree

Physicians	954,000
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Sources: Number of MDs or DOs from Federation of State Medical Boards (2016); all other occupations from Bureau of Labor Statistics (2018).

And a vast network of credentialing bodies fill the gap between education and practice.



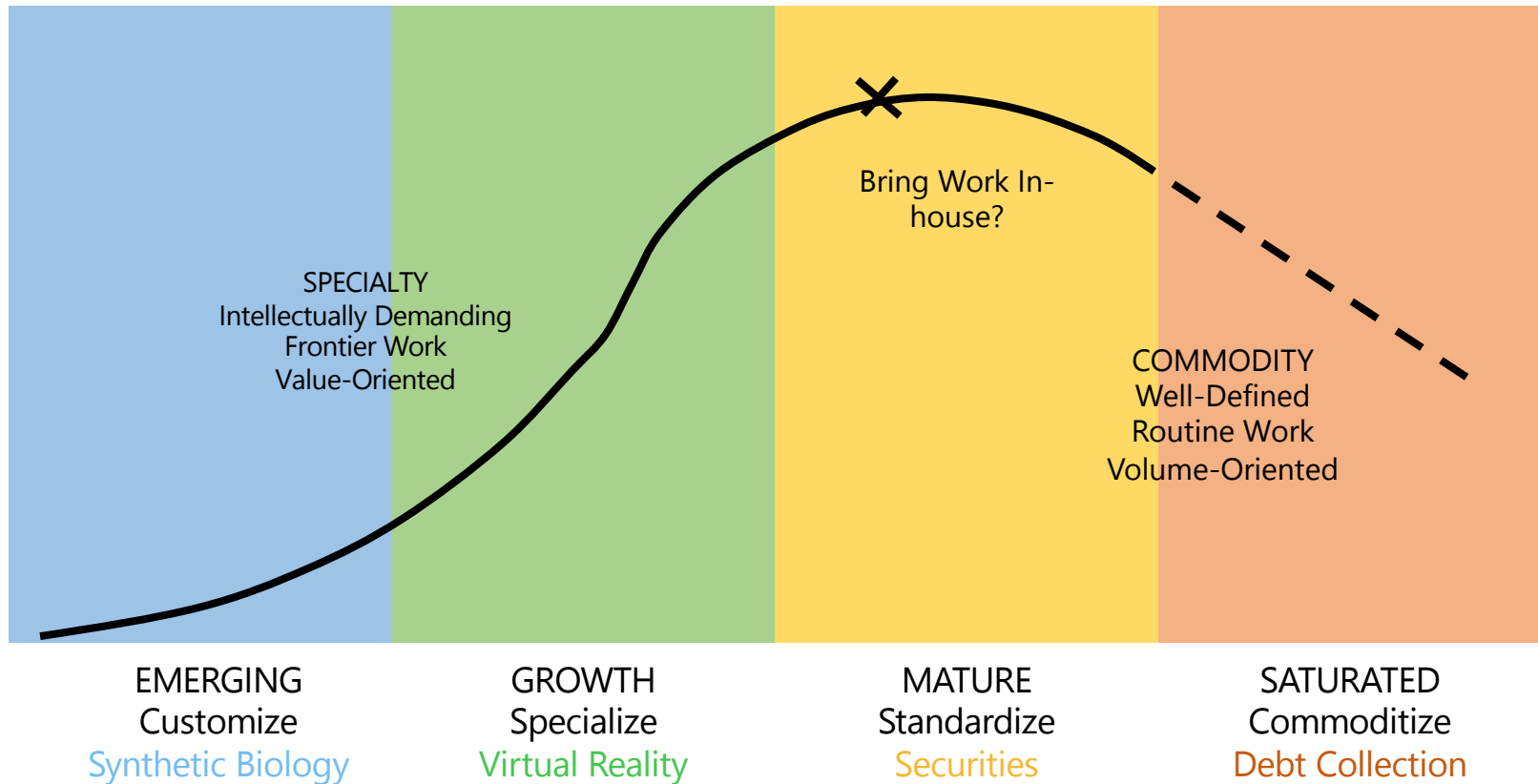
In legal services, there are only two career paths.
This is not enough for an efficient, cost-effective system.



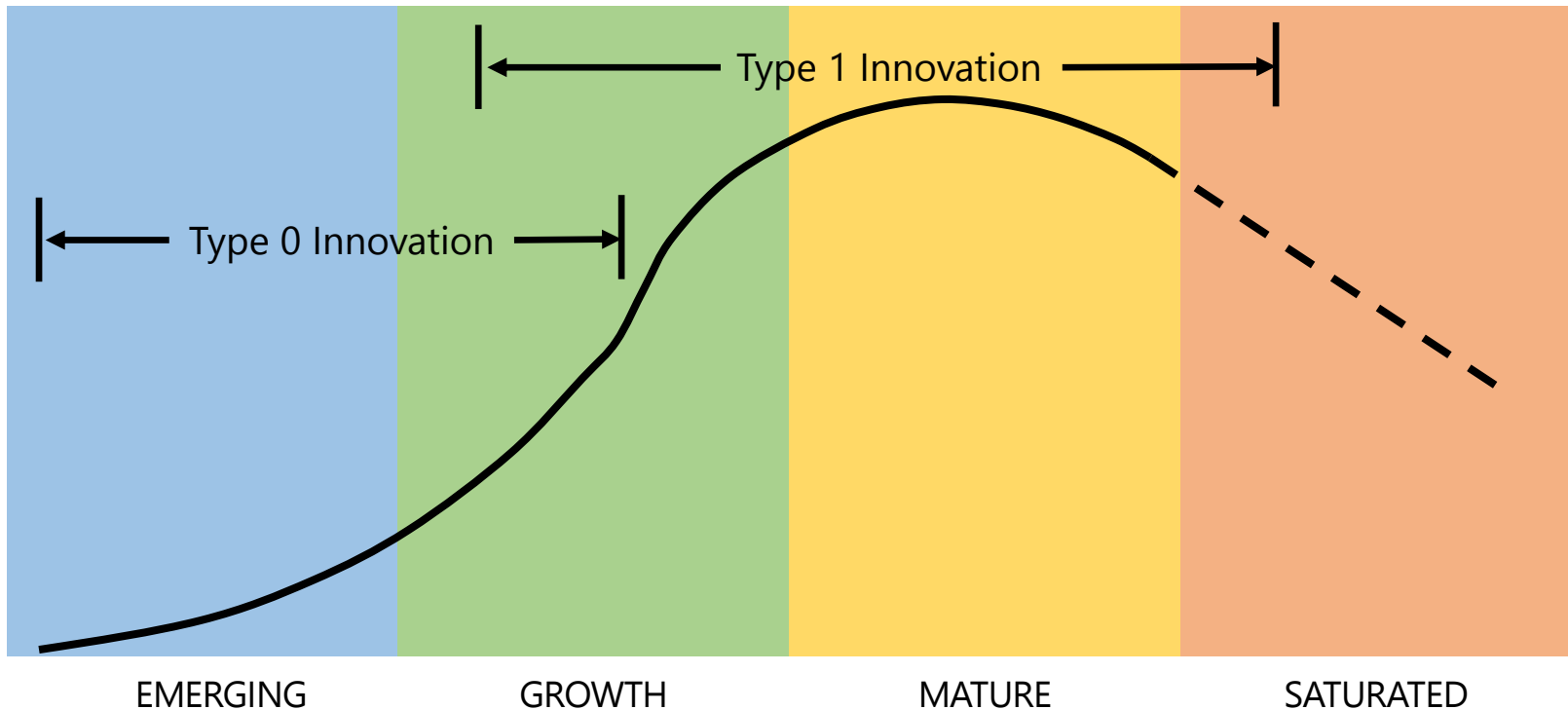
Sources: Number of licensed, active lawyers from American Bar Association (2019); paralegals, legal assistants, and other legal support workers from the Bureau of Labor Statistics (2018).

Law must become
multidisciplinary

LIFE CYCLE OF A PRACTICE AREA



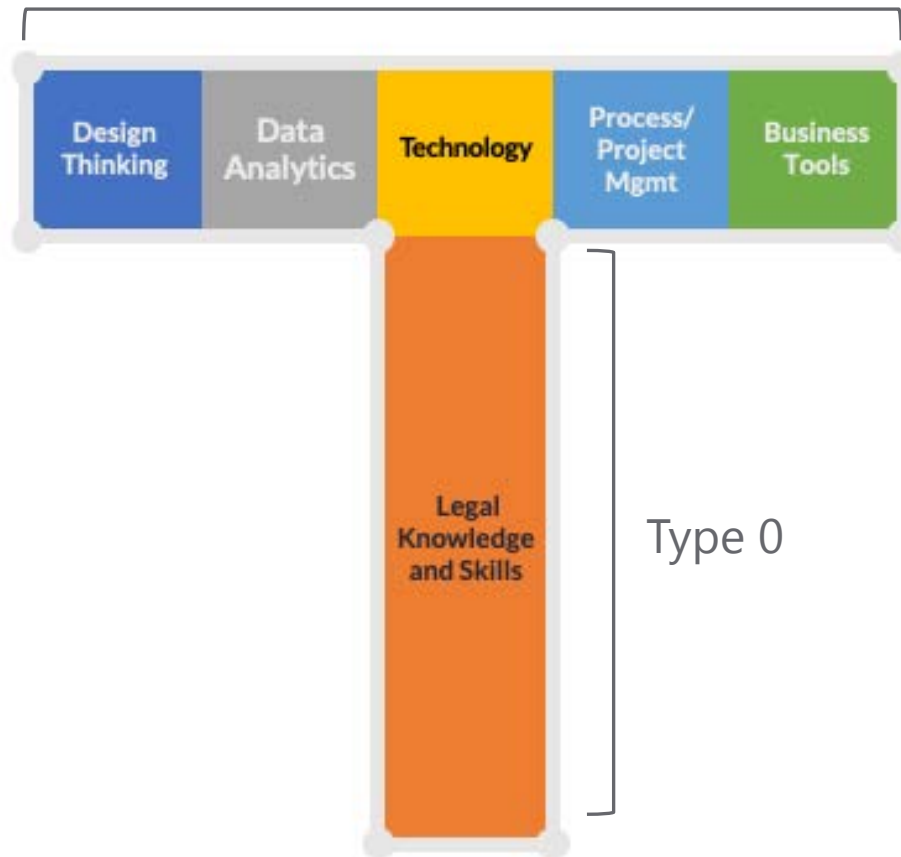
LIFE CYCLE OF A PRACTICE AREA



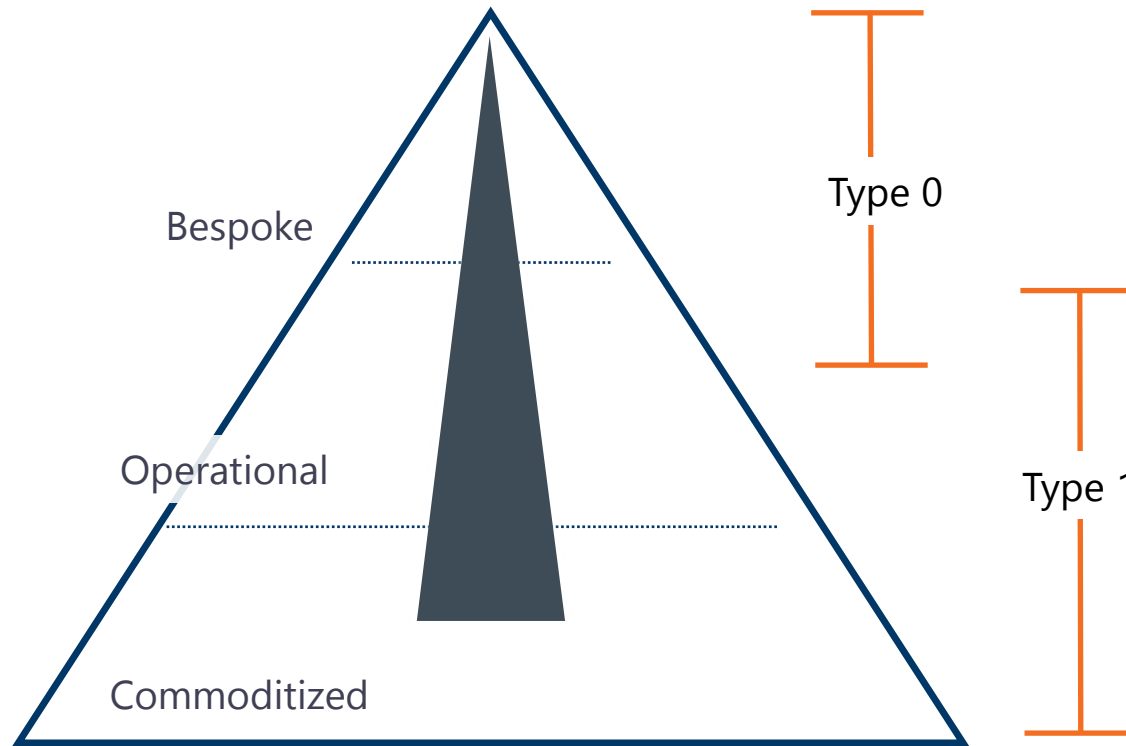
Type 0: Adapting law to fit new social, political, and economic complexities

Type 1: Improving the quality, cost, and delivery of existing legal solutions

Type 1



SOPHISTICATED CORPORATE WORK



HUMAN CAPITAL MAP FOR ONE-TO-MANY SOLUTIONS

Type of
Professional (Y)

Lawyer

S

Partners

Counsel

Associates

Staff Attorneys

Paralegal & support staff

Finance / Acct / IT

Marketing / Bus. Dev. /
Client Experience

Operations (experts in
process, PM, sourcing, cost
accounting, pricing)

Software Engineers

Data Scientists

Allied Professionals

Allied
Professionals

Individuals

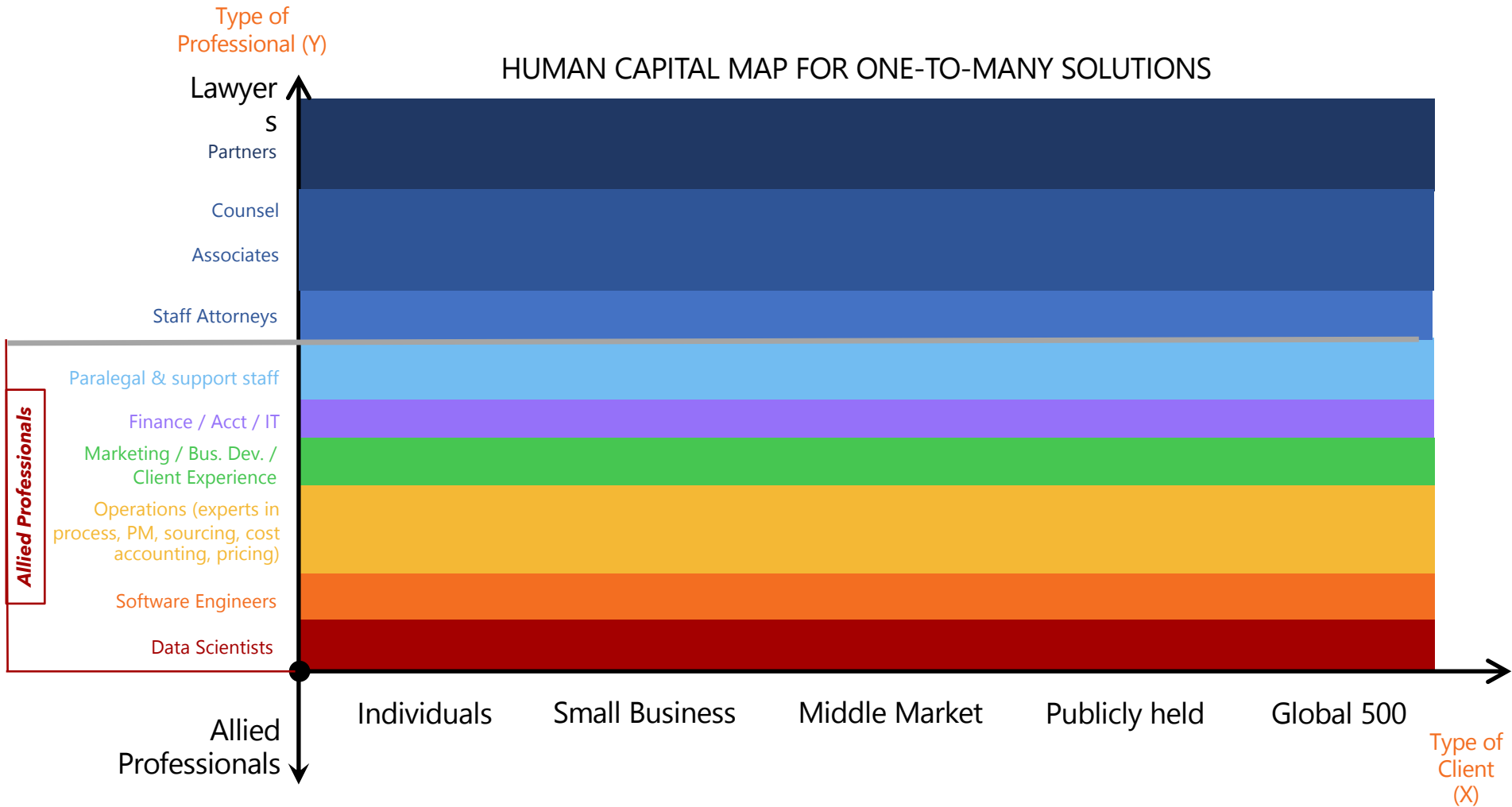
Small Business

Middle Market

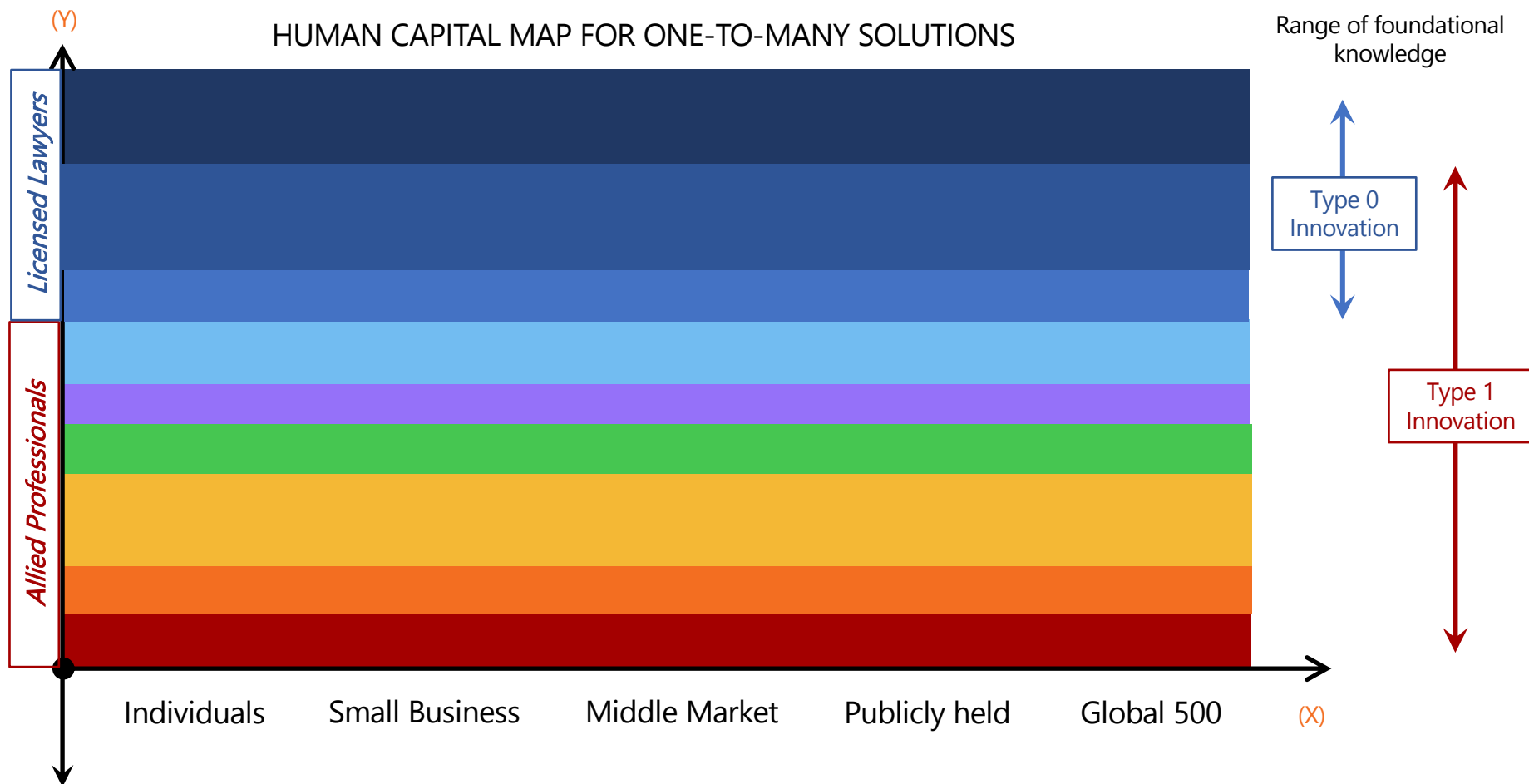
Publicly held

Global 500

Type of
Client
(X)



HUMAN CAPITAL MAP FOR ONE-TO-MANY SOLUTIONS



MVL

Minimum Viable Lawyer is a Key Ingredient



Jason Barnwell

Started at:

-Heller Ehrman
-Cooley

Now at:

AGC of Modern Legal
Microsoft



Eric Wood

Started at:

-Cleary Gottlieb
-Chapman and Cutler

Now at:

Partner at Chapman
and Cutler



Alma Assay

Started at:

-Gibson Dunn

Now at:

"Recovering legaltech
entrepreneur"



Christian Lang

Started at:

-Davis Polk

Now at:

Head of Strategy at
Reynen Court

Technical
Problem

Adaptive
Challenge



Lodewijk Bonebakker
Chief Innovation Officer



Thank You!

@wihender
wihender@indiana.edu

UTAH COURTS RECENT PRESS NOTIFICATIONS

HOME

Posted: August 13, 2020

Utah Courts

Search...

SEARCH

TO TACKLE THE UNMET LEGAL NEEDS CRISIS, UTAH SUPREME COURT UNANIMOUSLY ENDORSES A PILOT PROGRAM TO ASSESS CHANGES TO THE GOVERNANCE OF THE PRACTICE OF LAW

Salt Lake City, UT— In an historic vote, the Utah Supreme Court voted unanimously on Wednesday to authorize a pilot program to test pioneering changes to the practice of law and changes designed to address the access-to-justice crisis in America.

These changes allow individuals and entities to explore creative ways to safely allow lawyers and non-lawyers to practice law and to reduce constraints on how lawyers market and promote their services. In order to assess whether the changes are working as intended, the Supreme Court has authorized the core portions of these changes for a two-year period. At the conclusion of that time, the Supreme Court will carefully evaluate whether the program should continue. The evaluation will be based on a review of data collected from those entities and individuals participating in the program. The Supreme Court's willingness to experiment with innovation is an important step, especially now, because the need for more affordable legal help has reached crisis levels as a result of the COVID-19 pandemic and its economic fallout. Many Utahns are facing crushing challenges that require legal help, including lost jobs, bankruptcy and debt, and health and family crises. Now more than ever new legal services and providers are needed to ease this crisis of access to justice.

The Court's Reform-leading Efforts

The Utah Supreme Court has led the way on reforming the rules governing lawyers and the practice of law to increase Utahns' access to legal help. Over the past two years, a task force

RECENT POSTS

TO TACKLE THE UNMET LEGAL NEEDS CRISIS, UTAH SUPREME COURT UNANIMOUSLY ENDORSES A PILOT PROGRAM TO ASSESS CHANGES TO THE GOVERNANCE OF THE PRACTICE OF LAW

UTAH APPELLATE COURTS TO CONTINUE REMOTE ORAL ARGUMENTS FOR REST OF THE YEAR

THE COURTS MOURN THE PASSING OF JUDGE MICHAEL W. KWAN

JUSTICE COURT JUDGE PRO TEMPORE VACANCY ANNOUNCED

UTAH JUDICIAL COUNCIL CREATES NEW OFFICE OF FAIRNESS AND ACCOUNTABILITY

ARCHIVES

■ August 2020

established by the Supreme Court has researched and developed a model through which new and creative legal business models, services, and providers—under careful oversight—could offer safe and innovative legal services to Utahns. The resulting proposals, set out in the **Supreme Court's Standing Order 15** and associated revisions to the **Rules of Professional Conduct**, establish a regulatory sandbox for non-traditional legal providers and services, including entities with non-lawyer investment or ownership. The proposal also establishes an Office of Legal Services Innovation—a new office within the Supreme Court that will assess and recommend sandbox applicants to the Court, as well as oversee those applicants that are authorized by the Court to offer legal services. The rule changes and the sandbox, which the Supreme Court authorized pursuant to its plenary and exclusive constitutional mandate to govern the practice of law, represent perhaps the most promising effort by courts to tackle the access-to-justice crisis in the last hundred years.

Taking Input from All Sources into Account

Before voting on the changes, the Utah Supreme Court provided for a lengthy ninety-day comment period. Through the comment period and extensive outreach and research efforts, the Supreme Court and its task force were able to gather and take into account input on the proposals from the public, lawyers, the Utah Bar Commission—the body directly overseeing Utah's lawyers—and subject matter experts. As a direct result of this input, the Supreme Court made a number of important changes to the initial proposals. These changes included: (1) increasing transparency into the application and approval process, (2) adding clearer channels for complaints regarding the new legal services, (3) severely restricting any roles for disbarred or suspended lawyers and those with certain felony convictions, (4) more explicitly articulating the program's access-to-justice goals, (5) and more clearly delineating that the program will sunset in two years absent further order of the Supreme Court.

A New Legal Frontier

Justice Deno Himonas who, along with John Lund, past-President of the Utah Bar, led the effort, summed up the need for innovative solutions in the face of America's access-to-justice crisis as follows, "We cannot volunteer ourselves across the access-to-justice gap. We have spent billions of dollars

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trying this approach. It hasn't worked. And hammering away at the problem with the same tools is Einstein's very definition of insanity. What is needed is a market-based approach that simultaneously respects and protects consumer needs. That is the power and beauty of the Supreme Court's rule changes and the legal regulatory sandbox." Now, under the leadership of the Supreme Court and the Bar Commission, which will have an important role in the Innovation Office, Utah will be the first state in the nation to lay the foundation for a truly accessible and affordable, consumer-oriented legal services system.

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**UTAH APPELLATE COURTS
TO CONTINUE REMOTE
ORAL ARGUMENTS FOR
REST OF THE YEAR »**

UTAH COURTS

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3 thoughts on "TO TACKLE THE UNMET LEGAL NEEDS CRISIS, UTAH SUPREME COURT UNANIMOUSLY ENDORSES A PILOT PROGRAM TO ASSESS CHANGES TO THE GOVERNANCE OF THE PRACTICE OF LAW"

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Pingback: [Breaking: In Historic Vote, Utah Supreme Court Approves Sweeping Changes in Legal Services Regulation | Legal Tech Monitor | Mainstage](#)

UTAH COURT RULES – APPROVED

The Supreme Court or Judicial Council has approved and adopted the following rules, which rules are effective on the date indicated. To view the newly adopted rules, click on any rule number.

Under circumstances described in CJA Rules 2-205 or 11-105, certain rules may have been adopted prior to a public comment period. The public is provided the opportunity to provide comment on those rules during the 45 days following the adoption of any such rule. To review and comment, click on the “LINKS” tab directly below. Then click on “Proposed Rule Amendments Published for Comment” to be taken to the page where links to rules subject to public comment are located.

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Posted: August 13, 2020

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Supreme Court Regulatory Reform-Effective August 14, 2020

The Utah Supreme Court approves the following regulatory reform efforts effective **August 14, 2020**. Please see <https://sandbox.utcourts.gov/> and the [press release](#) for more information.

Supreme Court Standing Order

Standing Order 15: This order establishes a pilot legal regulatory sandbox and an Office of Legal Services Innovation to assist the Utah Supreme Court with respect to overseeing and regulating the practice of law by nontraditional legal service providers or by traditional providers offering nontraditional legal services.

Rules of Professional Conduct

Rules Governing the Professional Independence of a Lawyer:

The Supreme Court repeals **former Rule 5.4** of the Rules of Professional Conduct and replaces it with **Rules 5.4A** and **5.4B**.

- **Rule 5.4A:** This rule governs lawyers delivering legal services in the traditional and conventional model. New Rule 5.4A(a) outlines the foremost duties of a lawyer – the duty of independence of judgment, duty of loyalty to the client, and duty of confidentiality – applicable to the rest of the Rule. The preeminence of these professional core values is further

To view all rules effective on a particular date, click on the effective date. To view all dates on which a rule was amended, click on the rule number.

CATEGORIES

- -Alternative Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
- -Rules Governing the Utah State Bar
- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice

explained in new Comments [1] and [2] as they pertain to sharing fees with nonlawyers, with lawyers in a separate firm, and accepting referrals and payments from parties other than the client. In order to loosen the restriction on fee sharing, Rule 5.4A(b) allows a lawyer to share legal fees with a nonlawyer as long as written notice is given at the outset of the representation or before sharing fees from an existing client.

- **Rule 1.5:** Paragraph (e) of this rule has been eliminated to allow dividing fees among lawyers who are not in the same firm.
- **Rule 5.4B:** This rule is applicable to lawyers participating in the pilot legal regulatory sandbox. Like Rule 5.4A, the core professional values for lawyers underlying this rule are stated at the outset under subsection (a). Comments [1] and [2] reiterate and clarify the importance of the underlying core values and duties of a lawyer, notwithstanding the novel arrangement with nonlawyers. Rule 5.4B(b) allows a lawyer to practice law in an organization that is managed or owned, in whole or in part, by nonlawyers, as long as (i) the client is given written notice that nonlawyers have a financial interest in the organization or nonlawyers have managerial authority over the lawyer, and (ii) the client receives in writing the financial or managerial structure of the organization.

Lawyer Advertising Rules: The Supreme Court significantly simplified the lawyer advertising rules in the Rules of Professional Conduct. Rules **7.1, 7.2, 7.3, 7.4,** and **7.5** have been repealed and replaced with new **Rule 7.1**. Notably, this change eliminates the prohibition against in-person solicitation found previously in **Rule 7.3**.

- **Rule 7.1:** Prohibits (i) making false and misleading claims about the lawyer or the lawyer's services, and (ii) interacting in a way that involves coercion, duress, or harassment.

Redline and Clean Rules

Redline Rule 5.4A

Clean Rule 5.4A

Redline Rule 5.4B

Clean Rule 5.4B

Redline Rule 1.5

Clean Rule 1.5

Redline Rules 7.1 through 7.5

- **-Rules of Small Claims Procedures**
- **ADR102**
- **ADR103**
- **ADR104**
- **Appendix B**
- **Appendix F**
- **CAJ03-401**
- **CJA 10-01-202**
- **CJA01-0201**
- **CJA01-0204**
- **CJA01-0205**
- **CJA01-0303**
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- **CJA03-0306.03**
- **CJA03-0306.04**
- **CJA03-0306.05**
- **CJA03-0402**

Utah Supreme Court Standing Order No. 15

This Standing Order establishes a pilot legal regulatory sandbox and an Office of Legal Services Innovation to assist the Utah Supreme Court with overseeing and regulating the practice of law by nontraditional legal service providers or by traditional providers offering nontraditional legal services. Unless otherwise provided, this Order shall expire on the second anniversary of its effective date.

The Standing Order is effective as of August 14, 2020.

Background

The access-to-justice crisis across the globe, the United States, and Utah has reached the breaking point.¹ As to how affordable and accessible civil justice is to people, the 2020 World Justice Project Rules of Law Index ranks the United States 109th of 128 countries.² As to that same factor, out of the thirty-seven high-income countries, the United States ranks dead last.³

To put it into perspective, a recent study by the Legal Services Corporation found that 86 percent “of the civil legal problems reported by low-income Americans in [2016–17] received inadequate or no legal help.”⁴ Similarly, a recently published study out of California “[m]odeled on the Legal Services” study, concluded that 60 percent of that state’s low-income citizens and 55 percent of its citizens “regardless of income experience at least

¹ Access to justice means the ability of citizens to meaningfully access solutions to their justice problems, which includes access to legal information, advice, and resources, as well as access to the courts. See Rebecca L. Sandefur, *Access to What?*, DAEDALUS, Winter 2019, 49.

² WORLD JUSTICE PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX 2020 14, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

³ *Id.*

⁴ LEGAL SERVICES CORPORATION, THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2017).

one civil legal problem in their household each year.” The study also found that 85 percent of these legal problems “received no or inadequate legal help.”⁵ Closer to home, an in-depth April 2020 analysis of the legal needs of Utahns living at 200 percent or less of the federal poverty guidelines found that their unmet legal needs stood at 82 percent.⁶

For years, the Utah Supreme Court has made combating the access-to-justice crisis confronting Utahns of all socioeconomic levels a top priority. To date, the Supreme Court, along with the Judicial Council and the Utah Bar Association, have worked ceaselessly to improve access to justice through many initiatives: the Utah Courts Self-Help Center, the Licensed Paralegal Practitioner Program, form reform, and the Online Dispute Resolution Program, to name but a few. What has become clear during this time is that real change in Utahns’ access to legal services requires recognition that we will never volunteer ourselves across the access-to-justice divide and that what is needed is market-based, far-reaching reform focused on opening up the legal market to new providers, business models, and service options.

In its boldest step toward bridging the access-to-justice gap, the Supreme Court has undertaken an effort to reevaluate and amend several of the regulations it has historically relied upon in governing the practice of law. This Standing Order and accompanying rule changes implement that effort. The Supreme Court believes that the regulatory reform set out in this Standing Order will shrink the access-to-justice gap by fostering innovation

⁵ STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF LEGAL SERVICES, FINAL REPORT AND RECOMMENDATION 11–12 (2020) (emphasis added).

⁶ UTAH FOUNDATION, THE JUSTICE GAP: ADDRESSING THE UNMET LEGAL NEEDS OF LOWER-INCOME UTAHNS 23 (2020).

and harnessing market forces, all while protecting consumers of legal services from harm.⁷

1. General Provisions

In accordance with its plenary and exclusive authority and responsibility under article VIII, section 4 of the Utah Constitution to govern the practice of law, the Utah Supreme Court establishes the *Office of Legal Services Innovation* (Innovation Office). The Innovation Office will operate under the direct auspices of the Supreme Court and its purpose will be to assist the Supreme Court in overseeing and regulating nontraditional legal services providers and the delivery of nontraditional legal services.⁸ To this end, and subject to Supreme Court oversight, the Innovation Office will establish and administer a pilot legal regulatory sandbox (Sandbox)⁹ through which individuals and entities may be approved to offer nontraditional legal services to the public through nontraditional providers or traditional providers using novel approaches and means, including options not permitted by the Rules of Professional Conduct and other applicable rules. The Supreme Court establishes the Innovation Office and the Sandbox

⁷ The Supreme Court's decision to pursue changes regarding its governance of the practice of law is in keeping with (1) the Resolution of the Conference of Chief Justices and (2) the Resolution of the American Bar Association's House of Delegates "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"

⁸ In Utah, the practice of law is defined by Utah Supreme Court Rule of Professional Practice 14-802. This Standing Order incorporates that definition. For an understanding of "nontraditional legal services providers" and "nontraditional legal services," please refer to Section 3.3 (Regulatory Scope).

⁹ A regulatory sandbox is a policy tool through which a government or regulatory body permits limited relaxation of applicable rules to facilitate the development and testing of innovative business models, products, or services by sandbox participants.

for a pilot phase of two years from the effective date of this Standing Order. At the end of that period, the Supreme Court will carefully evaluate the program as a whole, including the Sandbox, to determine if it should continue. Indeed, unless expressly authorized by the Supreme Court, the program will expire at the conclusion of the two-year study period.

2. Innovation Office

In carrying out the responsibilities designated to it by the Utah Supreme Court, the Innovation Office, at all times, will be subject to the Supreme Court's direction and control. Furthermore, the Innovation Office will have no authority to regulate any individuals, entities, or activities that are beyond the Supreme Court's constitutional scope and mandate to govern the practice of law.¹⁰ With these overarching restrictions firmly in mind, the Innovation Office will have responsibility with respect to the regulation of non-traditional legal services provided by traditional legal providers and non-traditional and traditional legal services provided by non-traditional legal providers, including those services offered within the Sandbox and those that have been approved for the general legal market ("exit or exited the Sandbox"). The Innovation Office will be responsible for (1) evaluating potential entrants to the Sandbox and recommending to the Supreme Court which entrants should be admitted; (2) developing, overseeing, and regulating the Sandbox, including establishing protocols and monitoring nontraditional legal providers and services therein, as well as terminating an

¹⁰ By way of illustration, the Supreme Court has authorized real estate agents to advise their customers with respect to, and to complete, state-approved forms directly related to the sale of real estate. *See* Rule of the Utah Supreme Court Rules of Professional Practice 14-802(c)(12)(A). Outside of this grant, and the ability to modify it, the Supreme Court has no authority with respect to regulating real estate agents. That authority rests with the legislative and executive branches. By way of further illustration, some attorneys hold both J.D.s and M.D.s. The Supreme Court only governs the ability of these individuals to practice law. It has never interfered with their ability to practice medicine.

entrant's participation in the Sandbox where deemed appropriate and in keeping with the regulatory principles set forth below; and (3) recommending to the Supreme Court which entrants be permitted to exit the Sandbox and enter the general legal market.¹¹

The Innovation Office will be funded initially by a grant from the State Justice Institute and in-kind contributions from the National Center for State Courts and the Institute for the Advancement of the American Legal System. The Innovation Office will have the authority to seek additional grant funding and may also be supported through licensing fees as noted in Section 4.9.

The Innovation Office will meet regularly and at least monthly, on a day and at a time and place of its convenience. It will also report monthly to the Supreme Court during one of the Court's regularly scheduled meetings.

2.1 Office Composition

The Utah Supreme Court will appoint the members of the Innovation Office.¹² The Innovation Office will consist of a Chair, Vice-Chair, and nine additional members, all serving on a volunteer basis. Five of the members shall serve as the Executive Committee of the Innovation Office. The Executive Committee shall be composed of the Chair, Vice-Chair, Executive Director, and two additional members appointed by the Court. The Executive Committee will be responsible for setting the Agenda for each meeting of the Innovation Office and for making initial recommendations to the Innovation Office regarding applicants.

In the event of a vacancy, or on its own motion, the Supreme Court will appoint, depending on the vacancy, a new Chair, Vice-Chair, or member. The Court will strive to appoint nonlawyers

¹¹ Innovation Office resources may limit the number of Sandbox entrants.

¹² The Supreme Court Task Force on Regulatory Reform shall continue to operate pending the appointment of the members of the Innovation Office. Upon appointment of the members of the Innovation Office, Utah Supreme Court Standing Order 14 shall be vacated in accordance with the terms of that Standing Order.

(public members) as at least five of the members and will prioritize a membership body diverse across gender, race, ethnicity, sexual orientation, socioeconomic background, and professional expertise.

Innovation Office actions will be taken by majority vote by a quorum of the members.

2.2 Conflicts of Interests

The Utah Supreme Court acknowledges that instances may arise in which Innovation Office members may face conflicts of interest between their business or personal affairs and their member duties. A conflict of interest arises when members—or a member of their immediate family—have a financial interest in a Sandbox applicant or participant or in an entity that has successfully exited the Sandbox. For example, a member’s firm may apply to offer services as part of the Sandbox. Recognizing that transparency and public confidence are paramount concerns, the Supreme Court requires that in cases of conflict, the implicated member(s) disclose the conflict to the Innovation Office in writing and recuse from any involvement regarding that particular Sandbox applicant or participant. The Innovation Office will maintain a record of all conflicts and recusals and make all records related to conflicts and recusals publicly available.

2.3 Office Authority

Subject to the limitations set forth in the Standing Order and the ultimate authority and control of the Utah Supreme Court, the Innovation Office will have the authority to oversee the nontraditional provision of legal services (*see* Section 3.3.2 on Regulatory Scope) using an objectives-based and risk-based approach to regulation.

Objectives-based regulation specifically and clearly articulates regulatory objectives to guide development and implementation. Both the Innovation Office and the Sandbox participants will be guided in their actions by specific objectives.

Risk-based regulation uses data-driven assessments of market activities to target regulatory resources to those entities and

activities presenting the highest risk to the regulatory objectives and consumer well-being. Using risk-based regulation enables the Innovation Office to better prioritize its resources and manage risks in the Utah legal services market.

The Supreme Court grants the Innovation Office the authority to develop and propose processes and procedures around licensing, monitoring, and enforcement to carry out its mission in light of the Regulatory Objective and Regulatory Principles outlined in Section 3.¹³

The Innovation Office must submit proposed processes, procedures, and fee schedules to the Supreme Court for approval as they are developed and before they take effect.

3. Regulatory Objective, Principles, and Scope

3.1 Regulatory Objective

The overarching goal of this reform is to improve access to justice. With this goal firmly in mind, the Innovation Office will be guided by a single regulatory objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services. The Utah Supreme Court's view is that adherence to this objective will improve access to justice by improving the ability of Utahns to meaningfully access solutions to their justice problems, including access to legal information, advice, and other resources, as well as access to the courts.

¹³ The Implementation Task Force on Regulatory Reform has already established an Innovation Office Manual. A copy of that manual may be viewed at sandbox.utcourt.gov.

3.2 Regulatory Principles

The Innovation Office will be guided by the following regulatory principles:

1. Regulation should be based on the evaluation of risk to the consumer.¹⁴
2. Risk to the consumer should be evaluated relative to the current legal services options available.¹⁵
3. Regulation should establish probabilistic thresholds for acceptable levels of harm.¹⁶
4. Regulation should be empirically driven.¹⁷
5. Regulation should be guided by a market-based approach.¹⁸

¹⁴ The phrase “based on the evaluation of risk” means that regulatory intervention should be proportional and responsive to the actual risk of harm posed to the consumer, as supported by the evidence.

¹⁵ The phrase “relative to the current legal service options available” means that risk should not be evaluated as against an ideal of perfect legal representation by a lawyer. Risk should rather be measured as against the reality of current market options for consumers. In many cases, that means no access to legal representation or legal resources at all.

¹⁶ The phrase “probabilistic thresholds for acceptable levels of harm” (the chance a consumer is harmed) means the probability of a risk occurring and the magnitude of the harm should the risk occur. Based on this assessment, the Innovation Office will determine thresholds of acceptable risks for identified harms. Regulatory resources should be focused on areas in which, on balance, there is a high probability of harm or a significant impact from that harm on the consumer or the market.

¹⁷ The phrase “empirically driven” means that the regulatory approach and actions must be supported, whenever possible, by data from the legal services market.

¹⁸ The phrase “market-based approach” means that regulatory tactics should seek to align regulatory incentives with increased revenue or decreased costs for market participants in order to encourage desired behavior or outcomes.

3.3 Regulatory Scope

As noted, under the auspices of the Utah Supreme Court, the Innovation Office will be responsible for developing, overseeing, and regulating the Sandbox, including the oversight of nontraditional legal providers and services therein. The Supreme Court offers the following examples to help individuals and entities, lawyers and nonlawyers alike, understand the Innovation Office's regulatory scope. These examples are just that and the list is not intended to be exhaustive.

3.3.1 Outside the Regulatory Scope

Individuals and entities that carry out the following activities are outside the Innovation Office's regulatory scope, remain under the Utah Bar's authority, and need not notify the Innovation Office:

Partnerships, corporations, and companies entirely owned and controlled by lawyers in good standing; individual lawyers with an active Utah Bar license; and legal services nonprofits:

- (i) offering traditional legal services as permitted under the Rules of Professional Conduct; or
- (ii) using new advertising, solicitation, fee-sharing, or fee-splitting approaches as contemplated by the Rules of Professional Conduct.¹⁹

¹⁹ Partnerships, corporations, and companies entirely owned and controlled by lawyers; individual lawyers with an active Utah Bar license; and legal services nonprofits may not, however, engage in fee-splitting or fee-sharing in an effort to avoid the prohibition against outside ownership set forth in rule 5.4A of the Utah Rules of Professional Conduct.

3.3.2 Within the Innovation Office's Regulatory Scope

Individuals and entities that carry out the following activities are within the scope of the Innovation Office's regulatory authority and are subject to this Standing Order's requirements:²⁰

- (a) Partnerships, corporations, and companies entirely owned and controlled by lawyers; individual lawyers with an active Utah Bar license; and legal services nonprofits partnering with a nonlawyer-owned entity to offer legal services as contemplated by Rule 5.4B;
- (b) Nonlawyer owned entities, or legal entities in which nonlawyers are partial owners (for profit or nonprofit):
 - (i) offering legal practice options whether directly or by partnership, joint venture, subsidiary, franchise, or other corporate structure or business arrangement, not authorized under the Rules of Professional Conduct in effect prior to [Month] [Date], 2020, or under Utah Supreme Court Rule of Professional Practice 14-802; or
 - (ii) practicing law through technology platforms, or lawyer or nonlawyer staff, or through an acquired law firm.

3.3.3 Disbarred Lawyers and Individuals with Criminal History

Disbarred Lawyers. The Utah Supreme Court has determined that lawyers who have been disbarred²¹ present a significant risk of harm to consumers if in the position of ownership or control of

²⁰ This list is not meant to be exclusive or exhaustive. There may be business arrangements, models, products, or services not contemplated in Section 3.3.2, which are welcome and should come through the Sandbox. The Sandbox is not, however, meant to enable lawyers not licensed in Utah to practice in Utah without authorization from the Utah State Bar.

²¹ For purposes of this Standing Order, a lawyer whose license has been suspended qualifies as a disbarred lawyer during the period of suspension.

an entity or individual providing legal services. Therefore, disbarred lawyers are not permitted to gain or hold an ownership interest of greater than 10 percent in any entity authorized to practice law under Rule 5.4B or this Standing Order.

In addition, any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (a) whether the entity has any material corporate relationship and/or business partnership with a disbarred lawyer, and
- (b) whether a disbarred lawyer works with or within the entity, in either an employment or contractual relationship, and is in a managerial role in the direct provision of legal services to consumers.

Criminal History. The Supreme Court has determined that individuals with certain serious criminal histories may present an increased risk of harm to consumers if in the position of ownership or control of a legal service entity.

Any entity applying for authorization to offer services in the Sandbox must disclose the following:

- (a) whether any individual holding an ownership interest of greater than 10 percent in the entity has a felony criminal history,
- (b) whether the entity has any material corporate relationship or business partnership with an individual with a felony criminal history, and
- (c) whether an individual with a felony criminal history works with or within the entity, in either an employment or contractual relationship, and is in a managerial role in the direct provision of legal services to consumers.

The Innovation Office, on receipt of any disclosures required above, will incorporate the information into the risk assessment of the entity as appropriate. To the extent permitted by law, the Innovation Office may also conduct independent criminal history checks.

Falsifying any information, including lawyer status and individual criminal history, is a basis for dismissal from the Sandbox and in the event the entity or individual has exited the Sandbox, a basis for loss of licensure. Other criminal and civil sanctions may also apply.

4. The Sandbox

The Sandbox is a policy tool by which the Utah Supreme Court, through the Innovation Office, can permit innovative legal services to be offered to the public in a controlled environment. The Innovation Office will develop, oversee, and regulate the Sandbox according to the guidance outlined in this Standing Order. Individuals and entities wanting to offer the public nontraditional legal business models, services, or products must notify the Innovation Office. Individuals and entities in the Sandbox will be subject to such data reporting requirements and ongoing supervision as the Innovation Office determines, so long as the requirements fall within its regulatory authority.

4.1 Application

All individuals and entities that fall within the Regulatory Scope (Section 3.3.2) must apply to the Innovation Office for authorization to enter the Sandbox.

4.2 Application Process

The objective of the application process is for the Innovation Office to determine that the legal service proposed by the applicant furthers the Regulatory Objective and does not present unacceptable levels of risk of consumer harm. The Innovation Office will develop an efficient and responsive process for intake, review, assessment, and response to applications.

The Utah Supreme Court contemplates that the application process will be iterative and will include communications between the Innovation Office and the various applicants, as necessary.

The Innovation Office will make a determination as to whether an applicant's proposed legal service furthers the Regulatory Objective and does not present an unacceptable risk of consumer

harm. The Innovation Office will make recommendations to the Supreme Court regarding whether an applicant should be authorized and the associated requirements for the applicant (e.g., reporting, disclosure, risk mitigation, insurance requirements). In developing these requirements, the Innovation Office will consider the Regulatory Objective and Regulatory Principles.

If the Innovation Office does not find that an applicant's proposed legal service furthers the Regulatory Objective or finds that it presents an unacceptable risk of consumer harm, the Innovation Office will deny the proposed authorization, and will include a brief written explanation supporting the finding. The Innovation Office will develop a process for appeal of a denial of a proposed authorization to the Supreme Court.

4.3 Authorization

As with the licensing of lawyers and Licensed Paralegal Practitioners, the Utah Supreme Court will ultimately be responsible for approving or denying authorization to nontraditional legal service providers.

An approved application means permission to offer the proposed legal service in the Sandbox as outlined in the approval and under the Innovation Office's authority. Authorized participants and services are deemed authorized to practice law in Utah, albeit on a limited and temporary basis, under Utah Supreme Court Rule of Professional Practice 14-802.

Denial of authorization by the Supreme Court has the effect of returning the application to the Innovation Office. The Supreme Court may include a brief written explanation of the reasons for its decision not to authorize the applicant. This information may guide the applicant in how to potentially resolve concerns and revise its application for reconsideration for authorization. However, to be clear, some (perhaps many) applicants may not be approved to enter or exit the Sandbox.

Additionally, and to be clear, authorization to practice law does not impact any of the other requirements that may be imposed upon an entity (e.g., business license, tax commission registration, etc.).

4.4 Licensing (Exiting the Sandbox)

Sandbox participants that are able to demonstrate that their legal services are safe—i.e., that they do not cause levels of consumer harm above threshold levels established by the Innovation Office—may be approved to exit the Sandbox and may be granted the appropriate license to practice law by the Utah Supreme Court pursuant to Utah Supreme Court Rule of Professional Practice 14-802. Such providers and services will remain under the regulatory authority of the Supreme Court, through the Innovation Office and subject to such monitoring and reporting requirements as the terms of the license indicate and subject to the enforcement authority of the Innovation Office.

The Innovation Office will develop the process (subject to Supreme Court approval) by which providers and services exit the Sandbox. It is anticipated that this process will generally follow that outlined for application approval, including an assessment of the provider or service, a finding on the consumer safety of the provider or service, and a recommendation to the Supreme Court as to the scope of the license and associated requirements (e.g., reporting). The Innovation Office is authorized to make the licensing assessment, findings, and recommendations at both the individual or entity level and a more categorical level—i.e., to recommend that a category of legal service providers be licensed to practice law in Utah.

If the Innovation Office does not find that a participant's proposed legal service furthers the Regulatory Objective or finds that it presents an unacceptable risk of consumer harm, the Innovation Office will deny the proposed licensure, and will include a brief written explanation supporting the finding. The Innovation Office will develop and propose the process for appeal of a denial of Sandbox exit to the Supreme Court.

4.5 Fees

The Innovation Office will have the authority to propose a fee schedule to the Utah Supreme Court. Unless otherwise required, fees paid will be used to fund the Innovation Office.

4.6 Monitoring and Measuring Risk

The Innovation Office will have the authority to develop the measurements by which it assesses and manages risk. The Innovation Office will identify specific harms presenting the most significant risk to the Regulatory Objective. All regulated providers, whether in the Sandbox or after exiting, have a proactive duty to report any unforeseen risks or harms of which they become aware.

As noted, the Innovation Office will have the authority to develop specific data reporting requirements to monitor consumer risk of harm as part of both Sandbox authorization and general licensing of proposed legal services. The Innovation Office will develop processes and procedures for intake, review, and assessment of incoming data at an individual provider level, across different market sectors, and across the market as a whole. The Innovation Office will have the authority to increase or decrease reporting requirements as indicated by the provider's performance in the market and compliance with the Innovation Office's requirements.

The Innovation Office will have the authority to take proactive actions to effect monitoring of providers and the market as a whole, including but not limited to market surveys, expert audits, anonymous testing, and "secret shopper" tests. The Innovation Office will also develop processes and procedures for intake, review, and assessment of information coming from sources such as media, other governmental or nongovernmental institutions, whistleblowers, and academia.

The Utah Supreme Court acknowledges that this regulatory approach does not remove all possibility of harm from the market and, in fact, contemplates that sometimes there may be no regulatory enforcement action even though some consumers may experience harm. Nevertheless, aggrieved consumers may seek relief and remedy through traditional channels of civil litigation or, if applicable, the criminal justice system.

4.7 Consumer Complaints

The Innovation Office will develop a process by which consumers may directly complain to the Office. The Innovation Office will

develop a process by which individual complaint information is fed into the larger data reporting system to contribute to the assessment of risk.

4.8 Enforcement

The Innovation Office will develop standards for enforcement authority upon regulated providers in line with the Regulatory Objective and Regulatory Principles. Enforcement will generally be triggered when the evidence of consumer harm exceeds the applicable acceptable consumer harm threshold. The Innovation Office will also develop the range of enforcement mechanisms it deems appropriate, including but not limited to education, increased reporting requirements, fines, and suspension or termination of authorization or license. Last, the Innovation Office will develop a process for appealing enforcement decisions to the Innovation Office, and then to the Utah Supreme Court.

Once the Innovation Office has developed these various processes and procedures, they will be submitted to the Supreme Court for review and, if appropriate, approval. Both the Supreme Court and the Innovation Office will strive to make the enforcement process as transparent, targeted, and responsive as possible.

4.9 Standards of Conduct

As stated in Rule 5.4(B), lawyers engaging with the nontraditional provision of legal services, as owners, employees, contractors, or business partners with Sandbox participants or licensed providers are required to uphold their duties as required by the Rules of Professional Conduct.

4.10 Confidentiality

The Innovation Office shall maintain a commitment to transparency in the execution of its mission. Identities of applicants to the Sandbox and the applications themselves are presumed to be public information and will be shared via the Innovation Office website.

Applicants may designate appropriate, specific information in the application and/or in any data reported as required by the Innovation Office as confidential business information under the

Government Records and Access Management Act (GRAMA). *See* UTAH CODE § 63G-2-305(1)-(2). The Innovation Office will maintain the confidentiality of such designated information and it will be redacted from the publicly released documents. Nothing, however, in this paragraph limits the ability of the Innovation Office to provide aggregate and anonymized data sets to outside researchers, subject to a duly executed data sharing agreement with the Court.

4.11 Reporting Requirements

The Innovation Office will be responsible for regular reporting to the Utah Supreme Court and the public on the status of the Sandbox, the Sandbox participants, licensed providers, and consumers.

The reports to the Supreme Court must be monthly. Reports to the Supreme Court must include the following:

- The number of applicants
- General information about applicants (e.g., type of legal entity, ownership makeup, target market, proposed type of service, legal need to be addressed, subject matter served)
- Numbers of (along with general information)
 - Applicants recommended for Sandbox entry
 - Applicants denied Sandbox entry
 - Sandbox applicants on hold
 - Applicants recommended to exit Sandbox
 - Applicants not recommended to exit Sandbox
- Numbers and demographic data (as available) on consumers served by the Sandbox and licensed providers
- Identification of risk trends and responses

The Innovation Office will, subject to existing law, have the authority to determine the nature and frequency of its reports to the public, but must, at a minimum, report the information identified above on an annual basis (keeping anonymity and confidentiality as required).

4.12 Jurisdiction

Entities authorized to practice law within the Sandbox and licensed to practice law on exiting the Sandbox are subject to the jurisdiction of this Court. Any false or misleading statements made by entities or their members throughout the regulatory relationship, whether during application, authorization, reporting, monitoring, or enforcement, whether discovered at the time or at any time afterward, will be independent grounds for enforcement and an aggravating factor in any enforcement proceeding based on other conduct. Any fraudulent or materially misleading statements made by an entity or its members to the Innovation Office or the Court may result in revocation of the entity's authorization to practice law.

4.13 Termination of Pilot Phase

The Sandbox is a policy tool, adopted by the Utah Supreme Court to develop a new regulatory approach to nontraditional legal services and to inform the Supreme Court's decision-making on rule changes necessary to support the expanded legal services market. The Supreme Court has set out a two-year period of operation for this pilot phase of the Innovation Office and Sandbox.

At the end of the pilot phase, the Supreme Court will determine if and in what form the Innovation Office will continue. Sandbox participants authorized and in good standing at the end of the two-year period and for whom there appears to be little risk of consumer harm will be able to continue operations under the authority of the Innovation Office or other appropriate entity should the Innovation Office cease to exist. Entities that have successfully exited the Sandbox will be able to continue operations under the authority of the Innovation Office or other appropriate entity should the Innovation Office cease to exist.

1 **Rule 1.5. Fees.**

2 | (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or
3 an unreasonable amount for expenses. The factors to be considered in determining the
4 reasonableness of a fee include the following:

5 (1) the time and labor required, the novelty and difficulty of the questions
6 involved and the skill requisite to perform the legal service properly;

7 (2) the likelihood, if apparent to the client, that the acceptance of the particular
8 employment will preclude other employment by the lawyer;

9 (3) the fee customarily charged in the locality for similar legal services;

10 (4) the amount involved and the results obtained;

11 (5) the time limitations imposed by the client or by the circumstances;

12 (6) the nature and length of the professional relationship with the client;

13 (7) the experience, reputation and ability of the lawyer or lawyers performing the
14 services; and

15 (8) whether the fee is fixed or contingent.

16 (b) The scope of the representation and the basis or rate of the fee and expenses for
17 which the client will be responsible shall be communicated to the client, preferably in
18 writing, before or within a reasonable time after commencing the representation, except
19 when the lawyer will charge a regularly represented client on the same basis or rate.
20 Any changes in the basis or rate of the fee or expenses shall also be communicated to
21 the client.

22 (c) A fee may be contingent on the outcome of the matter for which the service is
23 rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or
24 other law. A contingent fee agreement shall be in a writing signed by the client and
25 shall state the method by which the fee is to be determined, including the percentage or
26 percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;

litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

~~(e) A division of a fee between lawyers who are not in the same firm may be made only if:~~

~~(e)(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;~~

~~(e)(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (e)(3) the total fee is reasonable.~~

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (a)(1) through (a)(8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses

incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee but is obligated to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may

81 be subject to the requirements of Rule 1.8(a) because such fees often have the essential
82 qualities of a business transaction with the client.

83 [5] An agreement may not be made whose terms might induce the lawyer improperly to
84 curtail services for the client or perform them in a way contrary to the client's interest.
85 For example, a lawyer should not enter into an agreement whereby services are to be
86 provided only up to a stated amount when it is foreseeable that more extensive services
87 probably will be required, unless the situation is adequately explained to the client.
88 Otherwise, the client might have to bargain for further assistance in the midst of a
89 proceeding or transaction. However, it is proper to define the extent of services in light
90 of the client's ability to pay. A lawyer should not exploit a fee arrangement based
91 primarily on hourly charges by using wasteful procedures.

92 **Prohibited Contingent Fees**

93 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic
94 relations matter when payment is contingent upon the securing of a divorce or upon the
95 amount of alimony or support or property settlement to be obtained. This provision
96 does not preclude a contract for a contingent fee for legal representation in connection
97 with the recovery of post-judgment balances due under support, alimony or other
98 financial orders because such contracts do not implicate the same policy concerns.

99 ~~Division of Fees~~

100 ~~[7] A division of fee is a single billing to a client covering the fee of two or more lawyers~~
101 ~~who are not in the same firm. A division of fee facilitates association of more than one~~
102 ~~lawyer in a matter in which neither alone could serve the client as well, and most often~~
103 ~~is used when the fee is contingent and the division is between a referring lawyer and a~~
104 ~~trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of~~
105 ~~the proportion of services they render or if each lawyer assumes responsibility for the~~
106 ~~representation as a whole. In addition, the client must agree to the arrangement,~~
107 ~~including the share that each lawyer is to receive, and the agreement must be confirmed~~

~~in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.~~

~~[8] 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.~~

Disputes over Fees

~~[9]~~ [7] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the Bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[8] This rule differs from the ABA model rule.

Rule 5.4A. Professional Independence of a Lawyer.

(a) A lawyer or law firm may provide legal services pursuant to sections (b) and (c) of this Rule only if there is at all times no interference with the lawyer's:

(1) professional independence of judgment;

(2) duty of loyalty to a client; and

(3) protection of client confidences.

(b) A lawyer or law firm may share legal fees with a nonlawyer if:

(1) the lawyer or law firm provides written notice to the affected client and, if applicable, to any other person paying the legal fees;

(2) the written notice describes the relationship with the nonlawyer, including the fact of the fee-sharing arrangement; and

(3) the lawyer or law firm provides the written notice before accepting representation or before sharing fees from an existing client.

~~(b) 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)(i) 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; and~~

~~(2)(ii) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and~~

~~(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.~~ (bc) A lawyer may permit a person to recommend, retain, or pay the lawyer to render legal services for another. ~~A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.~~

(ed) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. ~~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.~~

~~(de)~~ 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.

(ef) A lawyer may practice in a non-profit corporation which is established to serve the public interest provided that the nonlawyer directors and officers of such corporation do not interfere with the independent professional judgment of the lawyer.

Comments

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. The provisions of this Rule are to protect the lawyer's professional independence of judgment, to assure that the lawyer is loyal to the needs of the client, and to protect clients from the disclosure of their confidential information. 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 and may not interfere with the lawyer's professional judgment. ~~As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.~~

[2] Paragraphs (b), (c), (d), and (e) permit individual lawyers or law firms to pay for client referrals, share fees with nonlawyers, or allow third party retention in a context that does not change the business model or structure of the lawyer's or firm's practice. Paragraphs (b), (c), (d), and (e) do not permit any fee sharing or third party retention or other business relationships that change the business model or structure of the firm's practice, amounting to nonlawyer investment, ownership, or the practical equivalent. Such relationships are only permitted subject to Rule 5.4B and Utah Supreme Court Standing Order No. 15. Whether in accepting or paying for referrals, or fee-sharing, the lawyer must protect the lawyer's professional judgment, ensure the lawyer's loyalty to the client, and protect client confidences.

~~The 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] This Rule differs from the ABA Model Rule.

~~[a] Paragraph (a)(4) of the ABA Model Rule was not adopted because it is inconsistent with the provisions of Rule 7.2(b), which prohibit the sharing of attorney's fees. Rule 5.4(e) addresses a lawyer practicing in a non-profit corporation that serves the public interest. There is no similar provision in the ABA Model Rules.~~

Rule 5.4B. Professional Independence of a Lawyer

(a) Notwithstanding Rule 5.4A, and if permitted by Utah Supreme Court Standing Order No. 15, a lawyer may provide legal services pursuant to section (b) of this Rule only if there is at all times no interference with the lawyer's:

(1) professional independence of judgment,

(2) duty of loyalty to a client, and

(3) protection of client confidences.

(b) A lawyer may practice law with nonlawyers, or in an organization, including a partnership, in which a financial interest is held or managerial authority is exercised by one or more persons who are nonlawyers, provided that the nonlawyers or the organization has been authorized as required by Utah Supreme Court Standing Order No. 15 and provided the lawyer shall:

(1) before accepting a representation, provide written notice to a prospective client that one or more nonlawyers holds a financial interest in the organization in which the lawyer practices or that one or more nonlawyers exercises managerial authority over the lawyer; and

(2) set forth in writing to a client the financial and managerial structure of the organization in which the lawyer practices.

Comments

[1] The provisions of this Rule are to protect the lawyer's professional independence of judgment, to assure that the lawyer is loyal to the needs of the client, and to protect clients from the disclosure of their confidential information. Where someone other than the client pays the lawyer's fee or salary, manages the lawyer's work, or recommends retention of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (a), such arrangements must not interfere with the lawyer's professional judgment. See also Rule 1.8(f) (lawyer may accept compensation

27 from a third party as long as there is no interference with the lawyer's independent
28 professional judgment and the client gives informed consent). This Rule does not lessen
29 a lawyer's obligation to adhere to the Rules of Professional Conduct and does not
30 authorize a nonlawyer to practice law by virtue of being in a business relationship with
31 a lawyer. It may be impossible for a lawyer to work in a firm where a nonlawyer owner
32 or manager has a duty to disclose client information to third parties, as the lawyer's
33 duty to maintain client confidences would be compromised.

34 [2] The Rule also expresses traditional limitations on permitting a third party to direct
35 or regulate the lawyer's professional judgment in rendering legal services to another.
36 See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there
37 is no interference with the lawyer's independent professional judgment and the client
38 gives informed consent).

39

Rule 7.1. Communications Concerning a Lawyer's Services.

(a) 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:

(a~~1~~) 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~~2~~) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or

(c~~3~~) contains a testimonial or endorsement that violates any portion of this Rule.

(b) A lawyer shall not interact with a prospective client in a manner that involves coercion, duress, or harassment.

Comments

[1] This Rule governs all communications about a lawyer's services, ~~including advertising permitted by Rule 7.2.~~ Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] 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.

[3] By way of example, this Rule permits the following, so long as they are not false or misleading: 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; the use of actors or dramatizations to portray the lawyer, law firm, client, or events; the courts or

jurisdictions where the lawyer is permitted to practice, and other information that might invite the attention of those seeking legal assistance.

[4] An advertisement 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 an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

~~[4] 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.~~ [5] A lawyer can communicate practice areas and can state that he or she "specializes" in a field based on experience, training, and education, subject to the "false or misleading" standard set forth in this Rule. A lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field unless the lawyer has been certified as a specialist by an objective entity and the name of the entity is clearly identified in the communication.

[6] In order to avoid coercion, duress, or harassment, a lawyer should proceed with caution when initiating contact with someone in need of legal services, especially when the contact is "live," whether that be 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.

[7] 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 or retired members where there has

55 been a succession in the firm's identity or by a trade name if it is not false or misleading.
56 A lawyer or law firm also may be designated by a distinctive website address, social
57 media username or comparable professional designation that is not misleading. A law
58 firm name or designation is misleading if it implies a connection with a government
59 agency, with a deceased lawyer who was not a former member of the firm, with a
60 lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a
61 public or charitable legal services organization. If a firm uses a trade name that includes
62 a geographical name such as "Springfield Legal Clinic," an express statement
63 explaining that it is not a public legal aid organization may be required to avoid a
64 misleading implication.

65 [8] A law firm with offices in more than one jurisdiction may use the same name or
66 other professional designation in each jurisdiction.

67 [9] Lawyers may not imply or hold themselves out as practicing together in one firm
68 when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and
69 misleading.

70 [10] It is misleading to use the name of a lawyer holding public office in the name of a
71 law firm, or in communications on the law firm's behalf, during any substantial period
72 in which the lawyer is not practicing with the firm. A firm may continue to use in its
73 firm name the name of a lawyer who is serving in Utah's part-time legislature as long as
74 that lawyer is still associated with the firm.

75 [11] See Rules 5.3 (duties of lawyers and law firms with respect to the conduct of non-
76 lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another); and
77 Rule 8.4(e) (prohibition against stating or implying an ability to influence improperly a
78 government agency or official or to achieve results by means that violate the Rules of
79 Professional Conduct or other law).

80 [4a12] The Utah Rule is different. This Rule differs from the ABA Model Rule.

81 Subsections (b), (c), and (d) are added to the Rule to give further guidance as to which

82 | ~~communications are false or misleading.~~ Additional changes have been made to the
83 | comments.

Rule 7.2. Advertising.

~~lawyer may pay the reasonable cost of advertising permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service plan.~~

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 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 Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[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 by Paragraph (f), lawyers are not permitted to pay others for 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 (f), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line 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 does not recommend the lawyer, and any payment to the lead generator is consistent with the lawyer's obligations under these rules. 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

139 ~~receive the referral. See Rule 5.3 (duties of lawyers and law firms with respect to the~~
140 ~~conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the~~
141 ~~acts of another).~~

142 ~~[6] A lawyer may pay the usual charges of a legal service plan or a lawyer referral~~
143 ~~service. A legal service plan is a prepaid or group legal service plan or a similar~~
144 ~~delivery system that assists prospective clients to secure legal representation. A~~
145 ~~lawyer referral service, on the other hand, is an organization that holds itself out to~~
146 ~~the public to provide referrals to lawyers with appropriate experience in the subject~~
147 ~~matter of the representation. No fee-generating referral may be made to any lawyer~~
148 ~~or firm that has an ownership interest in, or who operates or is employed by, the~~
149 ~~lawyer referral service, or who is associated with a firm that has an ownership~~
150 ~~interest in, or operates or is employed by, the lawyer referral service.~~

151 ~~[7] A lawyer who accepts assignments or referral from a legal service plan or~~
152 ~~referrals from a lawyer referral service must act reasonably to assure that the~~
153 ~~activities of the plan or service are compatible with the lawyer's professional~~
154 ~~obligations. See Rule 5.3. Legal service plans and lawyer referral services may~~
155 ~~communicate with the public, but such communication must be in conformity with~~
156 ~~these Rules. Thus, advertising must not be false or misleading, as would be the case~~
157 ~~if the communications of a group advertising program or a group legal services plan~~
158 ~~would mislead the public to think that it was a lawyer referral service sponsored by~~
159 ~~a state agency or bar association. Nor could the lawyer allow in-person, telephonic,~~
160 ~~or real-time contacts that would violate Rule 7.3.~~

161 ~~[8] For the disciplinary authority and choice of law provisions applicable to~~
162 ~~advertising, see Rule 8.5.~~

163 ~~[8a] This Rule differs from the ABA Model Rule in that it defines "advertisement"~~
164 ~~and places some limitations on advertisements. Utah Rule 7.2(b)(2) also differs from~~
165 ~~the ABA Model Rule by permitting a lawyer to pay the usual charges of any lawyer~~

166 | ~~referral service. This is not limited to not-for-profit services. Comment [6] to the~~
167 | ~~Utah rule is modified accordingly.~~

168 | Reserved.

169

Rule 7.3. Solicitation of Clients.

~~(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(a)(1) is a lawyer;~~

~~(a)(2) has a family, close personal, or prior professional relationship with the lawyer, or~~

~~(a)(3) is unable to make personal contact with a lawyer and the lawyer's contact with the prospective client has been initiated by a third party on behalf of the prospective client.~~

~~(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, live telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:~~

~~(b)(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~(b)(2) the solicitation involves coercion, duress or harassment.~~

~~(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 of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). For the purposes of this subsection, "written communication" does not include advertisement through public media, including but not limited to a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, television or webpage.~~

~~(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 other real-time communication 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 real-time 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 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. 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

224 ~~in-person, live telephone or real-time electronic persuasion that may overwhelm a~~
225 ~~person's judgment.~~

226 ~~[4] The use of general advertising and written, recorded or electronic communications~~
227 ~~to transmit information from lawyer to the public, rather than direct in-person or other~~
228 ~~real-time communications, will help to ensure that the information flows cleanly as well~~
229 ~~as freely. The contents of advertisements and communications permitted under Rule 7.2~~
230 ~~can be permanently recorded so that they cannot be disputed and may be shared with~~
231 ~~others who know the lawyer. This potential for informal review is itself likely to help~~
232 ~~guard against statements and claims that might constitute false and misleading~~
233 ~~communications in violation of Rule 7.1. The contents of direct in-person, live telephone~~
234 ~~or real-time electronic contact can be disputed and may not be subject to third-party~~
235 ~~scrutiny. Consequently, they are much more likely to approach (and occasionally cross)~~
236 ~~the dividing line between accurate representations and those that are false and~~
237 ~~misleading.~~

238 ~~[5] There is far less likelihood that a lawyer would engage in abusive practices against a~~
239 ~~former client, or a person with whom the lawyer has a close personal or family~~
240 ~~relationship, or where the lawyer has been asked by a third party to contact a~~
241 ~~prospective client who is unable to contact a lawyer, for example when the prospective~~
242 ~~client is incarcerated and is unable to place a call, or is mentally incapacitated and~~
243 ~~unable to appreciate the need for legal counsel. Nor is there a serious potential for abuse~~
244 ~~in situations where the lawyer is motivated by considerations other than the lawyer's~~
245 ~~pecuniary gain, or when the person contacted is also a lawyer. This rule is not intended~~
246 ~~to prohibit a lawyer from applying for employment with an entity, for example, as in-~~
247 ~~house counsel. Consequently, the general prohibition in Rule 7.3(a) and the~~
248 ~~requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is~~
249 ~~not intended to prohibit a lawyer from participating in constitutionally protected~~
250 ~~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.

[5a] Utah's Rule 7.3(a) differs from the ABA Model Rule by authorizing in person or other real time contact by a lawyer with a prospective client when that prospective client is unable to make personal contact with a lawyer, but a third party initiates contact with a lawyer on behalf of the prospective client and the lawyer then contacts the prospective client.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information that is false or misleading within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3(b)(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 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 the 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 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.~~

~~[8a] Utah Rule 7.3(c) requires the words "Advertising Material" to be marked on the outside of an envelope, if any, and at the beginning of any recorded or electronic communication, but not at the end as the ABA Model Rule requires. Lawyer solicitations in public media that regularly contain advertisements do not need the "Advertising Material" notice because persons who view or hear such media usually recognize the nature of the communications.~~

~~[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization that 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, live person-to-person contacts or other real-time electronic 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 Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a). Reserved.~~

Rule 7.4. Communication of Fields of Practice.

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

~~(b) 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) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or substantially similar designation.~~

~~(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:~~

~~(d)(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and~~

~~(d)(2) the name of the certifying organization is clearly identified in the communication.~~

Comment

~~[1] 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. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.~~

~~[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

~~[3] Paragraph (d) 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 state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority 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 insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure 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.~~Reserved.

Rule 7.5. Firm Names and Letterheads.

~~(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 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.~~ Reserved.

~~(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

~~[1] 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. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use~~

~~the name of a lawyer who has not been associated with the firm or a predecessor of the firm, or the name of a nonlawyer.~~

~~[2] 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.~~



Ensuring
access
to justice
for all

CBA/CBF TASK FORCE ON THE SUSTAINABLE PRACTICE
OF LAW & INNOVATION

TASK FORCE REPORT

JULY 22, 2020

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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 nine 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. 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 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 Association 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.

THE TASK FORCE PROCESS

The Task Force carried out its work through [five committees](#):⁶

- Modernizing Lawyer Referral & Law Firm Models
- Regulating Technology-Based 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 H.

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:

- I. Helping lawyers to connect to more potential clients and offer more affordable and accessible solutions
 - Recognizing a new Intermediary Entity model to help connect lawyers with potential clients
 - Modernizing the Rules so that lawyers can offer technology-based services

² https://www.iardc.org/Regulatory_Objectives.htm

³ https://courts.illinois.gov/SupremeCourt/Jud_Conf/IJC_Strategic_Agenda.pdf

⁴ ⁴ <https://chicagobarfoundation.org/pdf/advocacy/task-force-principles.pdf>

⁵ https://www.ncsc.org/_data/assets/pdf_file/0010/23500/02052020-urging-consideration-regulatory-innovations.pdf

⁶ <https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/>

- Improving 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 a 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

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.

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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

I. Recommendation #1: Recognize a new Intermediary Entity model to help connect lawyers with legal consumers (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 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.
- 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.

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 products to meet the growing demand for legal services by low- and middle-income people. 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 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 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 52),
 - ii. Recommendation #3B: Enhancing educational programming on limited scope for law students, attorneys, judges, and court staff (Page 57),
 - iii. Recommendation #3C: Expanding and improving data collection on limited scope representation (Page 61), and
 - iv. Recommendation #3D: Considering expansion of limited scope representation in federal court (Page 62).

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 63)

- 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 66)

- 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 harder time 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. 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.

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 73)

- 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 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. 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.

7. Recommendation #7: Recognize a new Community Justice Navigator model to build off the success of Illinois JusticeCorps in the courts (Page 78)

- 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. If and when they 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 Task Force 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 build off the already successful Illinois JusticeCorps model within the courts and operate within existing and trusted community institutions, such as public libraries, schools, religious institutions, and offices of local, state and national legislators.

8. Recommendation #8: Create a hub where the public can find Court-approved sources for information and assistance (Page 83)

- a. By recognizing the new categories of Intermediary Entities (#1), Approved Legal Technology Providers (#8), 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 reasonable 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 right for them. 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: <https://www.irs.gov/newsroom/resources-to-help-you-prepare-your-tax-return-and-resolve-tax-disputes>.

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 85)

- 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.

10. Recommendations #10A-B: Undertake a broader plain language review of the Rules

- 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 89).
 - 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: 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 (Page 91)

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 92)

- 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 preventing 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 legal task forces looking at regulatory reform around the country (notably Arizona and Utah) have proposed that these ownership restrictions be lifted. Rather than suggesting changes to that part of 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, 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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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 Graves, *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*

Committee Members: Hon. Robert Anderson (Ret.), *Circuit Court of DuPage County*; Jessica Bednarz, *The Chicago Bar Foundation*; Doug Brann, *Chicago Legal Clinic*; Tisha Delgado, *Amata Law Offices Suites*; Bob Graves, *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, *Attorney at Law*; and Mike Santomauro, *Office of the Cook County Public Defender*

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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 Ann 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. But despite these efforts, the trend has persisted and grown exponentially.

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 failures in the delivery system and the urgency of the need to address them were laid bare by the COVID-19 pandemic.

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.”⁷ The current health crisis has laid bare the fault lines in our already fragile and outdated method of resolving legal disputes.⁸ 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.

These goals dovetail with Resolution 2 of the Conference of Chief Justices passed on February 5, 2020,⁹

⁷Patricia Hurtado, “Shirtless Lawyers, Barking Dogs Herald Courtroom of the Future,” (Apr. 16, 2020) <https://news.bloomberglaw.com/us-law-week/all-rise-not-really-virtual-courtroom-is-the-future-of-justice>

⁸ See Antonia Ayres-Brown, “Legal Aid Organizations Strained by Increase in Pandemic-Related Cases, including Domestic Violence, Unemployment Claims,” Chicago Tribune, May 11, 2020.

⁹ https://www.ncsc.org/_data/assets/pdf_file/0010/23500/02052020-urging-consideration-regulatory-innovations.pdf

“[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, 2019.¹⁰ 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,¹¹ 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 3.¹² 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 \$49,130.¹³ 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 \$50,000.¹⁴

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. *Id.* at 14, citing 2017 CLIO Legal Trends Report (2017).¹⁵ 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. *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.

¹⁰ (“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.”).

¹¹ 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.

¹² <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf>

¹³ <https://www.cnn.com/2015/05/22/opinions/barton-rise-and-fall-of-lawyers/index.html>

¹⁴ <https://www.dcbart.org/bar-resources/practice-management-advisory-service/upload/SoloSmallFirmCompensationSurvey2018-2.pdf>

¹⁵ 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. *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.¹⁶ A survey of more recent data, including the November 2019 class of admitted Illinois attorneys, confirms an even bleaker reality.¹⁷

The decline in the number of paying clients and per capita lawyer income is not the product of reduced demand. 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,¹⁸ 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.

¹⁶ See 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).

¹⁷ See <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).

¹⁸ 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.”

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.¹⁹ 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,²⁰ 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.

¹⁹https://courts.illinois.gov/SupremeCourt/Policies/Pdf/ATJ_Commission_Policy_on_Remote_Court_Appearances_in_Civil_Proceedings.pdf

²⁰ 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. 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;²¹ 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 dispensing 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 (between 40% and 60% 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.

²¹ 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.

To sum it up, these solutions are expanding access where they are permitted and are striking a chord with both consumers and businesses, who are voting with their feet. 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, 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 is 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 are way ahead of us in giving their professionals a range of business models to choose from to best serve their clients

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 part of the legal market is another area that functions well. Firms in this segment, 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 better functioning areas of the legal market to improve the broader consumer market for “bread and butter” legal issues.

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.²²

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 Graves, 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.

²² 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.

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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 connect lawyers with legal consumers

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 TO LEGAL CONSUMERS

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,²³ 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 lawyer 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.

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.

²³ <https://www.iardc.org/AnnualReport2019.pdf>, p. 42.

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.²⁴

THE MODERNIZING LAWYER REFERRAL & LAW FIRM MODELS COMMITTEE PROPOSALS

In developing its proposals below, the 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 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.

²⁴ See <https://chicagobarfoundation.org/blog/bobobservations/making-law-better-by-looking-outside-of-law-the-wrap/>

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 Committee developed its proposals, it was aware the ARDC was undertaking its own process to address some of the issues noted above. The Committee believes its proposed approach is the better and more comprehensive solution to the growing market failure, but as part of its work, the Committee also submitted formal comments to the ARDC proposal.²⁵

While the Committee's comments applauded the ARDC for its leadership in taking on this issue and saw many positives in the ARDC proposal, the Committee believes the ARDC's proposal is far more complicated and burdensome than necessary to meet valid regulatory objectives. As a result, the Committee believes 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.

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.

²⁵ A copy of the Committee's full comments to the ARDC proposal are attached as Appendix F on p. 98.

- (5) A lawyer or law firm may pay a portion of a legal fee to an intermediary entity that connects potential clients with lawyers or provides other business and administrative services as part of the connecting service 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 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 80I.
- (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.²⁶
- (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.

....

²⁶ 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. ~~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 (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.²⁷

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.”

²⁷ 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.

(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.
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/or provides other business and administrative services supporting lawyers' practices.

(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

Recognizing overwhelming evidence that the vast majority of Americans are not able to access legal solutions to their legal problems, our 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 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 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 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

The 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 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.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

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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 authorities 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 that connects potential clients with lawyers or provides other business and administrative services 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 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 96.²⁸

(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 a Approved Legal Technology Provider that is owned in whole or in part by nonlawyers.

²⁸ This proposed in made in connection with the Recommendations #I

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Comment

[1] The provisions of this Rule express traditional limitations on sharing fees ~~in order to~~. ~~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 (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).

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 [___] do not constitute the unauthorized practice of law, and a lawyer may assist a 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.....

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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

The 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. Government-sponsored forms and systems should be excluded from regulation. The Committee envisions this definition being formalized in an Illinois Supreme Court Rule.

The Committee 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 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 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 Committee recommends identifying basic criteria for certification that should guide the Board’s development of policies and practices. The 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:
 - provider has implemented effective security against external intrusions;

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

RULE 802. REGISTRATION AND REGULATION OF APROVED 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. No individual or entity may offer access to services and products through such systems unless approved and registered under this Rule.

(b) 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. 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.
6. 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.
7. Such other information as the Board may provide.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(g) 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.

(h) 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.

(i) 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.

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

RECOMMENDATION #3: IMPROVE THE RULES FOR LIMITED SCOPE REPRESENTATION

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.²⁹

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 (“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.

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²⁹ For a national perspective, see https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/lis_del_unbundling_tipping_point_article.authcheckdam.pdf.

RECOMMENDATION #3A: STREAMLINE RULES TO EXPAND THE USE OF LIMITED SCOPE COURT APPEARANCES

The 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 Completing 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.³⁰

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.

³⁰ 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.

- (7) *Withdrawal Following Completion of Limited Scope Representation.* Upon ~~completing~~completion of 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)-(f) 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 may~~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~~serving 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~~ Upon filing the Notice, the party may file an Objection to Withdrawal of 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~~Representation, 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.

- (iii) 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 uphold the attorney to withdraw termination of the appearance unless the court expressly finds that the attorney has not completed the representation as specified in the Notice of Limited Scope Appearance.

Adopted June 15, 1982, effective July 1, 1982; amended February 16, 2011, effective immediately; amended Jan. 4, 2013, eff. immediately; amended June 14, 2013, eff. July 1, 2013; amended June 22, 2017, eff. July 1, 2017.

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~~ practical, 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 a~~ and the court should enter an order, unless the client files a timely Objection to Withdrawal of Limited Scope Appearance that effect.

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.

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RECOMMENDATION #3B: ENHANCE EDUCATIONAL PROGRAMMING FOR LAW STUDENTS, ATTORNEYS, JUDGES, AND COURT STAFF

The 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 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 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 Committee recommends that limited scope representation be a regular part of both the curriculum for new judges and the biennial judicial education conference. The 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:

(1) 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)(12); 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).

Adopted September 29, 2005, effective immediately; amended September 27, 2011, effective immediately; amended May 23, 2017, eff. July 1, 2017; amended June 22, 2017, eff. July 1, 2017.

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)(1) 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.

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RECOMMENDATION #3C: EXPAND AND IMPROVE DATA COLLECTION ON LIMITED SCOPE REPRESENTATION

The 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 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 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

The 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 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

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 RPC 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

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), or
- 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 summary of the value of the attorney’s services to their client.

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, time-based entries are required only under the circumstances described in section (b).

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.

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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 Optimizing the Use of Other Professionals 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.³¹ Those categories of provider are permitted to practice law, with restrictions, without lawyer supervision. The Committee does not recommend that Illinois follow this approach. These categories of providers, created in other states, essentially expand the pool of providers able to serve consumers with legal services. However, there is little evidence that there is a shortage of providers of legal services in most communities. Instead, it appears 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. 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. Given the fact that these independent providers have the same operation costs and the same challenges in connecting to clients that lawyers face, it is unlikely that they will be able to deliver services at scale at significantly lower cost.

The proposal offered by this 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

³¹ e.g. Washington State Limited License Legal Technician - <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/become-a-legal-technician> but then https://www.wsba.org/docs/default-source/licensing/llt/llt-sunset-supreme-court-dissent-letter-june-5-2020.pdf?sfvrsn=ba6b09f1_4; Utah Licensed Paralegal Practitioner - <https://www.utahbar.org/licensed-paralegal-practitioner/>; Arizona Legal Document Preparer - <https://www.azcourts.gov/cld/Legal-Document-Preparer-Program>

Paralegals.³² By relying more heavily on Licensed Paralegals for things like routine preliminary court appearances, the lawyer can focus her/his attention on the more complex aspects of a case where legal analysis and judgment are key.

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.³³

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

A. Title: The 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 Committee proposes that the Supreme Court use the term “Licensed Paralegal” for the proposed new category of provider.

B. Categories of cases permitted: The 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 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 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 Committee member, however, believes that such a limitation is 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.

³² 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.

³³ See: Legal Paraprofessional Pilot Project: <http://www.mncourts.gov/Implementation-Committee.aspx> (last visited 5-20-2020)

D. Malpractice insurance: The 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 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 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 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 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 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 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 attached. 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:

(1) 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.

(2) 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.

(3) 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.

(4) 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:

(1) Meet one or more of the following educational, training, and work experience qualifications:

- (i) have received an associate's degree in paralegal studies from an accredited institution or a baccalaureate degree in paralegal studies from an accredited college or university;
- (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;
- (iii) 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 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 Committee developing the rule believes that on balance it is more important to assure that clients are protected.

[2] The 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 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 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 Committee, unique. It is unlike the “independent” paralegal models that are being piloted in several other states. The Committee reasons that the inaccessibility of legal services is not due to a provider pool that is too small. Adding new types of independent legal providers (Limited License Legal Technicians, etc.) will not necessarily lower costs and thus 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.

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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

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](#)³⁴ 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.³⁵

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
2. Rule 7.3 on solicitation, which broadly limits solicitation of a client known to be in need of legal services. This is overboard and only should be prohibited where it involves coercion, duress, or harassment, or the client has indicated they do not wish to be solicited.

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http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf

³⁵ 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=eyJpIjoiWkRkakIqUmIOWFI4TjJWbCIsInQiOiJBN2IY0cyV25pcEhoaFFzUldYYnNqWDBHeG1wY2RKRfITNGdpWXZkbEt5a0JFSFF6QWVLYklzOXJ6aTI3S2I2YWdFYU5NQVwvRmtzdWdWSVNCSDNmbk02dUNaUVlla1BLbIRibWF0aINnWUNqUHIubmh2VWxUYnpMUlJRFVZU8ifQ%3D%3D

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, recently approved [a more streamlined approach](#)³⁶ 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 followed suit, and the Association of Professional Responsibility Lawyers has recommended many of these changes as well.³⁷

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.³⁸ 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

LARGELY UNCHANGED WITH ADDITION FROM 7.2

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.

³⁶ <http://www.vsb.org/pro-guidelines/index.php/rules/information-about-legal-services/>

³⁷ <https://aprl.net/public-statements/> (https://aprl.net/wp-content/uploads/2016/07/APRL_2016_Lawyer-Advertising-Supplemental-Report_04-26-16_w-Attach.pdf)

³⁸ <https://www.legalfutures.co.uk/latest-news/exclusive-competition-in-law-is-fierce-but-not-working-for-consumers>

[2] 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.

[3] 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.

[4] 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

DELETE ENTIRELY

~~(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.~~
- ~~(d) 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.~~

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE SOLICITATION OF CLIENTS

NEW STREAMLINED VERSION

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 from a prospective client 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 from a prospective client 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 prospective client 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.~~

~~—(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone a prospective client 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.~~

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

DELETE ENTIRELY

~~(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.~~

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

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.³⁹ 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 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 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 Committee proposes to conceptualize this position as a “Justice” navigator, not a “Legal” navigator.

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

PROPOSED COMMUNITY JUSTICE NAVIGATOR MODEL

** This is a working title for the new classification, and during the Task Force public comment period we want to get more feedback from our target audiences in the community on the name.*

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.

³⁹ See Rebecca L. Sandefur, *Accessing Justice In The Contemporary USA: Findings From the Community Needs And Services Study* (2014).
http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf (last visited May 22, 2020).

As a recent [American Bar Foundation study](#)⁴⁰ 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 community justice navigator role and identify the qualifications, training, and resources necessary to obtain this recognition.

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 an Administrative Order designating the Court's Commission on Access to Justice and the Access to Justice Division to oversee the program, in partnership with the Chicago and Illinois State Bar Associations and their respective foundations. This oversight model is based on the successful models for the administration of Illinois JusticeCorps, the Commission's self-represented coordinator program for court staff, and the Court's language access policy and interpreter certification.

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 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](#).⁴¹

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

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http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf

⁴¹ <http://napco4courtleaders.org/wp-content/uploads/2019/08/Nonlawyer-Navigators-in-State-Courts.pdf>

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](#)⁴² play a similar role to court navigators in communities throughout the UK. The [Legal Hand](#)⁴³ 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](#)⁴⁴ 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 a new Administrative Order and accompanying policy statement, the Court should formally recognize a Community Justice Navigator function as an integral part of the broader access to justice system.

Community Justice Navigators must provide their services free of charge⁴⁵ and be associated with a nonprofit or public service entity such as:

- 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

⁴² <https://www.citizensadvice.org.uk/>

⁴³ <http://www.legalhand.org/>

⁴⁴ <https://www.chicago.gov/content/dam/city/depts/bacp/general/COVID-19/20200414covid19bacpsmallbusinessresourcenavigatorsflyer.pdf>

⁴⁵ 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 unit of government

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

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

Community Justice Navigators would:

- Be certified through a certification program run by the Access to Justice Commission similar to the current model for certifying court interpreters
- Be provided free training programs run by the Access to Justice Commission, in partnership with the Chicago and Illinois State Bar Associations and their respective foundations, and potentially other relevant organizations through periodic in-person training and on demand webinars
- 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 Commission on Access to Justice and the Access to Justice Division

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
 - Immigration (potential automatic certification for DOJ accredited representatives)
 - Reentry
 - Family law issues (divorce/parentage, parenting time/visitation, child support)
 - Consumer debt
 - Employment/wage theft
- 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

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RECOMMENDATION #8: CREATE A HUB WHERE THE PUBLIC CAN FIND COURT APPROVED SOURCES FOR INFORMATION AND ASSISTANCE

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 approved sources for legal information and assistance. 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.⁴⁶

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⁴⁶ <https://www.irs.gov/newsroom/resources-to-help-you-prepare-your-tax-return-and-resolve-tax-disputes>



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

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 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,⁴⁷ 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.⁴⁸ 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)).⁴⁹ 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.⁵⁰ 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

⁴⁷ Attorney Act, 705 ILCS 205/.

⁴⁸ Ill. S. Ct. R. 779(b) (eff. Dec. 7, 2011)

⁴⁹ See, also, *People ex rel. Chicago Bar Association v. Goodman*, 8 N.E.2d 944 (1937)

⁵⁰ 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,⁵¹ 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)⁵²

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.⁵³

Against this background, the Committee wrestled with the Catch-22 that the current situation presents in Illinois. A majority of the 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 volunteers⁵⁴ 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.⁵⁵ 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 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 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 could lead to even more

⁵¹ See, https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/ (last visited May 23, 2020)

⁵² Available at https://www.americanbar.org/content/dam/aba/directories/policy/2003_am_100.pdf (last visited May 23, 2020)

⁵³ See Comments on the American Bar Association's Proposed Model Definition of the Practice of Law at <https://www.justice.gov/atr/comments-american-bar-associations-proposed-model-definition-practice-law> (last visited May 23, 2020)

⁵⁴ See, https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf (last visited May 23, 2020)

⁵⁵ See, https://courts.illinois.gov/SupremeCourt/Policies/Pdf/Safe_Harbor_Policy.pdf (last visited May 23, 2020)

aggressive enforcement of UPL restrictions, stifling legitimate, innovative approaches to expanding access to justice.

The majority of 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 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 Committee considered approaches to promulgating the proposed definition, either through a new rule or through a new court policy. Members of the 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 Committee and the larger Task Force favor implementation through adoption of a new court rule.

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) It is the practice of law to:

- Give legal advice¹ that is customized to a specific situation or set of circumstances to a person or entity,
- Prepare or present arguments² 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
- Negotiate³ legal rights or responsibilities for a person or entity.

(b) It is not the practice of law:

¹ 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 customized: 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

² 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.

³ 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.

- To provide general information⁴ on court procedures and court rules, including court-approved forms,
- To serve as a mediator, arbitrator, or neutral,⁵
- For court personnel, Illinois JusticeCorps 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.

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.

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, and would also include the new category of Approved Legal Technology Providers if the Court adopts that Task Force recommendation.

Similarly, many federal 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 United States Patent and Trademark Office.

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⁴ 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.

⁵ 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.

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 Plain Language Rules Committee reviewed all Task Force committee recommendations at length and offered suggested edits to the respective committees. What follows is insight into some of the more robust discussions that took place along the way.

The Committee's Review of the Modernizing Lawyer Referral and Law Firm Models Committee's Response to the ARDC's Intermediary Connecting Services Proposal

The 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. 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, 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 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 Committee reviewed the Optimizing Other Legal Professionals Committee's (Optimizing Committee) proposed definition for the practice of law. The Committee was impressed with the Optimizing Committee's efforts to craft a workable definition and recommended suggested edits. The Committee, however, was of the opinion that the Optimizing Committee's suggestion that any adopted definition either 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 definition section of the rules found in Rule 1.0.

Review of the Community Justice Navigator Model and a Recommendation

The Committee reviewed the Optimizing Committee's proposal to train and certify Community Justice Navigators. The Committee applauds the effort and believes the proposal is an important step toward helping members of the public access critical legal information. The 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 Term "Limited Scope" is Not Very Plain Language

One plain language recommendation of note from the 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 Committee felt the term "limited scope representation" was not very plain language in communicating to the public what services were being offered. However, the

Committee did not reach a consensus as to an alternative and any alternative would require a rewrite of any rules where that terminology exists.

Substantive Recommendations

Although the 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 Committee noted that the existing rule serves a vital regulatory function in that it seeks to prohibit well documented harms. The 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.

RECOMMENDATION

The Committee recommends that the Supreme Court review and revise the Rules to conform with the Supreme Court's plain language directives. The Committee believes that after Rule 1.15, 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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RECOMMENDATION #10B: LTF AND ARDC SHOULD WORK TOGETHER TO AMEND RULE 1.15 TO ACCOMMODATE THE COURT'S PLAIN LANGUAGE INITIATIVES

At its initial meeting, the 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 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 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 RPC 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 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 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 Committee that the Task Force recommend to the Supreme Court that LTF and ARDC work together to amend Rule 1.15 to accommodate the Court's plain language initiatives.

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RECOMMENDATION #1 I: 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 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 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](#).⁵⁶

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 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 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.

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⁵⁶ https://www.iardc.org/Regulatory_Objectives.htm

APPENDIX

APPENDIX A

ABA RESOLUTION 115 – ENCOURAGING REGULATORY INNOVATION

CENTER FOR INNOVATION
STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION
STANDING COMMITTEE ON PUBLIC PROTECTION IN THE PROVISION OF LEGAL SERVICES

REPORT TO THE HOUSE OF DELEGATES REVISED RESOLUTION

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.

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APPENDIX B

CONFERENCE OF CHIEF JUSTICES RESOLUTION 2 – URGING CONSIDERATION OF REGULATORY INNOVATIONS 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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APPENDIX C

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 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 Report](#)⁵⁷ (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.”

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⁵⁷ <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf>

APPENDIX F – CBA/CBF TASK FORCE ON THE SUSTAINABLE PRACTICE OF LAW & INNOVATION—COMMITTEE ON MODERNIZING LAWYER REFERRAL AND LAW FIRM MODELS—COMMENTS ON ARDC PROPOSAL TO REGULATE INTERMEDIARY CONNECTING SERVICES

CBA/CBF TASK FORCE ON THE SUSTAINABLE PRACTICE OF LAW & INNOVATION—COMMITTEE ON MODERNIZING LAWYER REFERRAL AND LAW FIRM MODELS—COMMENTS ON ARDC PROPOSAL TO REGULATE INTERMEDIARY CONNECTING SERVICES (APRIL 2, 2020)

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 regulations 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 jurisdiction's 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 optics, 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) I 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(i) 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.

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APPENDIX G

LEGAL ASSISTANCE MODELS USING OTHER PROFESSIONALS OR LAYPEOPLE

Program	Brief Description	Area of Law	Permissible Services	Training/Certification Required	Data/Studies
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	<ul style="list-style-type: none"> -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 	<ul style="list-style-type: none"> -Information vs. advice -Layout & understanding of court system -Knowledge of referrals and other resources <p>Training can occur via webinars, videos, role play, quizzes, and/or shadowing</p>	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	<ul style="list-style-type: none"> -Help litigants access & complete forms -Provide information -Attend settlement negotiations -Accompany litigants into the courtroom (can respond to judge if directly addressed) 	<ul style="list-style-type: none"> -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.

Program	Brief Description	Area of Law	Permissible Services	Training/Certification Required	Data/Studies
Lay Domestic Violence Advocates	Non-lawyers who educate DV victims about available legal protections and provide assistance through court proceedings	Domestic Violence	<ul style="list-style-type: none"> -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 <u>sometimes</u> accompany victims to hearings, meetings, depositions, etc. 	<ul style="list-style-type: none"> -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	<p>F:</p> <ul style="list-style-type: none"> -Represent clients before all branches of DHS, Immigration Court, and the Board of Immigration Appeal (BIA) <p>P:</p> <ul style="list-style-type: none"> -Represent clients before all branches of DHS <p>N:</p> <ul style="list-style-type: none"> -Conduct intake, interview clients, prepare applications & 	<p>F:</p> <ul style="list-style-type: none"> -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 <p>P:</p>	<u>Yes.</u> Immigration programs can be very successful utilizing accredited representatives and other non-representative staff.

Program	Brief Description	Area of Law	Permissible Services	Training/Certification Required	Data/Studies
			documents, conduct citizenship classes & workshops	<ul style="list-style-type: none"> -Attend several immigration trainings (in-person, online, webinars) -Have hands-on experience in immigration legal services under the supervision of an attorney or DOJ fully-accredited rep N: <ul style="list-style-type: none"> -Appropriate training on immigration law, confidentiality, UPL 	
Legal Document Preparer Program – Arizona	Certified individuals can prepare or provide legal documents for self-represented litigants without attorney supervision.	Any legal matter	-Prepare & provide legal documents (i.e. any document that can be used in court)	<ul style="list-style-type: none"> -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 & present to Legal Document Preparer Board for a decision 	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.

Program	Brief Description	Area of Law	Permissible Services	Training/Certification Required	Data/Studies
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.

Program	Brief Description	Area of Law	Permissible Services	Training/Certification Required	Data/Studies
Social Security Administration Representatives	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	Social Security Law	<ul style="list-style-type: none"> -Get info from client's Social Security file & help obtain medical records -Attend interviews, conferences, or hearings -Request reconsideration, hearing, or Appeals Court review -Help client and witnesses prepare for a hearing 	<ul style="list-style-type: none"> -Hold a bachelor's degree or equivalent -Pass a written exam administered by the SSA -Have professional liability insurance -Complete continuing education courses 	No.
CHA Rental Assistance Demonstration (RAD) Program Grievance Procedure Representatives	Head of Household can be represented by a non-attorney advocate during the process of raising grievances with the CHA or a property manager	Housing	<ul style="list-style-type: none"> - Represent HOH at informal hearing -Make statements on client's behalf -Fill out paperwork 	-No formal training required by the CHA	No.

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APPENDIX H

LETTER OF DISSENT

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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.

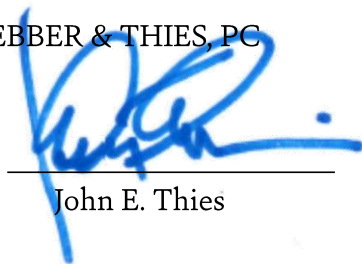
E. Lynn Grayson, Esq.
Hon. Mary Anne Mason (Ret.)
June 22, 2020



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):

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Rob Graves, Esq.
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