CBA/CBF Task Force on the Sustainable Practice of Law & Innovation

Task Force Report

September 28, 2020
# TABLE OF CONTENTS

Executive Summary................................................................................................................. 4
Summary of Recommendations .................................................................................................... 7
Member List ................................................................................................................................ 13
Committee List ............................................................................................................................ 16
A Confluence of Vision and Need: The Formation of the CBA/CBF Task Force ......................... 19
Recommendations..................................................................................................................... 28

## Helping Lawyers Connect to More Potential Clients and Offer More Affordable and Accessible Solutions ................................................................................................................................. 28

Recommendation #1: Recognize a New Intermediary Entity Model to Help Connect Lawyers with Legal Consumers and Collaborate with Business and/or Administrative Services.......................................................... 29
Recommendation #2: Enhance the Availability of Technology-Based Legal Products and Services and Authorize Greater Participation by Lawyers in Technology Solutions.......................................................... 38
Recommendation #2A: Modernize the Rules so that Lawyers Can More Actively Participate in the Development and Delivery of Technology-Based Legal Products and Services ................................................................. 42
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 ...... 47
Recommendation #3: Improve the Rules for Limited Scope Representation ................................ 52
Recommendation #3A: Streamline Rules to Expand the Use of Limited Scope Court Appearances ... 53
Recommendation #3B: Enhance Educational Programming for Law Students, Attorneys, Judges, and Court Staff ................................................................................................................................. 58
Recommendation #3C: Expand and Improve Data Collection on Limited Scope Representation ...... 62
Recommendation #3D: Consider Expansion of Limited Scope Representation in Federal Court ....... 63
Recommendation #4: Develop New/Amended Rules on Alternative Fees and Fee Petitions ........ 64
Recommendation #5: Recognize a New Licensed Paralegal Model so that Lawyers Can Offer More Efficient and Affordable Service in High Volume Areas of Need ......................................................................................... 67

## Helping People to Recognize When They Have a Legal Problem and Where They Can Turn for Affordable and Reliable Help ......................................................................................................................... 73

Recommendation #6: Streamline and Modernize the Rules Around Lawyer Advertising ................. 74
Recommendation #7: Recognize a New Community Justice Navigator Model to Build Off the Success of Illinois Justicicorps in the Courts ........................................................................................................... 84
Recommendation #8: Create a Hub where the Public Can Find Court Approved Sources for Information and Assistance .......................................................................................................................... 89

## Spurring More Innovation in the Profession and Delivery of Services ........................................ 90

Recommendation #9: Adopt a Clearer Practice of Law Definition with a Recognized Safe Harbor ... 91
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...96

Recommendation #10B: LTF and ARDC Should Work Together to Amend Rule 1.15 to Accommodate the Court’s Plain Language Initiatives...98

Recommendation #11: Convene a New Committee to Explore the Potential Benefits and Harm Associated with Eliminating the 5.4 Prohibition on Ownership of Law Firms by People Who are Not Lawyers...99

Appendix.........................................................................................................................100

Appendix A: Regulatory Objectives for the Provision of Legal Services of the Supreme Court of Illinois......................................................................................................................100

Appendix B: Conference of Chief Justices Resolution 2 – Urging Consideration of Regulatory Innovation Regarding the Delivery of Legal Services....................................................................................101

Appendix C: ABA Resolution 115 – Encouraging Regulatory Innovation .........................................................102

Appendix D: CBA/CBF Task Force on the Sustainable Practice of Law & Innovation Guiding Principles & Objectives ........................................................................................................103

Appendix E: Legal Market Landscape Report ............................................................................................104

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 .............................................................................................................105

Appendix G: Overview of Data Privacy and Protection Laws in the United States at the Federal and State Level.............................................................................................................................113

Appendix H: Legal Assistance Models Using Other Professionals or Laypeople ........................................116

Appendix I: Dissent from John Thies ........................................................................................................121

Appendix J: Feedback from the Public Comment Period ........................................................................126
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.  

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

BACKGROUND

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

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

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

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

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

_________________________________________

1 https://chicagobarfoundation.org/pdf/advocacy/task-force-members.pdf
The Task Force's proposed solutions are framed around the Illinois Supreme Court’s Regulatory Objectives and Strategic Agenda, and our Task Force Guiding Principles and Objectives. Recent resolutions from the Conference of Chief Justices 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:

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

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

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

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

---

2 https://www.iardc.org/Regulatory_Objectives.htm
3 https://courts.illinois.gov/SupremeCourt/Jud_Conf/IJC_Strategic_Agenda.pdf
6 https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/
7 See the National Center for State Courts's “Goodnight Status Quo” tiny chat https://www.ncsc.org/newsroom/public-health-emergency/tiny-chats
8 https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/
9 https://www.youtube.com/watch?v=L7UBNYYbWgl&feature=youtu.be
TASK FORCE RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPURRING MORE INNOVATION IN THE PROFESSION AND DELIVERY OF SERVICES*

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

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

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

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


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

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

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

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

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

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

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

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

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

Most of these market options currently exist in some form, but not in a transparent or easily navigable market for consumers.
MEMBER LIST

CO-CHAIRS

E. Lynn (Lynn) Grayson, Nijman Franzetti LLP (CBA 1st Vice President)
Hon. Mary Anne Mason, Illinois Appellate Court (Ret.) & JAMS (CBF Board Officer)

LIAISON, ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS

Alison D. Spanner, Administrative Office of the Illinois Courts

PRINCIPAL STAFF SUPPORT

Jessica Bednarz, CBF Director of Innovation & the JEP
Bob Glaves, CBF Executive Director

TASK FORCE MEMBERS

Dave Anderson*
Hon. Robert Anderson, Circuit Court of DuPage County (Ret.)*
IV Ashton, LegalServer
Alexander J. Bandza, Barnes & Thornburg LLP
David Berten, Global IP Law Group
Douglas Brann, Greater Chicago Legal Clinic
Terry Brooks, Consultant on Legal Services
Tisha Delgado, Amata Law Offices Suites
Bridget Duignan, Latherow & Duignan*
Margaret Duval, Ascend Justice
J. Timothy Eaton, Taft Stettinius & Hollister LLP
Regina P. Etherton, Regina P. Etherton & Associates
Agostino S. Filippone, Chokshi Filippone Law, LLC
Steve Fus, Law Office of Steve Fus
James M. Grandone, Grandone Media Strategies, Inc.
James Grogan, Loyola University School of Law
Stephen L. Hoffman, Law Office of Stephen L. Hoffman, LLC
David Holtermann, Lawyers Trust Fund of Illinois
William Hornsby, Law Office of William Hornsby
Hon. LaShonda A. Hunt, Northern District of Illinois
Angela Inzano, The Chicago Bar Foundation
Jennifer J.C. Kelly, Anesi Ozmon, Rodin, Novak & Kohen, Ltd.
Tracy Kepler, CNA
Scott Kozlov, ARDC
James M. Lestikow, Hinshaw & Culbertson LLP*
Conor Malloy, Lawyers Committee for Better Housing
Edward F. Malone, Barack Ferrazzano Kirschbaum & Nagelberg LLP
Mark Marquardt, Lawyers Trust Fund of Illinois
Patricia McCarthy, LexisNexis
Jeffrey M. Moskowitz, Attorney at Law
Wendy Muchman, Northwestern University Pritzker School of Law
Samira Nazem, The Chicago Bar Foundation
Kruti Patel, Charles Wintersteen & Associates
Steven Pflaum, Neal Gerber & Eisenberg LLP
Jayne Reardon, Illinois Supreme Court Commission on Professionalism
Trisha M. Rich, Holland & Knight LLP
Mary Robinson, Robinson, Stewart, Montgomery & Doppke, LLC
Audrey Rubin, Rubin Solutions
Mony Ruiz-Velasco, Alianza Americas
Roya Samarghandi, Carmel Law, LLC
Michael Santomauro, Office of the Cook County Public Defender
John E. Thies, Webber & Thies, P.C.*
Gary Wachtel, Discover Financial Services
Lara Wagner, Rian Immigrant Center
Stacey Weiler, Illinois Bar Foundation*
Allison L. Wood, Legal Ethics Consulting, P.C.

*These task force members were designated by the Illinois State Bar Association and Illinois Bar Foundation.

NATIONAL ADVISORY COUNCIL MEMBERS

Nathan D. Alder, Christensen & Jensen
Jean Clauson, ARAG
Bridget Gramme, Center for Public Interest Law, San Diego
Fred Headon, Air Canada
Danielle Hirsch, National Center on State Courts
Scott Kelly, Community Lawyer
Josh King, RealSelf
Arthur J. Lachman, Attorney at Law
Daniel W. Linna, Northwestern Pritzker School of Law & McCormick School of Engineering
John Mayer, Center for Computer Assisted Instruction
MODERNIZING LAWYER REFERRAL & LAW FIRM MODELS COMMITTEE

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

Chair: Trisha M. Rich, Holland & Knight LLP

Reporters: Jessica Bednarz & Bob Glaves, The Chicago Bar Foundation

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

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

OPTIMIZING THE USE OF OTHER LEGAL PROFESSIONALS COMMITTEE

This Committee was charged with considering how the Illinois legal system might model the medical profession allowing differing legal paraprofessionals to assist clients and provide a variety of legal services such as community legal navigators, limited licensed legal technicians or reliance upon other professionals to assist with specific types of legal support and evaluate what training and/or certifications such providers might require.11 It put forth recommendation #’s 5, 7 and 9.

Committee Chair: Allison Wood, Legal Ethics Consulting, P.C.

Committee Reporter: Terry Brooks, Consultant

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

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

REGULATING TECHNOLOGY-BASED LEGAL PRODUCTS AND SERVICES COMMITTEE

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

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

Committee Reporter: William Hornsby, Law Office of William Hornsby

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

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

EXPANDING THE LIMITED SCOPE RULES COMMITTEE

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

Committee Reporter:  Samira Nazem, The Chicago Bar Foundation

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

PLAIN LANGUAGE ETHICS RULES COMMITTEE

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

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

Committee Reporter:  Angela Inzano, The Chicago Bar Foundation

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

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

return to the table of contents
A CONFLUENCE OF VISION AND NEED: THE FORMATION OF THE CBA/CBF TASK FORCE

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

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

While these circumstances existed before the onset of the COVID-19 pandemic, and the need to address them was obvious and urgent, the current health crisis has only served to magnify the imperative to act and to act now. As Michigan Supreme Court Justice Bridget McCormack observed, the pandemic “is the disruption our industry needed, even if it wasn’t the disruption our industry wanted.”112 The current health crisis has laid bare the fault lines in our already fragile and outdated method of resolving legal disputes.13 The inability of growing numbers of parties to effectively utilize our justice system to resolve their disputes, the inability of many lawyers to practice law in a satisfying and sustainable manner, and the inability of our courts to resolve cases other than through inconvenient, expensive, and time-consuming in-person appearances poses a serious threat to the viability of the third, co-equal branch of government and, ultimately, to respect for the rule of law as the guidepost for human conduct.

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

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

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

**HOW WE GOT HERE**

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

Mirroring the steady decline in profitability, lawyers practicing in solo and small firm settings spend only a small fraction of their time actually rendering legal services. A 2017 study found that the average small firm lawyer spends only 2.3 hours per day performing legal work. \(ld.\) at 14, citing 2017 CLIO Legal Trends Report (2017).\(^{20}\) The remainder of a solo or small firm practitioner’s working day is generally spent on such necessary tasks as business development, office management, and bill generation and collection. \(ld.\) 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.

---


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

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

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


\(^{20}\) The same study also found that of the hours spent rendering legal services, only 82 percent was actually billed to clients and, of that amount, only 86 percent was collected, resulting in a collection rate representing the equivalent of 1.6 hours per day. \(ld.\)
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.\(^\text{21}\) A survey of more recent data, including the November 2019 class of admitted Illinois attorneys, confirms an even bleaker reality.\(^\text{22}\)

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

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

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

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

\(^{23}\) See Ill. Sup. Ct. Rule 63(a)(4): “A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.”

\(\text{21}\)
The issues litigants face in these matters often have profound negative impacts on many aspects of their lives and the fair handling of these cases is critically important to society as a whole. For example, eviction quite often leads to homelessness or housing instability, triggering a cascade of problems including loss of employment, mental and physical health issues, and school absences for children. Shortly after the pandemic resulted in massive job layoffs, it was widely reported that most families could not handle an unexpected expense of $400, which underscores the potential impact of an adverse judgment in a consumer debt collection case. When the well-being of so many members of society is impacted by their involvement in the judicial system, we, as a profession, have a duty to be responsive to those needs.

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

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

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

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

The Access to Justice Case

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

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

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

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

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

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

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

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

Lessons from Other Professions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

return to the table of contents
RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

Watch the pocket chat for this recommendation

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

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

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

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

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

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

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

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

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

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

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

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

Other professions like the medical, dental, accounting, and financial services sectors offer guidance on what a better functioning market would look like while also protecting the public and ensuring professional independence.30

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

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

The proposal solves the problem in three key ways:

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

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

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

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

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

**RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER**

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

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;

---

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

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

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

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

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

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

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

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit if:
   (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
   (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
   (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROPOSED RULE 801. REGISTRATION OF INTERMEDIARY ENTITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. An intermediary entity that has been removed from the roll solely for the failure to register and pay all required fees may be reinstated to the roll as a matter of course upon registering and paying all required fees prescribed for the period of its suspension from the roll, plus a required penalty for delinquency.
Proposed Illinois Rule of Evidence 503 Protections of Communications with Intermediary Entities

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

return to the table of contents
RECOMMENDATION #2: ENHANCING THE AVAILABILITY OF TECHNOLOGY-BASED LEGAL PRODUCTS AND SERVICES AND AUTHORIZING GREATER PARTICIPATION BY LAWYERS IN TECHNOLOGY SOLUTIONS

Watch the pocket chat for this recommendation

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

BENEFITS OF ENHANCING THE AVAILABILITY OF TECHNOLOGY-BASED LEGAL SERVICES

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

Ease of Access

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

Identifying Availability of Legal Solutions

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

Cost

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

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

Expanded Opportunity for Lawyers

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

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

Obstacles

Unauthorized Practice of Law

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

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

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

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

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

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

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

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

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

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

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

**Recommendations**

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

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

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

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

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

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

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

Watch the pocket chat for this recommendation

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

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

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

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

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

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

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

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

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

1. Discuss the legal consequences of any proposed course of conduct with a client,

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

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

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


……...

New comment (8)*

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

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

RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

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

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

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

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

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

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

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

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

(d) the entity is registered under Rule 801.

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

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

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

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

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

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

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

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

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

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

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

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.36

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

RULE UNCHANGED

Comment

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

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

Watch the pocket chat for this recommendation

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

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

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

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

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

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

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

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

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

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

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

RULE 802. REGISTRATION AND REGULATION OF APPROVED LEGAL TECHNOLOGY PROVIDERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. **Such other information as the Board may require.**

(d) **Provisional Approval.** Upon review sufficient to verify that the application is complete and that the fee has been paid, the Board shall issue a provisional approval authorizing the Legal Technology Provider to offer products and services to Illinois residents and businesses.
(e) **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.

(f) **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.

(g) **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.

(h) **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.
(i) **Complaints.** The Board shall have authority to inquire into complaints of improper conduct or practices by a Provider. The Board shall establish rules and practices for such inquiries, including requirements for the Provider’s cooperation in the inquiry and consequences for failure to cooperate.

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

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

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

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

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

[return to the table of contents]
RECOMMENDATION #3: IMPROVE THE RULES FOR LIMITED SCOPE REPRESENTATION

Watch the pocket chat for this recommendation

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

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

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

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

return to the table of contents

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

Watch the pocket chat for this recommendation

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

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

The proposed changes would also make use of standardized forms for both entering and terminating limited scope appearances. The Illinois Supreme Court Commission on Access to Justice (“ATJ Commission”) has created standardized, plain language court forms for use across the state for several years. The consistent use of such forms will make it easier for judges, clerks, and court staff to easily recognize and identify limited scope appearance forms. The use of one standardized set of forms will also facilitate better data collection across the state (as described in more detail below) allowing for a more robust analysis of where and how limited scope appearances are used. Lastly, the ATJ Commission can ensure that all forms are written in plain language that can be easily understood by the consumers of limited scope services to minimize the risk to both lawyers and clients.39

RULE 13. APPEARANCES—TIME TO PLEAD—WITHDRAWAL

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

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

(c) Appearance and Withdrawal of Attorneys.

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

39 For information on how other states have approached this issue, see https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf.
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 at which service of notices or other documents may be made.

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.

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.

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.

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

An attorney may file a Notice of Limited Scope Appearance more than once in a case. An attorney must file a new Notice of Limited Scope Appearance before any additional aspect of the proceeding in which the attorney intends to appear. A party shall not be required to pay more than one appearance fee in a case.
Withdrawal Following Completion of Limited Scope Representation. Upon completing the representation specified in the Notice of Limited Scope Appearance filed pursuant to paragraph (6), the attorney shall withdraw by oral motion or written notice as from the Limited Scope Appearance through one of the methods provided in parts (i) 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. If presentment of the Notice of Completion of Limited Scope Representation, the attorney’s appearance terminates without the necessity of leave of court.

(ii) An attorney may also withdraw from the Limited Scope Appearance by filing a Notice of Withdrawal, Completion of Limited Scope Appearance, prepared by utilizing or substantially adopting the appearance outside of open court, and content of, the form provided in the Article I Forms Appendix, in the form attached to this rule. The attorney must serve the Notice on the party the attorney represents and must also serve it on the other counsel of record, and other parties not represented by counsel, unless the court by order excuses service on other counsel and other parties. The attorney must also serve the Notice on the judge then presiding over the case. The attorney must file proof of service in compliance with this paragraph. Within 21 days after the service of the Notice, the party may file an Objection to Withdrawal 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, the attorney’s limited scope appearance automatically terminates, without entry of a court order when the 21-day period expires. If a timely Objection is filed, however, the attorney must notice a hearing on the Objection. If the ground for the Objection is the necessity of leave of court.
If the party objects that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance, either in-person if the Limited Scope Appearance is terminated pursuant to paragraph (7)(i) or by motion if the Limited Scope Appearance is terminated pursuant to paragraph (7)(ii), the court must hold an evidentiary hearing on the objection. After the requisite hearing the evidence, the court must enter an order allowing the attorney to withdraw the 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.


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 possiblepractical, 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 non evidentiary 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, 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.

return to the table of contents
RECOMMENDATION #3B: ENHANCE EDUCATIONAL PROGRAMMING FOR LAW STUDENTS, ATTORNEYS, JUDGES, AND COURT STAFF

Watch the pocket chat for this recommendation

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

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

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

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

RULE 793. REQUIREMENT FOR NEWLY-ADMITTED ATTORNEYS

(a) Scope

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

(b) Completion Deadline

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

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

The requirement for newly-admitted attorneys includes three elements:
(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)(42); and

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

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

(d) Exemption From Other Requirements

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

(e) Initial Reporting Period

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

(f) Prior Practice

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

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

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

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

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

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

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

RULE 794. CONTINUING LEGAL EDUCATION REQUIREMENT

(a) Hours Required

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

(b) Reporting Period

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

(c) Carryover of Hours

(1) For attorneys with two-year reporting periods

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

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

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

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

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

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

(d) Professional Responsibility Requirement

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

(2) Beginning with the two-year reporting period ending June 30, 2019, these minimum six hours shall include either completing the Rule 795(d)(1) yearlong Lawyer-to-Lawyer Mentor Program or:

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

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

Watch the pocket chat for this recommendation

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

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

The Limited Scope Committee recommends that the AOIC and ATJ Commission continue to work with Circuit Clerks to improve data collection efforts related to limited scope representation. The Limited Scope Committee also recommends that the AOIC and ATJ Commission work with Tyler Technologies, the vendor that operates the state’s e-filing system, to obtain information on the numbers and types of limited scope appearances that are filed electronically in Illinois. This data should be shared publicly and can guide future educational programming, outreach, and other efforts to expand limited scope representation in Illinois.
RECOMMENDATION #3D: CONSIDER EXPANSION OF LIMITED SCOPE REPRESENTATION IN FEDERAL COURT

Watch the pocket chat for this recommendation

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

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

return to the table of contents
**RECOMMENDATION #4: DEVELOP NEW/AMENDED RULES ON ALTERNATIVE FEES AND FEE PETITIONS**

Watch the pocket chat for this recommendation

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

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

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

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

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

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

**PROPOSED COMMENT FOR RULE 1.5: FEES**

**Comment**

**Types of Fee Agreements Permitted**

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

- fixed fees by task or phase of a case,
- fixed fees for an entire case,
- recurring fixed monthly fees (also called a subscription fees),
- pure contingency fees (the attorney receives a percentage of the amount recovered for the client),
- reverse contingency fees (the attorney receives a percentage of the amount of money saved for the client), 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 reasonable summary of the value of the attorney’s services to their client and of the fee agreement.

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

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

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

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

Comment

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

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

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

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

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

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

An additional way the value of the attorney’s services should be recognized is the attorney’s skill in explaining the legal process to the client and helping the client to understand what happened, what is happening, and what is likely to happen in the future of the legal matter. An attorney with this skill will limit uncertainty and stress for the client.

return to the table of contents
RECOMMENDATION #5: RECOGNIZE A NEW LICENSED PARALEGAL MODEL SO THAT LAWYERS CAN OFFER MORE EFFICIENT AND AFFORDABLE SERVICES IN HIGH VOLUME AREAS OF NEED

Watch the pocket chat for this recommendation

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

PROPOSED LICENSED PARALEGAL RULE 7XX. REPRESENTATION BY LICENSED PARALEGAL

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

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

(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 education from an accredited institution or a baccalaureate degree in paralegal education from an accredited college or university, or a baccalaureate degree in any discipline plus a post-baccalaureate certificate or master's degree in a paralegal or legal education/studies program;

(ii) have received a baccalaureate degree in any discipline from an accredited college or university and have performed at least 2,000 hours of substantive legal work in any of the types of cases described in paragraph (d)(1) or as a general litigation paralegal under the supervision of a licensed attorney, documented by the certification of the attorney or attorneys under whom the work was done on a form provided by the Supreme Court, and have completed at least five hours of approved continuing legal education in the area of legal ethics and professional responsibility;

(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 Optimizing Committees on Character and Fitness and receive a recommendation for licensing pursuant to that application.

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

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

(1) Case types where services may be rendered:

(i) Domestic relations matters under the Illinois Marriage and Dissolution of Marriage and Parentage Acts;

(ii) Civil matters under the Illinois Domestic Violence Act, Civil No Contact Order Act and Stalking No Contact Order Act;

(iii) Guardianships of the person of minors under the Illinois Probate Act;

(iv) Evictions; and

(v) Contract and debt collection cases where less than $25,000 is at stake.

(2) Types of Service Permitted:

(i) Counsel and advise clients;

(ii) Negotiate a settlement;

(iii) Represent clients in mediation and other non-litigation matters; and

(iv) Prepare written documents, including contracts, settlement agreements, appearances, pleadings, motions, and other documents to be filed with the court which may be signed by the Licensed Paralegal with the accompanying designation “Licensed Paralegal” but must also be signed by the supervising member of the bar.

(v) Appear in the civil trial courts and administrative tribunals of Illinois for all pretrial proceedings, and court-annexed arbitration and mediation. The supervising lawyer need not be present during such appearances.

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

Comment

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

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

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

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

return to the table of contents
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

return to the table of contents
RECOMMENDATION #6: STREAMLINE AND MODERNIZE THE RULES AROUND LAWYER ADVERTISING

Watch the pocket chat for this recommendation

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

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

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

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

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

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

---


45 [Clio's COVID-19 Impact Research Briefing: June 17](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=eyJpIjoiWkRkak1qUmlOVFiHTj1WbCIsInQiOiJBN21CY0cyV25pcEhoaFFzUldYVnNgQWDBHeGIwY2RKRFlTNGdpgVXZkbEt5a0JFSFF6QVwiLYldkOXj6aT13Sk2YdYsFWdFYUSNQVvwRmtzdWdWSSVNCSDNmbk02dUNnUVIlaIBLljRlbWF0aINnWUNqUHlubmh2VWxUYNpMUIlJRFFVZU8ifQ%3D%3D)
2. Rule 7.3 on solicitation, which broadly limits solicitation of a client known to be in need of legal services. This is overbroad; solicitation should only be prohibited where it involves coercion, duress, or harassment, or the client has indicated they do not wish to be solicited.

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

Virginia, on the other hand, three years ago approved a more streamlined approach similar to what we are suggesting for Illinois (deleting VA rules 7.2, 7.4, and 7.5 and consolidating them into one new rule 7.3). Utah and Arizona have recently followed suit, and the Association of Professional Responsibility Lawyers has recommended many of these changes as well.47

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.48 Two quotes in particular stand out:

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

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

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

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER’S SERVICES

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

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

Comment

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

48 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 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.

[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

(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.

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

Comment

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

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

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

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

Paying Others to Recommend a Lawyer

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

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

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

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

RULE 7.3: SOLICITATION OF CLIENTS

A lawyer may solicit professional employment unless:

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

Comment

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

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

[3] Paragraph (c) is meant to address lawyers’ contact with prospective clients at a point in an ex parte proceeding when contact poses a substantial risk of physical harm to the party seeking the protective order. Examples of laws providing for ex parte protective orders for personal protection include, inter alia, the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 et seq.), the Stalking No Contact Order Act (740 ILCS 21/1 et seq.), the Civil No Contact Order Act (740 ILCS 22/101 et seq.), and relevant sections of the Illinois Code of Criminal Procedure (725 ILCS 5/112A-1 et seq.).
(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

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


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

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

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

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

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

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

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to 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.

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

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

July 17, 2020, eff. immediately.

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND
SPECIALIZATION

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

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

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

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

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


Comment

[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.
Paragraph (b) states the general policy of the Supreme Court of Illinois not to recognize certifications of specialties or expertise, except that it recognizes that admission to patent practice before the Patent and Trademark Office confers a long-established and well-recognized status. The omission of reference to lawyers engaged in trademark or admiralty practice that were contained in the prior rule is not intended to suggest that such lawyers may not use terms such as “Trademark Lawyer” or “Admiralty” to indicate areas of practice as permitted by paragraph (a).

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

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

Watch the pocket chat for this recommendation

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

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

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

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

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

**PROPOSED COMMUNITY JUSTICE NAVIGATOR MODEL**

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

As a recent American Bar Foundation study\(^{50}\) 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 Justice Corps and other court navigator models around the country, the Supreme Court should formally recognize a new community justice navigator role and identify the qualifications, training, and resources necessary to obtain this recognition. Certification under the program would not be required for all community navigators, but our goal is that the credential and ability to be part of a supportive network of similarly dedicated individuals would be a strong incentive for participation.

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

Because the community justice navigator would not be providing legal services, we believe that this new policy can be carried out by the Court designating the Access to Justice Division of the Administrative Office of the Illinois Courts to develop and oversee the program as an expansion of the AOIC’s existing court navigator network, in partnership with the Court’s Commission on Access to Justice and the Chicago and Illinois State Bar Associations and their respective foundations. The new program would be modeled after the Court’s Language Access Program\(^{51}\) with a policy, registry, and Code of Conduct, as build off of the successful models for the administration of Illinois Justice Corps and the Commission’s self-represented coordinator program for court staff.

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

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

**Background:** Studies already have shown that trained court navigators provide a key service supplementing the role of lawyers and court staff to assist the growing number of people coming to court without lawyers. People coming to court on their own often just need information, procedural guidance, or trustworthy referrals to legal assistance and other services. The Illinois Justice Corps 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.\textsuperscript{52}

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

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

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

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

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

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

\begin{itemize}
  \item \texttt{https://www.citizensadvice.org.uk/}
  \item \texttt{http://www.legalhand.org/}
  \item \texttt{https://www.chicago.gov/content/dam/city/depts/bacp/general/COVID-19/20200414covid19bacpsmallbusinessresourcenavigatorsflyer.pdf}
  \item 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.
\end{itemize}
• A library
• A nonprofit legal aid or community service organization
• A religious institution
• An office of a public official (e.g., Alderman, Member of Congress)
• An educational institution
• A bar association
• A unit of government

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

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

Duties

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

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

Training and Certification

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

Community Justice Navigators would:

• Be certified through a certification program run by the Access to Justice Commission similar to the current language access program that certifies court interpreters
• Be provided free training programs run by the AOIC through periodic in-person training and on demand webinars. These trainings would be developed and implemented in partnership with the Court’s Commission on Access to Justice and the Chicago and Illinois State Bar Associations and their respective foundations, with participation and input from community-based organizations and entities
• Need to pass an online competence exam, which could be developed for the certification, demonstrating basic familiarity with the key training topics noted below.
• Become familiar (through trainings) with topics such as the role of the Community Justice Navigator; recognized online resources through Illinois Legal Aid Online, court, and other
recognized websites; recognized technology-based options (per proposed new Task Force Rule); standardized court forms; e-filing and basic court procedures; and court-recognized lawyer referral resources (including intermediary entities approved under proposed new Task Force Rule)

- Receive specific training on the unauthorized practice of law and the Court’s Safe Harbor policy would also be required
- Be able to obtain additional specialty designations in areas of law where there is high need, through additional training relevant to each substantive area
- Be subject to regulation and possible removal of certification through an overall certification/regulation process to be developed by the AOIC’s Access to Justice Division, using the Language Access Program process for interpreters as a model

Specialty Community Justice Navigator Designations:

- These navigators would be required to obtain the general community navigator certification and, by meeting other requirements relevant to one or more substantive area(s) of law listed below, could also receive a specialty navigator certification to provide more targeted assistance with those issues
- These each are high areas of need in the consumer legal market, and the specialty certification would also require the navigator have an established training and support relationship with a nonprofit legal aid or public interest law organization with expertise in that area
- For each specialty certification, an advisory committee of subject matter experts (including representation from existing navigator programs in those areas) would help develop the required standards
- Potential specialty certification areas include:
  - Evictions and landlord/tenant issues
  - Mortgage foreclosure
  - Reentry
  - Family law issues (divorce/parentage, parenting time/visitation, child support)
  - Consumer debt
  - Employment/wage theft
  - Immigration (potential automatic certification for DOJ accredited representatives)
- Domestic violence is not included in this specialty certification list because there is already a statutorily recognized and well-functioning advocate program for that area
RECOMMENDATION #8: CREATE A HUB WHERE THE PUBLIC CAN FIND COURT APPROVED SOURCES FOR INFORMATION AND ASSISTANCE

Watch the pocket chat for this recommendation

One of the biggest problems for the public today is not knowing how to find lawyers and other legal resources and know whether they are right for them.

By recognizing the new categories of Intermediary Entities (#1), Approved Legal Technology Providers (#2B), and Community Justice Navigators (#7), the Court for the first time can create a web-based hub where the public could easily find vetted and court-approved sources for legal information and assistance that have been certified under one of these new Rules. While it would not be an endorsement of any individual or entity, this new hub would solve a big gap in the system right now: the lack of any reasonable way for the public to know where they can turn for reliable legal help.

The Task Force’s recommendations to recognize these key intermediaries and resources would enable the Court to create a convenient resources page for the public similar to what the IRS already provides for tax issues.57

return to the table of contents

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
RECOMMENDATION #9: ADOPT A CLEARER PRACTICE OF LAW DEFINITION WITH A RECOGNIZED SAFE HARBOR

Watch the pocket chat for this recommendation

Other professionals and entities who seek to develop new models and technologies to expand access to justice encounter a paradoxical situation when they seek to understand the extent of permissible activities for providers without an Illinois law license: the unauthorized practice of law is prohibited, but there is no straightforward definition of exactly what constitutes the practice of law. At the same time, there is a strong commitment in the organized bar to enforce the prohibition against the unauthorized practice of law, but lawyers too are unable to define it in a way that others could understand and act upon. The uncertainty around the definition both inhibits much-needed innovation in legal assistance for the public and is a bad look for the profession when we so vigilantly try to enforce something we can’t define at a time when most people in need of legal help are not getting it.

The majority of the Optimizing the Use of Other Legal Professionals Committee (Optimizing Committee) therefore recommends that the Court provide some further definition of the practice of law, so that those who seek to explain or comply with the unauthorized practice prohibition can more clearly understand what is, and is not, permitted.

The Illinois Attorney Act proscribes the practice of law without a license, stating “No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.” The Act does not define what is meant by “to practice as an attorney or counselor at law.” Enforcement of the prohibition of unlicensed practice is delegated by Supreme Court Rule 779 to the Attorney Registration and Discipline Commission under the Court’s inherent authority to govern the practice of law. Rule 779 does not define the practice of law, nor do any other policies or rules of the Court provide such a definition.

Explication of the practice of law has occurred in Illinois solely through Supreme Court caselaw. Generally, caselaw has found that the practice of law is "the giving of advice or rendition of any sort of service...when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill." People ex rel. Chicago Bar Ass’n v. Barasch, 406 Ill. 253, 256, 94 N.E.2d 148, 150 (1950) (quoting People ex rel. Illinois State Bar Ass’n v. Schafer, 404 Ill. 45, 50, 87 N.E.2d 773, 776 (1949)). Unfortunately, caselaw is not the most accessible form of guidance for people without law training, and the definition offered in these cases is itself devoid of clarity regarding particular acts. Therefore, a case-by-case approach, which constitutes little more than “we know it when we see it,” is of little help to those seeking to understand or explain these boundaries.

Illinois is not alone in both prohibiting unauthorized practice of law and failing to define what is prohibited. This situation resulted in appointment of an American Bar Association Task Force in 2002 to seek to establish a model definition. That Task Force struggled with the endeavor. It floated a

---

58 Attorney Act, 705 ILCS 205/.
59 Ill. S. Ct. R. 779(b) (eff. Dec. 7, 2011)
60 See, also, People ex rel. Chicago Bar Association v. Goodman, 8 N.E.2d 944 (1937)
61 See summary of State Definitions of the Practice of Law, Appendix A to American Bar Association House of Delegates Report at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.pdf (last visited May 23, 2020)
proposal for a model definition, but ultimately achieved only adoption of a policy statement by the ABA calling for each state to adopt a definition:

“RESOLVED, That the American Bar Association recommends that every state and territory adopt a definition of the practice of law.

FURTHER RESOLVED, That each state’s and territory’s definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity.

FURTHER RESOLVED, That each state and territory should determine who may provide services that are included within the state’s or territory’s definition of the practice of law and under what circumstances, based upon the potential harm and benefit to the public. The determination should include consideration of minimum qualifications, competence and accountability.’’(Adopted by ABA House of Delegates, August 2003)

The attempt by the ABA to develop a definition of practice was met with resistance from a number of quarters. Notably, the U.S. Department of Justice expressed concern that the proposed (but ultimately not adopted) model definition included overly broad presumptions as to what constitutes the practice of law, and therefore could impede competition.

Against this background, the Optimizing Committee wrestled with the Catch-22 that the current situation presents in Illinois. A majority of the Optimizing Committee concluded that some clarification of the definition of practice is necessary. Indeed, the Court has already issued guidance in the form of a Court policy for court employees and volunteers to encourage appropriate forms of assistance to court patrons. The Court has also sought to clarify, through a Court “Safe Harbor” policy, the distinction between legal information and legal advice. The Court also has adopted a number of Rules identifying specific activities that are permitted that might otherwise constitute or be construed as the practice of law, including Rule 711 and Rule 756.

Approximately a quarter of the active Optimizing Committee members did not agree that an explicit definition of the practice of law would be useful, believing that adoption of such a definition carries more risks than benefits. This minority was divided in their reasons for opposing creation of an explicit definition. Members of the Optimizing Committee who have experience with enforcement of unauthorized practice of law (UPL) prohibitions expressed grave reservations about any attempt to define the practice of law, believing that any definition will contain ambiguities that could provide unscrupulous persons with windows of opportunity to engage in harmful conduct for Illinois consumers. On the other hand, members who favor greater flexibility for community groups and others to provide assistance with legal matters expressed equally strong concern that an explicit definition of practice

63 Available at https://www.americanbar.org/content/dam/aba/directories/policy/2003_am_100.pdf (last visited May 23, 2020)
could lead to even more aggressive enforcement of UPL restrictions, stifling legitimate, innovative approaches to expanding access to justice.

The majority of Optimizing Committee members, however, supported development of more clarity in the definition of practice, to encourage innovators to understand the boundaries, and court employees, court volunteers, legitimate community advocates, and other actors to find ways to provide appropriate legal help while protecting the public from harm. The definition that was developed and is offered as the attached proposal drew on the contributions of all members of the Optimizing Committee. The proposal includes some language drawn from the model proposed by the ABA, but is based primarily upon the principles articulated in the Court’s Safe Harbor Policy and Guide referenced above. The proposal seeks to minimize ambiguity by defining terms that might be seen as vague and setting forth some common examples that do not constitute the practice of law. The proposal also clarifies that it is meant to supplement, not supplant, existing caselaw providing guidance on the definition of the practice of law.

The Optimizing Committee considered approaches to promulgating the proposed definition, either through a new rule or through a new court policy. Members of the Optimizing Committee with UPL enforcement experience suggest that this be implemented through a Court policy statement rather than by adoption of an enforceable Court Rule, an approach that may provide the necessary guidance without constraining the enforcement activities of the ARDC. Other members of the Optimizing Committee and the larger Task Force favor implementation through adoption of a new court rule. The Plain Language committee, whose Chair is the former ARDC Deputy Director & Chief Counsel, also favors implementation through adoption of a new court rule or by incorporating it somewhere within the body of the Rules of Professional Conduct, such as the definition section of the rules found in Rule 1.0, and believes that promulgating the proposed definition through a new court policy would be impracticable.

At some future point, it may be appropriate to seek legislative action to supplement the statutory Illinois Attorney Act with language from this proposal clarifying the types of activities that are and are not considered the practice of law.

**PROPOSED ILLINOIS SUPREME COURT POLICY STATEMENT/RULE DEFINITION OF PRACTICE OF LAW/UNAUTHORIZED PRACTICE**

(a) Subject to (b) below, it is the practice of law\(^{67}\) to:

- Give legal advice\(^{68}\) regarding a specific situation or set of circumstances to a person or entity,
- Prepare or present arguments\(^{69}\) that involve interpretations or applications of the law or substantive legal rights and responsibilities, or
- Represent a person or entity in court or in other legal proceedings

---

\(^{67}\)Nothing in this definition displaces or contradicts decisions of the Illinois Supreme Court regarding conduct constituting the unauthorized practice of law.

\(^{68}\) Legal advice is guidance regarding a (person or entity’s) legal rights and obligations in light of their unique facts and circumstances…. Legal advice is the application of specialized judgment to a specific situation: it will vary depending on who is asking for it and the desired outcome. Legal advice is subjective: it will change depending on the specific facts of the case. See [https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf](https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf)

\(^{69}\) An “argument” in the context of a legal matter is stating the legal reasons for the position based on statutes, regulations, case precedents, legal texts, and reasoning applied to facts in the particular situation.
• Negotiate\textsuperscript{70} legal rights or responsibilities for a person or entity.

(b) It is not the practice of law:
• To provide general information\textsuperscript{71} on court procedures and court rules, including court-approved forms,
• To serve as a mediator, arbitrator, or neutral,\textsuperscript{72}
• For court personnel, Illinois JusticeCorps members, or court-recognized community justice navigators to provide assistance in accord with the Court’s Safe Harbor policy,
• To engage in lawful activities permitted by a federal, state, or local administrative body with jurisdiction over a particular type of matter or proceeding,
• To engage in lawful activities permitted under another professional license, or
• For a person to self-represent

(c) Unless otherwise permitted by these Rules, it is the unauthorized practice of law to engage in the practice of law in Illinois without authorization from the Illinois Supreme Court, or for someone to represent to another person that they are a licensed Illinois lawyer when they are not.

Comment

This Rule/Policy is intended to provide an overall definition and general guidance on what does and does not constitute the practice of law or the unauthorized practice of law. These concepts are further defined in the Court’s Safe Harbor policy (https://courts.illinois.gov/SupremeCourt/Policies/Pdf/Safe_Harbor_Policy.pdf), and Safe Harbor Guide (https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf), by exceptions defined elsewhere in these Rules and in the Court’s policies, and in Illinois case law.

Section (b) is intended to note some common situations that are not the practice of law, including assistance provided by Court-recognized individuals in accord with the Court’s Safe Harbor policy. In addition, many federal, state and local administrative bodies grant permission to designated advocates to perform services in proceedings before those bodies that otherwise would constitute the unauthorized practice of law if those services were provided elsewhere. Examples include accredited representatives for immigration and tax proceedings who are certified by the Department of Justice or the Internal Revenue Service.

\textsuperscript{70} To arrange for or bring about through conference, discussion, and compromise with an opposing party or that party's lawyer or representative to seek to arrive at the settlement of some matter.

\textsuperscript{71} Legal information is general factual information about the law or legal process intended to help a court patron navigate the court system. Legal information is neutral: it should not advance one party's legal position over another party's position. Legal information is universal: it should be the same regardless of which party is asking for it. Legal information is objective: it does not require knowledge about specific details of the case. Legal information can come from anyone, not just licensed attorneys. See https://courts.illinois.gov/CivilJustice/Training_Education/Safe_Harbor_Guide.pdf.

\textsuperscript{72} A lawyer may serve in these roles; when doing so, the lawyer must adhere to the Illinois Rules of Professional Conduct, including Rule 2.4: Lawyer Serving as Third-Party Neutral.
For Section (c) of this Rule/Policy, there are several exceptions in the Supreme Court Rules that permit certain classes of lawyers or other advocates who are not otherwise licensed to practice in Illinois to engage in the practice of law. Examples include Rule 711 for law students and Rule 756 for retired, inactive, or out-of-state lawyers to perform pro bono services.

return to the table of contents
RECOMMENDATION #10A: UNDERTAKE A BROADER PLAIN LANGUAGE REVIEW OF THE RULES TO MODERNIZE THEM WITH THE LIGHTEST HAND OF REGULATION NEEDED TO ACHIEVE THE COURT’S REGULATORY OBJECTIVES

Watch the pocket chat for this recommendation

The Plain Language Ethics Rules Committee’s mission was to undertake a critical review and assessment of the Illinois Rules of Professional Conduct, with a focus on a renewed “plain English” approach.

The Plain Language Committee primarily carried out this charge by reviewing all Task Force committee recommendations at length and offering suggested edits to the respective committees. These edits, some of which were substantive in nature, were incorporated into the various recommendations throughout this report.

What follows is insight into some of the more robust discussions that took place along the way.

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

The Plain Language Committee had the opportunity to review the Modernizing Lawyer Referral and Law Firm Models Committee’s (Modernizing Committee) response to the ARDC’s Intermediary Connecting Services Proposal. Plain Language Committee members agreed with the Modernizing Committee that the ARDC proposal was well-intentioned and certainly was a notable and viable effort to deal with technology and lawyer-client matching services. Nevertheless, Plain Language Committee members expressed the view that the regulatory language contained in the ARDC proposal was, with all due respect, difficult to understand from a plain language perspective. The Plain Language Committee had minor suggested edits and those edits were included in the response the Modernizing Committee submitted to the ARDC in April 2020.

Defining the Practice of Law and Recommendation Concerning the Promulgation of Any Such Provision

The Plain Language Committee reviewed the Optimizing Other Legal Professionals Committee’s (Optimizing Committee) proposed definition for the practice of law. The Plain Language Committee was impressed with the Optimizing Committee’s efforts to craft a workable definition and recommended suggested edits. The Plain Language Committee, however, was of the opinion that the Optimizing Committee’s suggestion that any adopted definition potentially be included in an advisory opinion issued by the Supreme Court or through the adoption of a policy would be impracticable. The Supreme Court has historically rejected the issuance of advisory opinions and any policy statement would best be incorporated in a rule. Due to its critical importance, a definition of the practice of law should be contained within the law of lawyering by incorporating it into either a separate Supreme Court rule or somewhere within the body of the Rules of Professional Conduct, such as in the definition section of the rules found in Rule 1.0. The Plain Language Committee’s feedback was incorporated into the final version of Recommendation #9.
Review of the Community Justice Navigator Model and a Recommendation

The Plain Language Committee reviewed the Optimizing Committee’s proposal to train and certify Community Justice Navigators. The Plain Language Committee applauded the effort and believes the proposal is an important step toward helping members of the public access critical legal information. The Plain Language Committee believes, however, that if a certification process is to be adopted, then a decertification process would also be required in the event that a navigator engages in inappropriate or wrongful conduct. The Plain Language Committee’s feedback was incorporated into the final version of Recommendation #7.

The Term “Limited Scope” is Not Very Plain Language

One plain language recommendation of note from the Plain Language Committee concerns the term “limited scope representation” to describe the various models of limited and accessible unbundled representation options to increase access to justice. The Plain Language Committee felt the term “limited scope representation” was not very plain language in communicating to the public what services were being offered. However, the Plain Language Committee did not reach a consensus as to an alternative and any alternative would require a rewrite of any rules where that terminology exists.

Recommendations Regarding Rule 5.4

Although the Plain Language Committee’s principal focus was to assure that Task Force proposals conformed to plain language guidelines, there were some substantive comments and recommendations made concerning the Modernizing Committee’s Rule 5.4 proposal. The Plain Language Committee noted that the existing rule serves a vital regulatory function in that it seeks to prohibit well documented harms. The Plain Language Committee recommends that great care be taken in drafting a final proposal that will, in its final iteration, allow greater opportunities for lawyers and clients to establish relationships through varying modes of technology, but that still serves to prohibit client exploitation. The Modernizing Committee took the Plain Language Committee’s comments to heart in drafting their final proposals.

Recommendation

The Plain Language Committee recommends that the Supreme Court review and revise all of the Rules of Professional Conduct to conform with the Supreme Court’s plain language directives, regulating only to the extent necessary to carry out the Court’s published Regulatory Objectives.73 The Plain Language Committee believes that after Rule 1.15 (see Recommendation #10B below), Rules 1.2, 5.4 and 5.5 are in greatest need of attention and recommends the Supreme Court start there.

73 https://www.iardc.org/Regulatory_Objectives.htm
RECOMMENDATION #10B: LTF AND ARDC SHOULD WORK TOGETHER TO AMEND RULE 1.15 TO ACCOMMODATE THE COURT’S PLAIN LANGUAGE INITIATIVES

Watch the pocket chat for this recommendation

At its initial meeting, the Plain Language Committee determined that Rule of Professional Conduct 1.15, a provision dealing with the segregation of client monies and the management of lawyer trust funds, greatly needed a plain language review. To assist them with this review, the Plain Language Committee consulted with David Holtermann, Associate Director and General Counsel of the Lawyers Trust Fund of Illinois (“LTF”), regarding the history and theory behind the rule. That discussion then prompted the Plain Language Committee Chair to speak with Jerry Larkin, the Administrator of the Attorney Registration and Disciplinary Commission (ARDC), in an effort to get his opinion regarding revising Rule 1.15. Thereafter, the Chair met with Mr. Larkin and spoke further with Mr. Holtermann. Not only was IRPC 1.15 discussed at length, but the Chair also had the opportunity to hear Mr. Holtermann’s insights about the complicated environment that exists for trust fund regulators.

Thereafter, the Plain Language Committee discussed Rule 1.15. It agreed the rule was in desperate need of review, modernization, modification, and editing. However, any redraft of the rule would best be left to the principal constituents with a stake in creating a viable, cogent, and enforceable provision: LTF and the ARDC. The Plain Language Committee recognized that Rule 1.15 is unique among the Illinois ethics provisions. Unlike the other rules, Rule 1.15 deviates quite substantially from its counterpart in the ABA Model Rules. The rule is the product of an evolutionary development that essentially dealt with two conceptually distinct needs. First, the rule exists to provide the ARDC with a mechanism to sanction lawyers who jeopardize client funds, taking into account Illinois lawyer disciplinary precedent (e.g., Rule 1.15’s discussion of advance payment retainers). Second, the rule has evolved quite profoundly since the early 1980’s to create a revenue stream for legal aid service providers, thus increasing access to justice to those most in need of legal help. Each time the rule has been amended over the years, the Supreme Court has been careful to accommodate the ultimate goals of both LTF and the ARDC and to make certain that no unintended consequences result from any language changes to the rule.

It is the unanimous opinion of the Plain Language Committee that the Task Force recommend to the Supreme Court that LTF and ARDC work together with input from other relevant stakeholders to amend Rule 1.15 to accommodate the Court’s plain language initiatives.

return to the table of contents
RECOMMENDATION #11: CONVENE A NEW COMMITTEE TO EXPLORE THE POTENTIAL BENEFITS AND HARM ASSOCIATED WITH ELIMINATING THE 5.4 PROHIBITION ON OWNERSHIP OF LAW FIRMS BY PEOPLE WHO ARE NOT LAWYERS

Watch the pocket chat for this recommendation

The Modernizing Lawyer Referral and Law Firm Models Committee (Modernizing Committee) and broader Task Force have found broad consensus on their proposals to modernize the rules to allow for lawyers to responsibly partner with other disciplines so long as the proposals do not change the current prohibition ownership of law firms by people who are not lawyers.

While we elected not to include any change to the rules on ownership in our Task Force recommendations, the Modernizing Committee believes the sections of Rule 5.4 restricting law firm ownership also should be reconsidered. Other professions already allow different ownership structures, and other legal task forces looking at regulatory reform around the country (notably Arizona and Utah) have proposed that these ownership restrictions be lifted. Further, in jurisdictions outside of the U.S. where ownership restrictions have been lifted (notably the United Kingdom and Australia), they have not seen a significant increase in lawyer discipline issues with respect to lawyers sharing fees with people who are not lawyers. Finally, so long as the Rules protect the professional independence of lawyers, restricting the business models that lawyers can utilize to best serve the market goes beyond the Court’s stated regulatory objectives.

Some of the potential benefits of taking the further step to eliminate the ownership restrictions include:

1. It would make it easier for firms to access capital and scale.
2. It would incentivize other professionals to work in law as equal partners.
3. It would allow for and incentivize additional business models, such as attorneys partnering with professionals offering complimentary services, and would create more holistic and comprehensive solutions for legal consumers.

However, the Modernizing Committee also recognizes that other members of the Task Force and a broader segment of our profession have concerns about changing the rules on law firm ownership. For that reason, rather than suggesting changes to that part of the rule right now, the Modernizing Committee recommends the Court create a new Committee to further study the benefits and potential harms of eliminating the prohibition on outside investment of law firms.

---

74 Many people who submitted written feedback during the public comment period also believe that the Modernizing Committee should have gone further and eliminated the prohibition on nonlawyer ownership in Rule 5.4.
75 https://www.iardc.org/Regulatory_Objectives.htm
APPENDIX

APPENDIX A: REGULATORY OBJECTIVES FOR THE PROVISION OF LEGAL SERVICES OF THE SUPREME COURT OF ILLINOIS

A. Protection of the public
B. Advancement of the administration of justice and the rule of law
C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
E. Delivery of affordable and accessible legal services
F. Efficient, competent, and ethical delivery of legal services
G. Protection of privileged and confidential information
H. Independence of professional judgment
I. Accessible civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct
J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system

Adopted by the Supreme Court
November Term 2017

return to the table of contents
APPENDIX B: CONFERENCE OF CHIEF JUSTICES RESOLUTION 2 – URGING CONSIDERATION OF REGULATORY INNOVATION REGARDING THE DELIVERY OF LEGAL SERVICES

WHEREAS, access to affordable legal services is critical in a society that has the rule of law as a foundational principle; and

WHEREAS, legal services are growing more expensive, time-consuming, and complex, which makes it difficult for many people to obtain necessary legal advice and assistance in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody; and

WHEREAS, the Conference of Chief Justices has long championed the importance of meaningful Access to the justice system for all, and in 2015 adopted Resolution 5 which set the aspirational goal of 100 percent access to effective assistance for essential civil legal needs through a continuum of meaningful and appropriate services; and

WHEREAS, traditional solutions to reducing the access to justice gap, such as increased funding for civil legal aid, more pro bono work, or court assistance programs have had some success, but are not likely to resolve the gap, which is only increasing in severity; and

WHEREAS, several states are experimenting with regulatory innovations that are designed to spur new models for legal service delivery that provide greater access while maintaining the quality and affordability of legal services as well as protecting the public interests; and

WHEREAS, these regulatory innovations generally fall within three broad areas including the authorization and regulation of new categories of legal service providers, the consideration of alternative business structures, and the reexamination of provisions related to the unauthorized practice of law; and

WHEREAS, experimentation with different approaches to regulatory innovation provides a measured approach to identify and analyze the best solutions to meeting the public’s growing legal needs;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges its members to consider regulatory innovations that have the potential to improve the accessibility, affordability and quality of civil legal services, while ensuring necessary and appropriate protections for the public.
RESOLVED, That the American Bar Association encourages U.S. jurisdictions to consider innovative approaches to the access to justice crisis in order to help the more than 80% of people below the poverty line and the many middle-income Americans who lack meaningful access to effective civil legal services.

FURTHER RESOLVED, That the American Bar Association encourages U.S. jurisdictions to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services, while also ensuring necessary and appropriate protections that best serve clients and the public, including the provision of legal counsel as a matter of right and at government expense for children facing essential civil legal matters and for low-income individuals in adversarial proceedings where basic human needs or a loss of physical liberty are at stake.

FURTHER RESOLVED, That the American Bar Association encourages U.S. jurisdictions to collect and assess data regarding regulatory innovations both before and after their adoption to ensure that changes are effective in increasing access to legal services and are in the interest of clients and the public.

FURTHER RESOLVED, That nothing in this Resolution should be construed as recommending any changes to any of the ABA Model Rules of Professional Conduct, including Rule 5.4, as they relate to nonlawyer ownership of law firms, the unauthorized practice of law, or any other subject.
APPENDIX D: CBA/CBF TASK FORCE ON THE SUSTAINABLE PRACTICE OF LAW & INNOVATION GUIDING PRINCIPLES & OBJECTIVES

Overarching Philosophies

- Recognize that the status quo in the consumer legal market is untenable for lawyers, the public, and the courts and jeopardizes public confidence in and respect for our judicial system and the Rule of Law
- Improve access to justice for anyone with a legal need by increasing access to a spectrum of legal services ranging from self-help to full representation
- Make the practice of law more sustainable for lawyers serving the consumer legal market by ensuring that a range of legal and business opportunities are available and accessible to them within the changing legal marketplace
- Regulate with as light a hand as possible to preserve the core values of the legal profession, protect the public, and enable market forces to better address the current failure in the consumer market for legal services

Objectives of Modernized Regulation

- Empower the public to determine and obtain the level of services appropriate to their legal needs
- Protect the public from harm caused by purchasing or receiving bad legal advice or inappropriate legal services.
- Enable lawyers to compete on a level playing field by:
  1. Empowering lawyers to offer the full range of legal services--including technology-based solutions--that consumers expect and demand today, and
  2. Allowing all lawyers to tap into the marketing, business, and technology expertise necessary to succeed in the modern world
- Protect the professional independence of lawyer judgment
- Use “plain English” whenever possible to promote greater clarity and understanding for practitioners and other stakeholders

return to the table of contents
APPENDIX E: LEGAL MARKET LANDSCAPE REPORT

2018 Legal Landscape Report\textsuperscript{76} (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.”

\textsuperscript{76} http://board.calbar.ca.gov/docs/agendaiem/Public/agendaiem1000022382.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

SUBMITTED 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 regulation to the regulatory objectives approved by the Supreme Court in 2017. A potentially onerous layer of bureaucracy should not be imposed if there is not good cause, particularly when many of the regulated entities will be operating in multiple jurisdictions.

We all agree that protection of the public and protection of the independence of the lawyer’s professional judgment and practice of law should be the motivating purposes underlying these regulations. But we think the proposed regulations go much further than that and arguably undermine other regulatory objectives, including advancement of the administration of justice and rule of law (Objective B) and delivery of affordable and accessible legal services (Objective E). Also, we have concerns with putting these proposed changes in Rule 7.2, which the Task Force expects to propose be repealed as being redundant and having an unnecessary chilling effect on the market.

We also believe the proposal should broaden the definition of intermediary to include other business, technology, and administrative services. Solo and small firm practitioners would equally benefit from access to these services in addition to connecting services, as they already do in other professions. The Task Force believes these services collectively open up further opportunities to improve the functioning
of the market for all concerned, and that these services collectively can be managed through a similar regulatory framework.

Finally, we want to address specifically what amounts to a proposed access to justice tax in the ARDC proposal. As an entity in the business of advancing access to justice, the CBF regularly works to increase funding for pro bono, legal aid and related access to justice efforts. However, singling out one class of entity for what amounts to a special tax we don’t impose on law firms, corporate legal departments, or other entities recognized under these Rules is not the right approach. We think it is bad optically, adds a whole host of otherwise unnecessary regulatory requirements, and would discourage entities from entering the market, particularly smaller entities who would have a harder time complying with these added requirements and financial burdens that would ultimately get passed on to the end user.

There is still a real access to justice benefit that comes from connecting more people in need of legal help who can pay something for it with lawyers who can help them. We see huge potential for increased access to legal services for that part of our population--who we know are a significant share of the pro se population in the courts and the larger latent market for legal services--particularly for limited scope representation.

Our full comments and suggestions follow below. We focus only on those sections where we have concerns, suggestions or think a section in the proposal is particularly positive and important to be included in the final regulatory framework. Generally, we suggest the amendments should reflect a mindset change to permissive language rather than punitive language unless certain conditions exist.

**Proposed Amendments to ILPC Rule 7.2: ADVERTISING**

**ARDC Proposed (b)** a lawyer shall not offer the lawyer’s services, or accept a connection of a potential client, through an intermediary connecting service, defined in Supreme Court Rule 730, if

1. The lawyer knows or reasonably should know that the intermediary connecting service does not maintain active registration with the ARDC pursuant to Supreme Court Rule 730,
2. The intermediary connecting service requests or requires the lawyer to act in violation of the Illinois Rules of Professional Conduct, or
3. The lawyer’s participation in the intermediary connecting service or the lawyer’s acceptance of the connection otherwise violates the Illinois Rules of Professional Conduct.

**Task Force Committee Comments:** We recommend framing this provision more positively and permissively (i.e., instead of framing it as “shall not” saying a lawyer may...unless...) and clarifying subsection (1) and deleting subsection (3). Given the significant registration and reporting requirements proposed under the rule and the broad discretion given to the Administrator, a lawyer may not know that an entity that had been appropriately registered when the lawyer began the engagement has sometime thereafter fallen off the rolls. We would suggest subsection (1) be amended to limit it to “at the start of the engagement with the potential client.”

We believe that subsection (3) above is unnecessary because the language contained therein already exists in other sections of the ILPC (e.g., Rule 8.4). In addition to adding unnecessary length to the rule, the language could also have a chilling effect. Attorneys are already overly cautious when it comes to navigating the lengthy and opaque attorney advertising rules. Consistently reminding attorneys that they will be disciplined if they violate the rules is both unnerving and unnecessary.
ARDC Proposed (c) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may (3) pay the usual charges of a registered intermediary connecting service, including a reasonable connecting fee for every connection that results in a potential client hiring the lawyer for the lawyer’s services offered through the intermediary connecting service, if

(iv) Before or within a reasonable time after commencing the representation, the lawyer informs the client in writing, including by electronic means, of the relationship between the lawyer and the intermediary connecting service, the basis or rate of the fees and expenses for which the client will be responsible, and any connecting fee the lawyer has paid or is required to pay to the intermediary connecting service, and

(v) The lawyer does not permit the intermediary connecting service to interfere with the lawyer-client relationship or with the lawyer’s exercise of professional judgment regarding the client matter.

Task Force Committee Comments: We recommend deleting this subsection (c)(3)(iv). We believe exempting contingent fee work from the proposed regulatory framework (as subsection (c) proposes) is a sensible proposal given the already well-functioning market and regulatory framework for those services. However, we think subsection(c)(3)(iv) is overly burdensome for attorneys and does nothing to further protect the public in exchange. Because in this scenario the client proactively searched online for a lawyer and connected with the lawyer representing them through the intermediary connecting service, the client presumably already understands the relationship between the lawyer and the intermediary connecting service. Further, the client will not care what fee, if any, the lawyer had to pay the intermediary service so long as it doesn’t come out of the client’s pocket and the overall fee was reasonable.

Proposed Amendments to ILSC Rule 730: INTERMEDIARY CONNECTING SERVICES

ARDC Proposed Opening Paragraph: No Illinois attorney shall participate in an intermediary connecting service unless the intermediary connection service has been registered as hereinafter set forth.

Task Force Comments: We recommend rewording this sentence so that it is no longer stated in the negative. Here is a suggestion: Attorneys may participate in an intermediary connecting service so long as that entity is registered with the Attorney Registration and Disciplinary Commission.

ARDC Proposed I. Applicability

(a) An “intermediary connecting service” is a lawyer directory, network, matchmaking service, bidding site, question & answer site, prepaid or group legal services plan, or similar marketplace the business or activities of which include: (1) the connecting of its users, customers, members, or beneficiaries to participating lawyers for the performance of legal services in Illinois; or (2) an organization’s users, customers, members, or beneficiaries paying for or receiving legal services from participating lawyers in matters for which the organizations does not bear ultimate responsibility. For purposes of this rule, “participating lawyer” means a lawyer licensed or authorized to practice law in Illinois who uses the service to offer or render their legal services.
**Task Force Committee Comments:** We believe this subsection is good as far as it goes, but should be broadened to include other business and administrative services an intermediary service might provide. Doctors, dentists, and other professions can and do use entities that effectively act as “intermediary services” for purposes beyond connecting clients, including the provision of other business, technology, and administrative services. So long as the intermediary is not interfering with the lawyer’s independent professional judgment, we believe lawyers should be able to participate under the same terms as a connecting service. Lawyers in solo or small firm settings who just want to focus on practicing law would benefit from access to that broader suite of services just as lawyers in larger firms and corporate settings already do, and could do so more efficiently and effectively to better serve the public.

(b) The definition of “intermediary connecting service” does not apply to: (3) a bar association-operated or legal aid organization-operated referral service, lawyer marketplace or directory, or similar service that connects potential clients to lawyers.

**Task Force Committee Comments:** We recommend deleting this subsection. We believe that bar associations and nonprofits should be treated as intermediary connecting services and held to the same standards and reporting requirements as for-profit entities. The only caveat is that we think the $1,000 registration fee should be waived for bar associations and nonprofits that don’t financially benefit from that service.

---

**ARDC Proposed II. Registration and Reporting**

(a) Initial Registration. At least 90 days prior to commencing operation, the intermediary connecting service shall be registered in the office of the Administrator of the Attorney Registration & Disciplinary Commission. The intermediary connecting service must file an initial registration application with the Administrator, using forms provided by the Administrator, and must pay a fee of $1,000 to the Administrator.

   (1) The initial registration application shall be in writing signed by an authorized officer or representative of the intermediary connecting service, and shall set forth or be accompanied by the following:

   (i) The name and street address of the corporation, association, limited liability company, registered limited liability partnership, or plan.
   (ii) The statute of law under which it is formed, or a copy of the most recent certificate of good standing, certificate of existence/authorization or similar document.
   (iii) A copy of the intermediary connecting service’s basic organizational document, including the articles of incorporation, articles of association, articles of organization, operating agreement, partnership agreement, trust agreement, or other organizational document, and all amendments, addenda, or exhibits to any such document.
   (iv) A copy of all bylaws, rules, regulations, or similar documents, if any, regulating the conduct of the intermediary connecting service.
   (v) A description of the intermediary connecting service’s method for connecting participating lawyers to potential clients.
   (vi) A description of the intermediary connecting service’s method of, and criteria for, rating and reviewing participating lawyers, and whether participating lawyers have the opportunity to dispute ratings and reviews.
   (vii) A description of the intermediary connecting service’s marketing efforts to lawyers and the public.
   (viii) The name and addresses of official positions of, and biographical information concerning any individuals who are responsible for conducting the intermediary connecting
service's affairs, any individuals or entities that have an ownership interest in the intermediary connecting service, and, if applicable, the plan administrator and principal or sponsor.

(ix) A list of other jurisdictions in which the intermediary connecting service is operating or has operated, or is registered or has registered to operate in accordance with that jurisdictions’ rules, along with the status of the intermediary connecting service and its registration in the other jurisdiction. For purposes of this rule, “other jurisdictions” is defined as the District of Columbia; a country other than the United States, a state, province or territory, or commonwealth of the United States or another country.

(x) A signed statement by an individual responsible for the affairs of the intermediary connecting service, designating that individual as the agent of and principal contact for the service.

(xi) Such other information and documents as the Court may from time to time require.

Task Force Committee Comments: We recommend reconsidering and significantly streamlining the extent of the information required to appropriately regulate these entities. We think many of the requirements in this section impose burdens on registrants. As noted at the outset of our comments, there should be a valid regulatory purpose articulated that connects to these proposed requirements. While we recognize some registration and reporting requirements may be necessary for appropriate regulation (e.g., subsections (i), (ii) and (ix)), requiring an organization to do things like submit organizing documents and describe their marketing efforts is overburdensome and unrelated to the need to protect the public. Further, these requirements may act to frustrate other regulatory objectives, including advancement of the rule of law, access to justice, and the delivery of affordable and accessible legal services.

ARDC Proposed (c) Annual Registration. Subsequent to initial registration, an intermediary connecting service shall be registered annually on or before the first day of November on forms supplied by the Administrator a copy of the service's financial records for the prior year, showing the total revenue generated from its connecting fees. Failure to receive notice of annual registration shall not constitute an excuse for the failure to register. On or before the first day of November of each year, the intermediary connecting service shall:

(1) Pay a fee of $1,000 to the Administrator; and
(2) Remit to the Administrator 0.25% of the service's total revenue of the prior year that was generated from the service's connecting fees.

Task Force Committee Comments: We recommend deleting paragraph (c)(2). Requiring intermediary services to remit to the Administrator 0.25% of all profits generated each year through its connecting services without any relation to administrative expenses is overly burdensome, and we believe it will have a chilling effect on intermediary services entering the market. As an entity in the business of advancing access to justice, the CBF regularly works to increase funding for pro bono, legal aid and related access to justice efforts. However, as noted above, singling out one class of entity for what amounts to a special tax we don’t impose on law firms, corporate legal departments, or other entities recognized under these Rules is not the right approach. We think it is bad optically, adds a whole host of otherwise unnecessary regulatory requirements, and would discourage entities from entering the market, particularly smaller entities who would have a harder time complying with these added requirements and financial burdens.

There is still a real access to justice benefit that comes from connecting more people in need of legal help who can pay something for it with lawyers who can help them. We see huge potential for increased access to legal services for that part of our population—who we know are a significant share of the pro se population in the courts and the larger latent market for legal services--particularly for limited scope representation.
ARDC Proposed (d) Use of Registration Fees and Access to Justice.

(1) The ARDC shall retain the fees received under Section II paragraphs (a) and (c) 1 and Section III paragraph (b) to fund its expenses to administer this rule.
(2) At the direction of the Court, the ARDC shall remit the funds received under Section II paragraph (c)(2) to an access to justice program or entity the Court designates.

Task Force Committee Comments. We recommend deleting paragraph (d)(2). For the reasons noted above in the comments on paragraph (c)(2) of this section, section (d) (2) would no longer be necessary.

ARDC Proposed (e) and (f) Use of Registration Fees and Access to Justice.

(e) Denial of Registration. The Administrator of the Attorney Registration and Disciplinary Commission may conduct an inquiry into the initial registration application and annual registration documents. If the Administrator determines that the service does not meet the definition of “intermediary connecting service,” has not provided complete information, has provided false information, or has otherwise failed to satisfy the registration requirements, the Administrator may deny the registration. If the Administrator denies the registration, the Administrator shall inform the service’s agent and explain the basis for the denial. Upon notice that the registration has been denied, the service may resubmit an amended registration application or amended annual registration documents or seek review by the Court upon motion. The denial of registration shall not be a bar to revocation or disciplinary proceedings arising from the facts upon which the denial is based.

(f) Refusal to Register. The Administrator may refuse to register an intermediary connecting service under this rule if any individual listed pursuant to paragraph (a)(1)(viii) or other persons or entities associated with the intermediary connecting service were associated with an intermediary connecting service that was disciplined in this state or other jurisdiction or whose registration was revoked in this state or pursuant to the equivalent of the this rule in another jurisdiction.

Task Force Committee Comments. We believe the powers given to the Administrator to deny or refuse to register a service are overbroad to meet legitimate regulatory purposes. At a minimum, discretion should be limited to material omissions that fundamentally challenge the ability of the Administrator to carry out its appropriate regulatory authority. Similarly, Rule 730 II (f) is too broad for purposes of denying a service the right of doing business with Illinois lawyers by including the overbroad and unclear phrase “associated with” in its list of powers to deny or refuse registration.

ARDC Proposed II(h) Reporting Requirements

(2) A registered intermediary connecting service shall maintain a period of not less than seven years, and shall provide to the Administrator upon request, records for each participating lawyer, including:

(i) the lawyer’s name and contact information
(ii) the number and type of connections made involving the lawyers; and
(iii) any financial transactions with the lawyer.
**Task Force Committee Comments:** We question whether this level and specificity of record maintenance is necessary and see no valid reason that the Administrator should be able to request these records.

**ARDC Proposed II(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](http://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.
As electronic means of communication and data storage become more prevalent in an increasingly digital world, countries and supranational organizations have begun passing comprehensive legislation to address concerns of data privacy and protection. Some entities, like the European Union, have reacted to these concerns by passing a single piece of legislation that comprehensively addresses consumer data privacy and protection in a general manner.\textsuperscript{77} The United States, by contrast, does not have such a broad statute regarding data privacy and protection. Instead, the United States has several federal statutes that address data privacy and protection, but these are rather limited in scope and tend to be focused on specific industries and sectors.\textsuperscript{78} Furthermore, data regulation is enforced through the Federal Trade Commission, which relies on language from Section 5 of the Federal Trade Commission Act that prohibits unfair and deceptive business practices.\textsuperscript{79} In response to this, a small number of states have passed comprehensive data protection legislation of their own to address this, with several more states considering such legislation in committee, including Illinois.\textsuperscript{80}

A. Federal Laws on Data Privacy & Protection

One of the first major federal data privacy and protection laws was the US Privacy Act of 1974.\textsuperscript{81} The purpose of the law was to put restrictions on what government agencies can do with personal data that they collect and individual rights regarding that data. These include restrictions on when agencies can disclose personal data to other agencies, limit data collection on individuals “as is relevant and necessary to accomplish a purpose of the agency required,” and permit individuals to modify incorrect data, among other rights and restrictions.\textsuperscript{82}

Another major piece of data protection legislation was the Health Insurance Portability and Accountability Act of 1996 (HIPAA).\textsuperscript{83} The Act required the Department of Health and Human Services to promulgate regulations to protect the privacy of patients and their medical information, which led to the creation of the HIPAA Security Rule and the HIPAA Privacy Rule.\textsuperscript{84} These standards, largely codified in 45 C.F.R. § 160–164, were designed to account for technological changes regarding the storing of...
medical data and balance individual privacy with the ability of medical providers to use such data for treatment options.\footnote{85}

A particularly controversial data protection law was the Children’s Online Privacy Protection Act of 1998 (COPPA).\footnote{86} The law essentially declares that “It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child” unless otherwise specified in the law.\footnote{87} The law has been frequently criticized for failing to protect data collection on children due to the ease of lying about one’s age on the Internet.\footnote{88} Recently, content creators on YouTube have also criticized the law after a suit filed by New York led to sweeping changes on the platform regarding “kid-friendly” content.\footnote{89}

Congress has also passed data protection law regarding banking and finance in the form of the Gramm-Leach-Bliley Act of 1999. Although the Act covers a wide swath of issues, it is notable for including data protections regarding “nonpublic personal information.”\footnote{90} It notably imposed on financial institutions a continuing obligation, with standards and enforcement being handled by the Bureau of Consumer Finance Protection, to “insure the security and confidentiality of customer records and information […], protect against any anticipated threats or hazards to the security or integrity of such records, […] and to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.”\footnote{91}

**B. Proposed Data Privacy & Protection Bills in Illinois**

Without a single comprehensive law at the federal level that addresses data privacy and protection, several states like California have taken the initiative and passed comprehensive data protection bills of their own.\footnote{92} Though these states form a distinct minority, more state legislatures are now considering date protection bills of their own to address the growing need for comprehensive legislation, including Illinois.\footnote{93} As of writing this, Illinois is considering three separate bills on data protection that are likely intended to synergize with each other, with all three bills granting enforcement power of its provisions to the Attorney-General of Illinois.

The first of these proposed bills is the Data Privacy Act.\footnote{94} The purpose of the bill is to protect the data of consumers by those who process and collect their data, who are defined as “controllers” for the purposes of this bill.\footnote{95} The bill clearly delineates the rights of consumers with respect to personal data collected by controllers, which includes the right to receive an answer from a controller to inquiries regarding their use of consumer data (such as selling personal data to data brokers), conditions for when personal data must be deleted by a controller upon request by a consumer, and other rights

---

\footnote{85}{Id.}  
\footnote{86}{15 U.S.C. § 6502 (2018).}  
\footnote{87}{Id.}  
\footnote{88}{See e.g., Eric Goldman, The FTC’s New Kid Privacy Rules (COPPA) Are a Big Mess, FORBES (Dec. 20, 2012), \url{https://www.forbes.com/sites/ericgoldman/2012/12/20/the-ftcs-new-kid-privacy-rules-coppa-are-a-big-mess/#2f551dc867a5} (articulating criticisms of COPPA).}  
\footnote{89}{Jim Salter, The FTC’s 2020 COPPA rules have YouTube creators scared, ARS TECHNICA (Jan. 6, 2020), \url{https://arstechnica.com/gaming/2020/01/the-ftc-2020-coppa-rules-have-youtube-creators-scared/}.}  
\footnote{90}{15 U.S.C. § 6801 (2018).}  
\footnote{91}{Id.}  
\footnote{92}{Noordyke, supra note 7.}  
\footnote{93}{Id.}  
\footnote{94}{S.B. 2263, 101st Gen. Assemb., 1st Sess. (Il. 2019).}  
\footnote{95}{Id.}
The bill notably includes a home rule preemption clause that explicitly states “The regulation of data use and privacy is an exclusive power and function of the State.”

The second bill under consideration is the Data Transparency and Privacy Act. The bill is largely similar to the proposed Data Privacy Act with regards to the rights of consumers regarding their data, but whereas the Data Privacy Act broadly regulates what controllers can do with personal data, the Data Transparency and Privacy Act is targeted towards businesses. The general goal of the bill is to facilitate transparency between consumers and businesses regarding how their data is used and to safeguard that data from potential abuse. The Data Transparency and Privacy Act also includes a home rule preemption clause, further emphasizing the general desire for uniform data protection laws throughout the state.

The final bill under consideration is the Consumer Privacy Act. The bill is very similar to the Data Transparency and Privacy Act in regards to the subject matter and many details, but noticeably includes various disclosures businesses must make with respect to when and how they use consumer data. The bill also prohibits discrimination or retaliation on the part of businesses against consumers who exercise their rights with respect to data privacy and protection, such charging different prices or providing lower quality services. However, businesses may offer consumers financial incentives to consumers in exchange for permission to collect and sell their data provided that businesses do not use “financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.”

---

96 Id.
97 Id.
99 Id.
100 Id.
101 Id.
103 Id.
104 Id.
105 Id.
## APPENDIX H: LEGAL ASSISTANCE MODELS USING OTHER PROFESSIONALS OR LAYPEOPLE

<table>
<thead>
<tr>
<th>Program</th>
<th>Brief Description</th>
<th>Area of Law</th>
<th>Permissible Services</th>
<th>Training/Certification Required</th>
<th>Data/Studies</th>
</tr>
</thead>
</table>
| Navigators in State Courts (e.g. JusticeCorps in IL) | Trained & supervised individuals without full legal training provide one-on-one assistance to self-represented litigants | Varies by program: Family, Housing, Debt Collection, Domestic Violence, Conservatorship, Elder Abuse | - Help litigants navigate court  
- Provide information and referrals to other sources  
- Help complete paperwork  
- Language assistance  
- (in some models) Accompany litigants to court for emotional support and answering of factual questions | - Information vs. advice  
- Layout & understanding of court system  
- Knowledge of referrals and other resources  
- Training can occur via webinars, videos, role play, quizzes, and/or shadowing | Yes. Navigator programs enhance effectiveness of courts, build public trust in the legal system, improve access to justice for people without lawyers, and widen community understanding of the legal system. |
| NYC Court Navigators Program                  | Trained & supervised individuals without full legal training provide one-on-one assistance to self-represented litigants either “for the day” or “for the duration” of the legal process | Housing & Civil Courts: Nonpayment & Debt Collection Proceedings, Housing, Consumer Debt | - Help litigants access & complete forms  
- Provide information  
- Attend settlement negotiations  
- Accompany litigants into the courtroom (can respond to judge if directly addressed) | - 3-hour training with role-play videos + additional training depending on the courthouse  
- Orientation to court, a manual, and copies of informational materials  
- “On the job” training with supervision | Yes. Litigants who received help from a Navigator were more likely to have their defenses recognized and addressed and experienced far fewer evictions (0) and hardships throughout the legal process than unassisted litigants. |
<table>
<thead>
<tr>
<th>Program</th>
<th>Brief Description</th>
<th>Area of Law</th>
<th>Permissible Services</th>
<th>Training/Certification Required</th>
<th>Data/Studies</th>
</tr>
</thead>
</table>
| Lay Domestic Violence Advocates            | Non-lawyers who educate DV victims about available legal protections and provide assistance through court proceedings | Domestic Violence   | - Provide information about resources, shelters, emergency services, and legal protections  
- Help prepare petitions for orders of protection and other court proceedings  
- Ensure that victims meet eligibility requirements, are prepared for court, and show up on time  
- Can sometimes accompany victims to hearings, meetings, depositions, etc. | - Communication and socioemotional training for dealing with victims (DV advocates often affiliated with counseling programs, shelters, or courts)  
- Continuing education requirements and manuals/materials on dealing with victims | No.                       |
| Immigration Legal Assistance – Accreditation Programs | Immigration legal programs can include a mix of staffing beyond lawyers: DOJ fully-accredited representatives (F), DOJ partially-accredited representatives (P), and non-accredited staff (N) | Immigration Law      | F:  
- Represent clients before all branches of DHS, Immigration Court, and the Board of Immigration Appeal (BIA)  
- Expected to have the skillset to fully represent a client in front of an immigration judge  
- Extensive training & experience in immigration law (mentorship)  
- Strong letter of rec from a mentor  
P:  
- Conduct intake, interview clients, prepare applications & | | Yes.  
Immigration programs can be very successful utilizing accredited representatives and other non-representative staff. |
<table>
<thead>
<tr>
<th>Program</th>
<th>Brief Description</th>
<th>Area of Law</th>
<th>Permissible Services</th>
<th>Training/Certification Required</th>
<th>Data/Studies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Document Preparer Program – Arizona</td>
<td>Certified individuals can prepare or provide legal documents for self-represented litigants without attorney supervision.</td>
<td>Any legal matter</td>
<td>Prepare &amp; provide legal documents (i.e. any document that can be used in court)</td>
<td>-Prepare &amp; provide legal documents (i.e. any document that can be used in court)</td>
<td>No, but the program has been in existence since 2003, and an AZ task force is recommending expanding their permissible services to allow them to speak in court when addressed by a judge, among other things.</td>
</tr>
<tr>
<td>Program</td>
<td>Brief Description</td>
<td>Area of Law</td>
<td>Permissible Services</td>
<td>Training/Certification Required</td>
<td>Data/Studies</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| 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:        | - 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.                                                                                                                                                                                                                                           |
<table>
<thead>
<tr>
<th>Program</th>
<th>Brief Description</th>
<th>Area of Law</th>
<th>Permissible Services</th>
<th>Training/Certification Required</th>
<th>Data/Studies</th>
</tr>
</thead>
</table>
| 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       | - 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                                                                                                                                   | - 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                   | - Represent HOH at informal hearing  
- Make statements on client’s behalf  
- Fill out paperwork                                                                                                                                                                                                                                                                 | - No formal training required by the CHA                                                                                                                                                                                                                                                                       | No.                       |

[return to the table of contents](#)
APPENDIX I: DISSENT FROM JOHN THIES
June 22, 2020

BY EMAIL
E. Lynn Grayson, Esq.
Hon. Mary Anne Mason (Ret.)
Chairs, CBA/CBF Task Force on the Sustainable Practice of Law & Innovation

Re: Draft Task Force Report

Dear Lynn and Judge Mason:

Thank you both for the opportunity to comment on the referenced draft report.

First, I appreciate the committee’s interest in improving the sustainability of the practice of law and in advancing needed innovation in our profession. Both have been important priorities during my career as a bar leader, including within the work I have done in the area of legal aid, which depends very much on a viable legal profession.

Second, my comments as to certain of the proposed recommendations that I do not support do not detract from my appreciation for a number of the conclusions and recommendations raised elsewhere in the report, some of which I found to be timely, appropriate and helpful. This certainly includes the recommendations of the sub-committee on which I served concerning Limited Scope Representation. For example, we do indeed have a gap in access to justice and a need in our profession for expanded uses of technology and other innovations. There is no dispute there.

Another important priority of mine (certainly not unique to me) beyond sustainability and innovation, is attention to client protection. When we talk about changes to our ethics rules, this particular priority is paramount, and it figures greatly in how we should evaluate change that is intended to provide greater access to justice. To me, improving access to justice necessarily means expanding high quality – and ethical – legal service across a broader spectrum of the public. The underserved need quality legal service, not weak substitutes.
As a threshold matter, it should go without saying that radical changes in our ethics rules have broad consequences for the entire profession, including the portions which are operating productively, serving many clients and lawyers well. I say this as one who practices in a nine-person general practice firm who over the years has worked closely with lawyers in virtually every practice setting. As you know, there is significant diversity in these settings. Our ethics rules apply to all of us no matter what type of practice we have. When it comes to these rules, one size needs to fit all.

No one should want change that disrupts institutions and approaches that work well; and we especially do not want change that does this while NOT providing the desired outcomes that prompted the change in the first place. This is the big problem with operating out of the playbook — as some have done — of those whose main interest is the bottom line, without systems of ethics remotely similar to our own, with little care about the client interest or truly expanding access to justice. It is also a problem with changes similar to those which have been proven ineffective, like Limited License Legal Technician programs — one of which was just eliminated in the state of Washington after its Supreme Court concluded that LLLTs are not an effective way to meet legal needs, or which are rooted in dubious predicates, like the notion that lawyers could serve a broader client base and get more referrals if only they had more capital or could simply advertise more through the help of non-lawyers who demand a more substantial cut.

With this background, please consider the following additional comments on the draft report and recommendations. These comments generally have the concurrence of task force members Judge Robert Anderson (Ret.) and James Lestikow. In the case of Judge Anderson, he stands on his separate response as to the report of the Optimizing the Use of Other Legal Professional Committee. Otherwise, he agrees with all comments expressed herein.

Changing Rule 5.4 to permit greater lawyer collaboration, including non-lawyer ownership of law firms. We are strongly opposed to the recommendations that would permit greater influence by non-lawyers in the operation of law firms, or in the handling of particular client matters (e.g., through relaxing fee-splitting rules). As the recent experience of the American Bar Association House of Delegates shows, there is no appetite within that body for such radical change, for good reason. Such recommendations pose a tremendous threat to lawyer independence, and run the risk of damaging the viability of large and small firms alike. We do see the value of broader systems of ethical lead generation, and support the approach taken on this subject by the Illinois State Bar Association. The hallmark of this approach has been to provide practical guidance to lawyers who wish to participate in Internet based matching services while preserving the longstanding prohibition on fee sharing with nonlawyers. We believe this provides a viable market-based approach to expanding consumer education about available legal services and ready and convenient access to lawyers available to provide those services.
Recognizing a new Licensed Paralegal model. We express concern about this proposal because we believe that, appropriately, most lawyers would be very cautious about acting as such a paralegal’s supervisor if the paralegal is allowed to perform the responsibilities mentioned. We believe that these present significant malpractice and supervisory concerns and would likely be ineffective in practice. As for those situations where paralegals would not be supervised (not part of the current proposal), we strongly agree with the statement within the report of the “Optimizing the Use” committee that “[t]here has been scant data to support the proposition that the creation of a new independent categories of providers in some other jurisdictions have had a meaningful impact on addressing the access to justice issue.”

Adopting a clearer practice of law definition. While not opposed to reviewing the definition of the practice of law, we are concerned that any changes to the status quo may result in an increased threat to the client interest. There are certainly those outside our profession that would like to see the definition of the practice of law narrowed as much as possible such that their influence and control over the delivery of legal service may be expanded (to the benefit of their bottom lines, but the harm of clients and the legal profession). Accordingly, we believe that any review of this question should be systematic and involve input from all corners of our profession.

Establishing Approved (or Certified) Legal Technology Providers. Founded in part on the recommendations to eliminate the prohibition on fee sharing with nonlawyers is the proposed establishment of “Approved (or Certified) Legal Technology Providers.” Such Providers are envisioned to provide “one to many” legal products and services. This recommended concept has broad significance and has the potential to substantially alter the provision of legal services and the practice of law. Unfortunately, the concept is not well defined, including the recommendation that the details of regulating such providers be deferred to an unspecified board (presumably, although not expressly stated, echoing the “regulatory sandboxes” of Utah and Arizona). We are highly suspicious of this approach, particularly in the absence of more specific analysis and discussion. We believe such recommendations are premature for inclusion in the report.

Lastly, to the extent changes are not made to the report consistent with the above, Bob, Jim and I would appreciate revisions to incorporate a statement that committee member support was not unanimous, and in fact, some members of the task force were strongly opposed to the report’s findings and recommendations that could lead to excessive influence by outside interests in the practice of law, and which threaten lawyer independent judgment, and client interests.
Again, thank you for the opportunity to comment on the draft report. Please do not hesitate to contact me with any questions or comments.

Very truly yours,

WEBBER & THIES, PC

By: __________________________
   John E. Thies

JET/ejo
cc (by email):
   Hon. Robert Anderson (Ret.)
   James M. Lestikow, Esq.
   Rob Glaves, Esq.
   Jessica Bednarz, Esq.
Virtual Town Hall Meeting

On August 18, 2020, the Task Force hosted a virtual town hall meeting via zoom to collect feedback on the report. Members of the profession and the public were invited to attend the hearing. In addition to attending the town hall meeting, interested attendees could also sign up to offer verbal feedback. A recording of the hearing can be found here.106

Written Feedback

Members of the profession and the public also had the opportunity to submit written feedback from July 22, 2020 through August 21, 2020. All written feedback received is organized and included below by recommendation. Some feedback was submitted in memo or letter form via email and some feedback was submitted through the online application and thus the patchwork summary. While some of the letters and memos have been reformatted to fit within this report, none of the content has been altered.

Recommendation #1: Recognize a New Intermediary Entity Model to Help Lawyers Collaborate with Business and/or Administrative Services

Kimball R. Anderson, Partner at Winston & Strawn LLP

See Kimball Anderson’s feedback in his memo on page 152 below.

Attorneys Liability Assurance Society (ALAS)

See ALAS’s feedback in their memo on page 158 below.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

This recommendation is a great start. Given the depth and breadth of the need for legal services the one-size-fits-all approach to this aspect of regulation seems unduly restrictive. I like how this recommendation focuses on the client need and hence opportunity for lawyers and then designs regulation to support us in reaching more people with legal needs. Drawing on the expertise of others lets us do what we do best and leverage what others can bring to the table. My question is whether some mid and large firm lawyers don’t feel the same as the solo and small firm lawyers. Perhaps with some experience to guide us this could apply generally through the profession.

Illinois State Bar Association (ISBA)

See the ISBA’s feedback in their letter on page 168 below.

Institute for the Advancement of the American Legal System (IAALS)

106 https://www.youtube.com/watch?v=L7PUBNYbWgl&feature=youtu.be
See IAALS's feedback in their letter on page 175 below.

**Art Lachman, Attorney at Law & Co-Chair of Association of Professional Responsibility Lawyers (APRL) Future of Lawyering Committee**

See Art Lachman's feedback in his letter on page 180 below.

**Rohan Pavuluri, CEO at Upsolve**

This is an excellent idea. Consumers across Illinois suffer because law firms are unable to attract individuals who have strong skills beyond practicing law -- this includes technology, marketing, and business skills. There must be a way to invite these individuals to participate in the success of the law firm.

There are countless other industries where a high degree of ethics matters to consumers -- medicine, accounting, investing, etc. These industries all permit non-practitioners to own equity or share revenue. It is unreasonable to think that the moment a non-lawyer owns equity in a law firm that the law firm is suddenly at high risk of compromising its integrity or ethics.

Indeed, in the 21st century, there are many reasons why rules against having non-lawyers own equity or share revenue may compromise a law firm’s commitment to its clients. Consider the importance of data privacy and security today and how important it is to attract people with this expertise to your organization. A CTO of a law firm would be able to exert more influence on data security practices over a firm if they were a part-owner.

**Darren Perconte Principal Attorney at Perconte Law**

It is clear that there is an access to justice issue, and a sustainability issue for lawyers and law firms. Intermediary entities that help connect potential clients to lawyers could help with both issues. However, private for-profit entities are not the answer to either problem. Across many industries, we have seen the issues created by for-profit entities entering a market and neither the consumer nor the businesses in the industry benefiting. Additionally, in regulated professions, we have seen many examples of these connecting businesses engaging in unethical behavior. Established organizations in the legal industry should build out robust services to connect potential clients and lawyers.

In the pocket chat for Recommendation #1, creating a service to match clients to lawyers was described as a win-win. That assumption forms the basis for radically changing the current regulatory rules, and inviting Silicon Valley and private equity into the legal relationship between client and attorney. If a client cannot find an attorney, but there are attorneys available to perform the legal services, then a service connecting the client to attorney is a win-win. Unless, that potential client cannot afford the attorney. Especially, if the potential client cannot afford the attorney due to the cost of the service and the attorney. That's a lose-lose. If the attorney cannot afford to take on the potential client because the cost of the service prevents it from being profitable for the attorney, then it is a lose-lose.

A for-profit intermediary entity designed to connect lawyers to potential clients may succeed in connecting clients to attorneys, but it will definitely succeed at dominating the advertising market for attorneys. Once the for-profit entities become established, the massive amounts of funds they can throw at internet advertising will push all attorneys to the deep pages of Google searches. In order to obtain clients over the internet, attorneys will be forced to enter into deals with these intermediaries. That is when the intermediaries will really start to profit by keeping consumer rates the same and decreasing
the amount attorneys make by providing those services. Maybe initially these entities will be able to cut rates by operating at a loss, but the various solo and small firms will not be able to compete in the advertising arena, and will become beholden to these entities. That is extremely dangerous for consumers and attorneys.

The Chicago Bar Foundation has presented the ride sharing companies as an example of an industry the legal industry should look for inspiration. Uber and Lyft have connected many riders to drivers through efficient apps. While doing so, these companies have generally reduced the costs of using a car service. And how do these companies do that? By operating at massive losses. In 2019, Uber lost $8.5 billion. In 2018, Uber lost $1.8 billion. In 2017, Uber lost $2.2 billion. Lyft lost 2.6 billion in 2019, 911.3 million in 2018, and $1.1 billion in 2017. Those are not sustainable business models. Additionally, Uber and Lyft drivers struggle to make minimum wage. That is not a sustainable path for practicing attorneys. The proposed private entities would be Ubers for lawyers. So, they will either need to increase pricing to survive, or they will fail. Consumers will not benefit from either outcome.

During the Covid-19 pandemic, there have been countless stories of how Grubhub, Postmates, Uber Eats, and DoorDash are shortchanging restaurant owners, and costing consumers more than if they ordered directly from the restaurants. Even with restaurants and consumers losing in the situation, Uber Eats lost $232 million in the second quarter of this year (not including expenses). That is during the pandemic with food deliver up across the nation. That is a connecting services that is a lose-lose-lose situation.

Talkspace is a therapy-by-text company that connects therapists to potential clients. As the New York Times recently reported, former employees claim that Talkspace has questionable marketing practices and improperly mines the data of those they connect. Their accounts suggest that the needs of a venture capital-backed start-up to grow quickly can sometimes be in conflict with the core values of professional therapy, including strict confidentiality and patient welfare. Due to issues with the app and problems connecting clients and therapists, Talkspace employees were tasked with writing fake positive reviews. Additionally, Talkspace has been criticized for advertising to trigger people into needing their services. Most importantly, confidential information was used in their market research. Talkspace uses various methods to coerce the therapists to prioritize certain clients and punishes therapists financially for not responding within certain time frames. It was not that long ago that Talkspace was a tech darling. Now, they are a cautionary tale of when tech start-ups get involved in connecting clients to professionals. Lawyers should not trick themselves into believing that just because we are lawyers, we can better regulate big tech and private equity-backed start-ups in our industry.

The perils of for-profit entities getting involved in our industry should not be brushed aside as protectionism. They are legitimate concerns, and we should not open the door to these issues until we have tried other solutions. The legal industry has ethical, moral, and financial stakes in connecting potential clients and attorneys at affordable and practice-sustaining rates. During the July 21 CLE for Regulatory Reform to Better Serve the Profession & Public, the question was posed as to whether there had been any consideration to using funds gained from lawyers trust accounts to establish an intermediary entity. The answer provided was that it had not bee considered.

The Lawyers Trust Fund and the Lawyers Committee for Betting Housing have created a bot called Rentervention to help tenants get the legal services they need. Rentervention helps consumers figure out if they have a legal issue, and it connects them to resources and potentially a legal aid organization.
The Lawyers Trust Fund and similarly situated entities (Chicago Bar Association, Chicago Bar Foundation, Illinois State Bar Association, etc.) should work to create one or multiple services that connect lawyers to potential clients. These intermediary entities would avoid many of the thorny complications and dangers of involving for-profit entities in the process. There are many ways to construct a connecting service, and certainly it would require tweaks along the way. However, this kind of intermediary entity would be incentivized solely to connect lawyers to clients. It would only require sustainability instead of profitability. Operating through the legal community, it would be the responsibility of addressing the access to justice and lawyer sustainability issues where they belong - with the legal community. The Illinois justice system would be better off if the legal industry took the lead on solving these legal issues rather than punting the chance of coming up with viable solutions to big tech and private equity.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis Rendleman’s feedback in his memo on page 182 below.

Responsive Law

See Responsive Law’s feedback in their letter on page 189 below.

Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy Ricca’s feedback in her letter on page 192 below.

Lynda Shely, Ethics Lawyer at The Shely Firm PC

As a member of the National Advisory Council to the CBA/CBF Task Force, I was honored to participate in some of the discussions that went into the Report. I applaud the Task Force for addressing many issues related to the access to justice gap and sustainability of the profession in the recommendations in the Report - they are a start! My comments in support of the recommendations, with a suggestion that the proposals could go even farther, are my own and based upon over 25 years of advising law firms in ethics compliance issues, as well as assuring that legal consumers receive legal services from competent and accountable providers. My remarks focus on just three of the recommendations - #1 and #11 pertaining to sharing legal fees with nonlawyers and/or referral sources, and #6 regarding updating the rules that regulate lawyer advertising (comments shared regarding Recommendation #6 have been moved to that section below).

Sharing legal fees with nonlawyers in accordance with RPC 5.4: Recommendation #1 suggests new regulatory models for registration of intermediary entities that assist lawyers in marketing their availability, with commensurate amendments to Rule of Professional Conduct 5.4 that currently prohibits sharing any fees with nonlawyers. Recommendation #11 encourages further consideration of modifications to Rule 5.4. I encourage further review because regulation of referral entities is not necessary to legal consumers and Rule 5.4 needs to be retired.

Arizona currently is considering amendments to eliminate Rule 5.4 entirely, based upon the Arizona Supreme Court Task Force on the Delivery of Legal Services’s succinct conclusion that [...] ER 5.4 be eliminated because no modern compelling reason for maintaining the rule exists. (Petition R-20-0034 at 9).
Rule 5.4 is not necessary to assure that lawyers use their independent professional judgment in selecting and advising clients. The Rules of Professional Conduct regarding conflicts and competence still apply. Currently a lawyer (defined as those attempting to comply with their ethical obligations) must contort themselves to fit within the antiquated strictures of Rule 5.4 if they want to compensate a nonlawyer employee for exemplary work, or obtain financing to expand their practices without having to incur loans or lines of credit from banks. It is a fallacy that lawyers will be corrupted if they share legal fees with nonlawyers. There is no data evidencing that there is such a problem. Lawyers already manage the financial pressures to bring in more clients or bill more fees without running afoul of their obligations to represent clients competently, diligently, and objectively. Presuming that a nonlawyer employee/investor/referral source would insist that a lawyer violate their ethical obligations in order to generate more revenue is a wholly unfounded premise. In fact, the Law Society of England and Wales has not seen an increase in complaints about the quality or pricing of legal services since they instituted nonlawyer ownership several years ago. Nor has the District of Columbia seen nonlawyers creating significant ethics issues in law firms since DC amended its version of Rule 5.4 back in 1991 to permit nonlawyer ownership. The nonlawyer equity owner’s interest is the same as the lawyer’s - provide quality legal services and avoid bar complaints, malpractice claims, and fee disputes. Moreover, the reality is that law firms already share legal fees with nonlawyers in their firms every time they pay someone’s salary or make a payment on their line of credit because all revenue in a firm obviously is from legal fees.

Rule 5.4 is not necessary to assure that clients receive competent, affordable, and conflict-free legal advice. It creates an unnecessary restraint on lawyers that further inhibits the already struggling profession to remain competitive and relevant in the legal services market.

Regulating intermediary entities that provide accurate information about the availability of legal services is unnecessary. Such regulations reinforce an outdated paternalistic view of how consumers view legal advertising. Consumers know when they search online for a lawyer that they may be viewing a website that is going to refer them to lawyers who have paid to be listed or paid to receive referrals just like consumers know that if they search for a hotel room, a dentist, or a vet the websites they view may be referral sites. As long as the information about the lawyer is accurate, why should it matter if the lawyer pays a website (or a human) for every possible client sent to them? Lawyers are still responsible for the content of the advertisements. The lawyer still must be competent to provide the legal services and still must check for conflicts before accepting the client. Merely paying for a referral does not mean the lawyer must accept the prospective client or share information about the client with the referral source. There is no difference, ethically, between paying a nonprofit referral service, which lawyers can do right now in many states and paying a for profit website.

Referral services or intermediary organizations - whether for profit or nonprofit - should be encouraged to provide accurate information about the availability of legal services without imposing unnecessary regulatory obstacles. There is no evidence to indicate that consumers are harmed by for-profit referral services, nor is there any indication that such services need to be regulated, certified, or otherwise overseen by a government entity.

Rule 5.4 (and 7.2) are not necessary to protect legal consumers. They unreasonably inhibit lawyers from partnering with other professionals who could assist clients, and unnecessarily restrict lawyers from using innovations (the internet) to market their availability. Anticompetitive restraints on legal
marketing, such as Rules 5.4 and 7.2 do not protect consumers and they continue to hurt the profession. These Rules are inconsistent with the regulatory standard set forth in the Preamble to the Rules of Professional Conduct:

[12][. . .] The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.[. . .]

Rule 5.4 should be retired altogether.

The Stanford Center on the Legal Profession

See the Center’s comments on page 195 below.

Recommendation #2A: Modernize the Rules So that Lawyers Can More Actively Participate in the Development and Delivery of Technology-Based Products and Services

Attorneys Liability Assurance Society (ALAS)

See ALAS’s comments on page 158 below.

Marie A. Clear, Marie A. Clear, P.C.

While I do not believe the scope of this technology topic was intended to include my concern, below, I nonetheless want to bring it to the Task Force’s attention.

I am a residential real estate attorney, and the issue of fraudulent wiring instructions - scam artists inserting themselves in the midst of communications (usually between a buyer and a title company, but sometimes posing as the attorney) and providing fraudulent wiring instructions is costing the country billions of dollars in stolen funds every year.

A clear technological solution simply does not exist. For example, many companies are increasingly using "secure" emails with embedded links to deliver wiring instructions. However, such emails can easily be spoofed by criminals with just a little technological know-how, making the "real" secure email vs the scam secure email impossible to distinguish. And scammers are already use valid-appearing emails with embedded links as the main delivery method to deliver harmful code or software rules modifications to atty PCs that facilitate their crimes.

For example, it used to be the case in my practice that I had a VERY strict rule that no one I employ is permitted to click ANY email embedded link on our PCs. That kept us entirely safe from 99% of malicious code. But now with so many real estate related companies adopting embedded links in the misplaced belief that it makes us more secure, we simply have to click these links as part of our day to day business.

A knock-on problem relating to fraudulent wiring instructions is that I worry many malpractice insurance carriers have no idea whether an attorney is protected if they become embroiled in a fraudulent wiring situation with their client. At least ISBA Mutual was not clear about what constituted culpability on the atty's part, whether they would be covered, or what their response should be. I approached them with the question a year or two ago and they had no published detailed guidelines...
addressing the issue at all.

So again, I'm quite sure your Task Force wasn't intending to address this specific issue, and it's likely an issue that will NOT be remedied by technology (since it lends itself to technological breach). Nor were you probably thinking about related insurance questions or even attorney ethical guidelines for best practices, but I wanted to put it out there in case your scope is broader than I think. But in the event the Task Force has the bandwidth down the road to look at this matter specifically.

However, if you are going to look at any type of attorney use of technology, please be sure to also consider what constitutes technological malpractice on the part of an attorney in connection with your tech subject.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

This recommendation may be among those which have the greatest potential to improve our ability to serve those who need what we offer. Technology is so pervasive today that is has recast how consumers of all sorts of services seek out solutions and expect to be served. We need to be present where they are and use means which are relevant and comfortable for them to deliver our services. This may mean adapting some of our approach to service delivery so that we continue to protect core values like confidentiality and privilege, but it is part of our obligation as professionals to figure that out, as opposed to expecting our clients to forego the benefits of technology.

Illinois State Bar Association (ISBA)

See the ISBA's comments on page 168 below.

Institute for the Advancement of the American Legal System (IAALS)

See IAALS's comments on page 175 below.

Art Lachman, Attorney at Law & Co-Chair of Association of Professional Responsibility Lawyers (APRL)
Future of Lawyering Committee

See Art's comments on page 180 below.

Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

As lawyers, we need to be adaptive to the world of technology and use technology to help advance the legal profession and to allow for access to those who cannot afford to hire an attorney. This recommendation provides solid guidance on how to regulate this field. I would feel very comfortable allowing this recommendation to govern.

Rohan Pavuluri, CEO at Upsolve

This is an excellent idea. Lawyers must be able to provide technology services to increase access to our legal system.
Darren Perconte, Principal Attorney at Perconte Law

Law firms and solo attorneys should be allowed to provide one-to-many legal services outside the scope of their practice of law without having to become an "Approved Legal Technology Provider." Only once they provide specific one-on-one legal services would it be considered the practice of law. Law firms and solo attorneys would have to clearly explain that the one-to-many legal services is not legal advice and does not constitute representation.

Rule 5.4 - This would do nothing to increase consumer access to legal services or the sustainability of legal practices. There is not any data that shows that existing legal technology providers have increased access to legal services. The data out of England shows that alternative legal providers face the exact same pricing pressures as law firms, and charge as much as law firms for the same services. Essentially, this just shifts the potential for profitability from lawyers to less-regulated businesses.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Responsive Law

See Responsive Law’s comments on page 189 below.

Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy’s comments on page 192 below.

Barry C. Taylor, VP for Civil Rights and Systemic Litigation at Equip for Equality

Equip for Equality, a private non-profit organization that provides free legal services for people with disabilities, is supportive of Recommendation #2 seeking to enhance the availability of technology-based legal products and services and authorizing greater participation by lawyers in technology solutions. However, it is absolutely critical that any regulatory changes that involve technology ensure that technology that is either developed or utilized is accessible to people with disabilities, and more specifically accessible to people who are blind, including attorneys and members of the public who are blind. Technology has been incredibly helpful to provide access to people with disabilities, if technology, including websites, are programmed to be accessible for people who use screen reader software. Unfortunately, we have seen over and over technology being developed without considering accessibility for people with disabilities. For instance, the new on-line filing system for the Circuit Court of Cook County failed to ensure that its new system was accessible prior to being launched. Since we realized that the new system was inaccessible (based on a blind attorney in our office not being able to independently use it), we have been working with the court and the contracted developers on retrofitting the system to make it accessible. Addressing these issues after a system is launched is more costly and it delays equal access to technology. State and federal law require that technology be accessible to people with disabilities. Moreover, the World Wide Web Consortium (W3C) has developed Web Content Accessibility Guidelines (WCAG) to ensure that electronic accessibility is accessible. See https://www.w3.org/ Equip for Equality strongly recommends that any regulations addressing technology ensure that standards for accessibility are included. As lawyers, we must be
stewards of the law and only work with systems that are accessible to all. Please reach out to us if you have questions or need assistance.

**Recommendation #2B: Explicitly Authorize the Delivery of Technology-Based Legal Products and Services by Individuals or Entities and Appoint a Board to Develop an Appropriate Regulatory Mechanism Responsible for Registering and Vetting Approved Legal Technology Providers**

**Hon. Alison Conlon, Circuit Court of Cook County**

First, I want to commend the Chicago Bar Association, the Chicago Bar Foundation and its Task Force on the Sustainable Practice of Law & Innovation for their thorough and thoughtful work product and recommendations. It’s hard to imagine it arriving at a better time, given how all of us in the legal profession and courts have been forced to change and rethink our practices during the pandemic. That the Circuit Court of Cook County migrated from its prolific use of carbon paper to Zoom and emails in a matter of weeks is just one example of our ability to adapt, whether we like it or not. Let’s try to like it!

From the standpoint of the administration of justice, I am intrigued by the Task Force’s recommendations about enhancing the availability of technology-based products and services and authorizing greater participation by lawyers in technology solutions. Many self-represented litigants face legal problems with common attributes but do not know their legal rights. A “one-to-many” form of disseminating information about their rights seems not only promising, but efficient and necessary. Technology lends itself quite readily to “bundling” and disseminating legal information on a large scale in a way that a one-on-one attorney-client relationship cannot. Consider an alleged debtor in small claims court who assumes she has nothing to say in response to a complaint, who is able to learn through technology of the availability of a jury demand and a statute of limitations defense, if appropriate. The assertion of these rights can be case-determinative. Or consider a self-represented landlord who learns in advance about the new requirement to attach a copy of the eviction notice to his complaint, and therefore avoids having his case dismissed. This potential to inform people of their rights on a large scale through technology and an expanded personnel base is exciting for the law, legal profession and administration of justice.

**Dan Cotter, Attorney & Counselor at Howard and Howard Attorneys PLLC**

I applaud the Task Force for its work and am in agreement with this recommendation.

**Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada**

These providers can not only help fill a need in the market, but can be partners in how lawyers serve their clients. For those reasons, this is a great recommendation. We should focus on what they offer and how lawyers can work with them to expand the range of what we offer and how many people we can serve. For services these providers deliver directly, we should look at them as we look at firms: focus on the quality of the output rather than the form of the vehicle by which the service is delivered. So glad this recommendation is part of the report.

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.
Institute for the Advancement of the American Legal System (IAALS)
See IAALS’s comments on page 175 below.

Art Lachman, Attorney at Law & Co-Chair of Association of Professional Responsibility Lawyers (APRL)
Future of Lawyering Committee
See Art’s comments on page 180 below.

Rohan Pavuluri, CEO at Upsolve
This rule is well-intentioned. I propose two changes and voice one concern.

First, the definition of a Legal Technology Provider is overly broad. This will mean that there are big risks of existing platforms just leaving Illinois. DIY document generation/assembly tools are materially different from tools that provide personalized legal advice or legal strategies. This rule, as it's written now, appears to apply to TurboTax (software used to generate IRS tax forms) and any online form-filling template. This broad definition could easily backfire. There are countless national platforms that provide form-filling tools. They may find it easier to just pull out of Illinois and continue to operate in 49 other states. Also, keep in mind that the Federal Trade Commission already regulates every Legal Technology Provider and that its regulatory purpose overlaps with many of the stated purposes of the proposed regulatory agency in this rule.

Second, this rule should only apply to for-profit Legal Technology Providers. There are several free online technology tools provided by LSC-funded legal aid nonprofits. Undertaking this regulatory process would be unnecessarily cumbersome and needlessly take up donor dollars for these nonprofits. If other states enact a similar rule, consider the nightmare that a free nonprofit tool in a federal area of the law must undergo. They would have to get 50 regulatory approval processes and 50 annual reports. And consider that the free tool is not generating any revenue to fund compliance with this burden. Like above, I'm concerned that this will stifle nonprofit innovation in Illinois, doing more harm to low-income consumers than good.

Finally, I'm concerned by the First Amendment constitutionality of this proposed rule and suggest a narrower scope to address it. A choose-your-own-adventure book and a choose-your-own-adventure software program are essentially identical. If First Amendment rights protect the former, they may apply to the latter. As a result, you should tread with extreme caution before adopting the broad definition of a Legal Technology Provider. You may limit the rule to focus on attorney-involvement within these technology platforms.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer
See Dennis’s comments on page 182 below.

Responsive Law
See Responsive Law’s comments on page 189 below.
Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy’s comments on page 192 below.

The Stanford Center on the Legal Profession

See the Center’s comments on page 195 below.

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

Hon. Joel Chupack, Circuit Court of Cook County

As a judge in Eviction Court at the Daley Center, my experience with limited scope representation has left me questioning its benefit in this setting. During my tenure in Eviction Court (December, 2018 to April, 2019), limited scope appearances (“LSA”) were typically used by private attorneys in conjunction with the filing of a jury demand. At the initial court date, the tenant (or counsel, who many times did not appear) would apprise the court of the filing of a jury demand. The court would then sign a transfer order and the case would be transferred to a randomly selected judge presiding over a jury call. The first court date on the jury call would be typically be one week after the transfer order was entered (the "jury intake" date). At jury intake, discovery and motion deadlines would be set.

The "scope" of the representation on these LSAs ended at jury intake. Typically, at jury intake, a discovery schedule would be set along with a date to file dispositive motions and/or the setting of a trial date. If a "deal" with the landlord could not be worked out at jury intake, tenant's attorney would withdraw his or her representation. The tenant would then be left is on his or her own for the remainder of the case.

This scenario presents many issues. Did the tenant truly understand the "scope" of the limited appearance? Even if the tenant understood it, is this how the LSA was intended to be used by the Illinois Supreme Court? Should a private attorney be able to file an appearance in a jury case and then withdraw the appearance if the case does not settle at jury intake?

On one occasion that I can remember, after the case was transferred, the tenant scheduled a motion back in my courtroom. The tenant said that she did not want a jury trial and now wanted me to hear the case. She told me that her attorney was not representing her anymore. I explained to her that she can waive the jury demand and have a bench trial before the jury judge, but the case cannot transferred back to me. I have seen a LSA used by a legal aid attorney, in which the scope was limited to the representation on a motion to quash. This was a proper and effective use of the LSA.

The CBF had a follow up conversation with Judge Chupack about his concerns during which he suggested we ask for an ethics opinion that clarifies that limited scope appearances are improper in situations where they are used to the detriment of the client. The ISBA may be able to provide such an opinion, and the CBF will reach out to them regarding this suggestion.

107 The CBF had a follow up conversation with Judge Chupack about his concerns during which he suggested we ask for an ethics opinion that clarifies that limited scope appearances are improper in situations where they are used to the detriment of the client. The ISBA may be able to provide such an opinion, and the CBF will reach out to them regarding this suggestion.
In my opinion, the use of a LSA by a private attorney, where the representation ends at jury intake, results (i) in confusion for the tenant, (ii) in the tenant being disadvantaged due to the intimidation of having to conduct a jury trial without representation or being forced to waive the jury demand, (iii) in more delay in the administration of the case due, and (iv) distrust of the judicial system.

The LSA should not be one where the tenant is left worse off by its use. Perhaps the court needs the authority to approve the withdrawal as part of its function to effectively administer cases. The proposed rules intentionally leaves the court out of the decision. Perhaps the proposed rules need to define what is a permissible limited scope in litigation and/or, in the alternative, define what is an impermissible limitation on representation.

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

**Institute for the Advancement of the American Legal System (IAALS)**

See IAALS’s comments on page 175 below.

**Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law**

What we have right now doesn’t work. Pro Se litigants are clogging up the court system and they need help that they cannot afford. This recommendation would likely alleviate this burden on the court. I particularly like the recommendation for education on limited scope for law students, attorneys, judges, and clerks - this will help with the training and make everyone more comfortable with doing this.

**Rohan Pavuluri, CEO at Upsolve**

This is a great idea. Countless areas of the law don’t require a lawyer at every step of the process. Consumers should be allowed to make decisions for themselves about how much help they need and shouldn’t be forced to pay fees they can’t afford due to the existing regulatory framework.

**Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer**

See Dennis’s comments on page 182 below.

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

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

**Rohan Pavuluri, CEO at Upsolve**

This is an excellent idea. Consumers should be empowered to make their own choices about how much help they need. Many requirements around full-representation are both paternalistic and hurt law firm business, by not allowing law firms to capture a lower-income segment of the population.
Thomas Shannon, Partner at Shannon & Associates Ltd.

In light of changes brought about by the recent pandemic, Law Schools should be encouraged to explore offerings addressing the advantages of virtual law firms (as distinct from brick and mortar operations) and the related issues of fee sharing, jurisdictional regulations/requirements, "associations of attorneys" (as distinct from formal law firms) etc.

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

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

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

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Rohan Pavuluri, CEO at Upsolve

This is a great idea. In Chapter 7 bankruptcy, for example, most people don't need an attorney to show up to their 341 meeting with the trustee. This meeting lasts about 5 minutes and in the vast majority of 341 meetings, the lawyer doesn't say more than a few words. Attorneys should be able to charge to review the bankruptcy forms and then individuals should be able to file them on their own. This would dramatically increase both business for private attorneys and increase access to justice by reducing the cost of a bankruptcy.

Thomas Shannon, Partner at Shannon & Associates Ltd.

Consideration should be given to allowing limited scope representation on transactional as well as litigation matter. This would involve written agreements on risk sharing regarding the transaction and Client willingness to assume some level or risk which need not be addressed by Attorney.

Recommendation #4: Develop New/Amended Rules on Alternative Fees and Fee Petitions

Hon. Joel Chupack, Circuit Court of Cook County

It is unclear to me in reading the proposed Supreme Court Rule 300 whether (i) the written agreement needs to be attached to the Fee Petition, (ii) whether the court has the right to determine whether the written agreement is reasonable, and (iii) whether the court can require to see a ledger of hours incurred, in order to determine the reasonableness of the fee being charged? 108

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

108 The Task Force made changes to Recommendation #4 to address Judge Chupack’s questions.
Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

Alternative fee agreements should be binding and enforceable via a fee petition. These agreements are good alternative options for fees and more doable by some individuals. This recommendation would allow that so I’m in support of this recommendation.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Recommendation #5: Recognize a New Licensed Paralegal Model So that Lawyers Can Offer More Efficient and Affordable Services in High Volume Areas of Need

American Association for Paralegal and Legal Education

See the Association's comments on page 156 below.

Chicago Paralegal Association

See the Association's comments on page 166 below.

Melanie Blair, affiliation unknown

I would really love to understand the reasoning as to why someone with a JD should be allowed to do all of these things that normally only a lawyer can do, under the supervision of someone else with JD, and the only difference between the two is that one JD took the bar exam and the other hasn’t. What skills does the bar exam provide one JD with over the other? How does the bar exam show the necessary competence for one JD to supervise the other?

Kathryn Conway, Partner at Power Rogers, LLP

I suspect this recommendation will be somewhat controversial, but it appears there is a demand-supply problem that would be solved in these specific practice areas. Not only would this increase supply in high-volume practice areas, it would make representation more affordable for litigants and more feasible for small firms and sole practitioners.

Teresa Gaglione, JD and Legal Specialist at Corporate Law Partners

I am trying to understand the logic behind why someone can be licensed under Section (c)(1)(v) and counsel and advise clients and negotiate a settlement, under the supervision of an attorney. What makes them minimally competent?

The key distinguishing feature between an attorney and a licensed paralegal under section (c)(1)(v) is the bar exam. Under this proposal, a JD may represent and advise a client without having taken the bar exam, so long as they are supervised by an attorney. But, if the legal training provided by a JD, continuing CLEs, and supervision by an experienced training is not enough to ensure minimum competency of JDS looking to become attorneys, why is it sufficient to ensure minimum competency of a JD looking to become a licensed paralegal?

As one member of the committee asserted, "the reason attorneys have to attend law school and not
just apprentice with a licensed attorney is because this formal education is seen by the bar as the only way to ensure that lawyers have the competence to adequately represent individuals in a court of law." I agree.

The task force report does not rebut this statement that law school is the only way to ensure competence, but rather builds on it in acknowledging that is one way to ensure competency, but that an individual "can demonstrate aptitude and intelligence through service and experience."

I must ask, then, why this same logic does not apply to JDs trying to become lawyers. What distinguishes them?

My proposal is that, if a JD and supervision by an experienced attorney is sufficient to ensure minimum competency for a Licensed Paralegal, then it is sufficient to ensure minimum competency in attorneys.

I hope this proposal, or one in the very near future, reflects this standard for minimum competency for JDs looking to become attorneys. Thank you.

Illinois Paralegal Association

The Illinois Paralegal Association has been a leading voice for paralegals in Illinois since 1972. Our members take their role seriously, as evidenced by their attendance at continuing legal education seminars, their pro bono work, and their annual reaffirmation to following IPA’s Code of Ethics.

Our comments and recommendations to the Proposed Licensed Paralegal Rule 7XX are set forth below. We have a pdf copy of our response as well as a redline of the proposal we would like to submit in connection with this response. Please contact us to obtain this copy. You can reach me at president@ipaonline.org.

1. Title. The IPA recommends the proposed designation of Licensed Paralegal be modified to Limited Licensed Paralegal. The proposed change serves to underscore the limited nature of the legal work to be completed by trained and licensed non-lawyers. It also leaves the Licensed Paralegal title available for potential future use should a more expanded role of paralegals be considered in the future.

2. Education level. IPA recommends that all limited licensed paralegals will have completed, at minimum, an associate degree. Illinois has many excellent two year paralegal programs, which is not the case in all states. Paralegals in the greater Chicago area, in particular, have access to many excellent education sources, including two and four year paralegal studies programs and post-baccalaureate certificate programs.

3. Threshold experience level. The required number of hours of substantive legal work should be determined by education level achieved. IPA recommends a minimum requirement of 1,000 hours for individuals who have earned either a baccalaureate degree in any discipline, or a post-baccalaureate certificate in paralegal studies from an accredited college or university. For others, the substantive legal work requirement should consist of at least 2,000 hours.

4. Continuing education requirements. IPA is committed to continuing education and offers seminars to its members. We believe that the minimum requirement to maintain the limited licensed paralegal
designation should consist of a minimum, in each 24 month period, of 12 total hours, of which 2 to 4 hours shall be in professional ethics.

5. Supervision of Limited Licensed Paralegals. IPA feels strongly that limited licensed paralegals can contribute to the unmet legal needs of the community, however we remain committed to working under the supervision of attorneys. A supervising attorney must be available for consultation at all times.

The Illinois Paralegal Association supports the general recommendations of the Report and appreciates the recognition that paralegals and other paraprofessionals are afforded. IPA will lend its support to the Task Force in lobbying efforts with respect to the goals outlined in the Report. In particular, IPA believes its members are well suited to assist in developing certain court procedures to make them accessible to the average citizen. IPA has a working relationship with paralegal educators throughout the state and can use our connections to facilitate training programs for the licensing scheme. IPA traditionally holds annual education conferences through which additional training can be offered to further the education of licensed paralegals.

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

**Institute for the Advancement of the American Legal System (IAALS)**

See IAALS’s comments on page 175 below.

**Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law**

This will provide more cost effective options for the public so that more people can afford counsel.

**Thomas Shannon, Partner at Shannon & Associates Ltd.**

Law Schools should be encouraged to consider curriculum involving first year studies applicable toward eventual law degree; or toward MBA; or toward certificate degree (e.g. paralegal). Final decision not required until further during 3 year course of study. Counseling to be provided by practicing lawyers, MBA grads, and paralegals on practical and financial considerations relative to each career.

**Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer**

See Dennis’s comments on page 182 below.

**Responsive Law**

See Responsive Law’s comments on page 189 below.

**The Stanford Center on the Legal Profession**

See the Center’s comments on page 195 below.

**Recommendation #6: Streamline and Modernize the Rules Around Lawyer Advertising**

**Illinois State Bar Association (ISBA)**
Darren Perconte, Principal Attorney at Perconte Law

I agree that the rule on solicitation should be changed, rule 7.4 should be eliminated, and that lawyers should not have to identify advertising materials.

I do not see any reason why Rule 7.2 needs to be changed. I think that eliminating this language would open the door to “advertising companies” dominating sectors of the legal industry in monopolistic ways: setting consumer prices, and setting lawyer compensation. The massive amounts of funds they can throw at internet advertising will push all attorneys to the deep pages of Google searches. In order to obtain clients over the internet, attorneys will be forced to enter into deals with these advertising businesses. That is when the advertising businesses will really start to profit by setting consumer rates because they will be the only rates consumers will see, and decreasing the amount attorneys make by providing those services because attorneys in certain practice areas will not be able to get clients except through the advertising businesses.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Responsive Law

See Responsive Law’s comments on page 189 below.

John C. Sciacotta, Partner at Aronberg Goldgehn

Not critical.

Lynda Shely, Ethics Lawyer at The Shely Firm PC

The proposed amendments to the Rules, eliminating Rules 7.2, 7.3, and 7.4 and maintaining the consumer protection standard in Rule 7.1 (that all advertising must refrain from false and misleading communications) are a practical updating of the Rules. The Association of Professional Responsibility (APRL) 2014 survey of lawyer regulatory agencies found that the vast majority of complaints about lawyer advertising are filed by other lawyers, not consumers. Moreover, the Rule most often cited by regulators was Rule 7.1 - lawyers must refrain from false and misleading communications. That Rule is sufficient to establish the standard that lawyer advertising must be truthful and not create unjustified expectations.

I applaud the Chicago Bar and Bar Foundation Task Force for recommendations that are moving in the right direction to address both the access to justice gap and the need to help sustain the profession in a rapidly changing legal marketplace and would encourage regulators to consider even more updating of the Rules to retire Rule 5.4 altogether.

Recommendation #7: Recognize a New Community Justice Navigator Model to Build off the Success of Illinois JusticeCorps in the Courts

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.
Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

Yes - this would be amazing to replicate in the form of a computer-based counterpart to the Illinois JusticeCorps! Access to legal help is an urgent issue and many people don’t even know that they even have a legal issue. This model would help address those issues. This is such an important and wonderful recommendation!

Rohan Pavuluri, CEO at Upsolve

The current system of justice for who is allowed to provide legal assistance is deeply racist. UPL rules promote racial inequity and guarantee that black Americans don’t have equal opportunities and equal rights under the law.

First, consider which group of people disproportionately has access to three years and $100,000-plus of graduate school education. Due to today’s racial wealth gap, created by centuries of white supremacy and black oppression dating back to slavery, the net worth of a typical white family is nearly 10 times higher than that of a black family. It should come as no surprise that only 5% of lawyers are black.

Countless legal problems do not and should not require someone to pay more than $100,000 in fees to learn how to provide competent assistance. By essentially requiring people to go to law school to provide legal assistance, UPL rules guarantee that only a fraction of black people who could competently provide legal assistance are actually allowed to provide such help.

Second, consider which group of people disproportionately cannot afford the legal help they need. UPL rules guarantee that black people don’t have equal access to our justice system by limiting the supply of helpers available, which drives up the cost of legal assistance.

It’s not hard to imagine a system that exists, similar to nurse practitioners in medicine, where we train professionals to provide the same outcomes as lawyers in specific areas of poverty law. The process could include training modules for specific parts of poverty law that are routine and straightforward, followed by a test for each one.

We could start by training social workers, paralegals and law librarians who are already familiar with the law and serve lower-income communities. Areas of the law that present opportunity include uncontested divorce, consumer bankruptcy, immigration, social security disability, and consumer debt collection.

Opponents of UPL reform claim that we'll compromise consumer protection if we allow nonlawyers to provide assistance. This line of defense lacks nuance.

To reform UPL doesn’t mean choosing between regulation and no regulation of the legal industry. It's a choice between maintaining a status quo where black people are disproportionately excluded from both providing and receiving assistance and a system where we re-regulate the legal industry to make it more inclusive, increasing the supply of vetted, qualified helpers available. The false dichotomy of an all-or-nothing dialogue around UPL reform has failed black Americans who need access to affordable legal assistance.
Opponents also object on the grounds that allowing a new class of professionals to help low-income families access the justice system will create two tiers of justice, one for people who can afford a lawyer and one for those who can’t. This view fails to appreciate that it’s simply impossible to have a lawyer for every single person in America who needs one.

We need more lawyers to do pro bono work and more public funding for legal aid. We need more black lawyers too. But anyone who thinks the sole solution to the access to justice problem in America is more lawyers doesn’t understand the scope of the problem.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Recommendation #8: Create a Hub Where the Public Can Find Court Approved Sources for Information and Assistance

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

I think this is important and critical to advance access to justice. If the public doesn’t have access to this information and resources and they cannot afford counsel, then they will continue to be at a disadvantage as compared to those who can afford attorneys.

Juan Morado Jr., Partner at Benesch, Friedlander, Coplan & Aronoff LLP

I wholeheartedly support this proposal. Access to legal services is crucial for many, especially those without the resources to afford an attorney for "easier" questions. The only addition I would make it that it be required these intermediary entities be required to provide this information in multiple languages, as we are seeking to remove as many barriers as possible.

Dennis A. Rendleman

See Dennis’s comments on page 182 below.

Recommendation #9: Adopt a Clearer Practice of Law Definition with a Recognized Safe Harbor

Kimball R. Anderson, Partner at Winston & Strawn LLP

See all of Kimball Anderson’s comments on page 152 below.

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.
I do not support the definition that's proposed, but I think the idea of a definition is a good one. I fear that the current definition you've outlined for "practicing law" is too broad. It may lead to an outcome that's the opposite of what's intended.

Consider two examples:

A librarian follows a "choose your own adventure"-style handbook (written by an attorney) to provide assistance to someone about their eviction. They should not be considered to be providing legal advice.

Similarly, a social worker fills out a "mad-libs"-style template (again, the template is written by an attorney) for a litigant who is contesting a debt collection lawsuit. They should not be considered to be providing legal advice.

"Customized" assistance alone should not trigger "legal advice." "Specialized judgment" should be a part of what makes something "legal advice." It's dangerous to say that personalization alone constitutes the practice of the law, given that there's "mindless" customization that doesn't require any "specialized judgment" but can still be very helpful to individuals. This type of personalized assistance shouldn't be considered legal advice.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis's comments on page 182 below.

Recommendation #10A: Undertake a Broader Plain Language Review of the Rules to Modernize Them With the Lightest Hand of Regulation Needed to Achieve the Court's Regulatory Objectives

Jeffrey Bunn, Owner of The Mindful Law Coach & Consulting Group, LLC

Having read the Task Force Report, I understand that the primary focus of the Task Force has been outward-facing (i.e., the growing disconnect between the legal needs of the public and the lawyers who serve them), but I cannot help but observe that a comprehensive examination of the sustainability of the practice of law, might also include an inward-facing component (e.g., the growing disconnect in lawyers with themselves, as well as the growing disconnect between lawyers and their legal peers).

Respectfully, I would suggest that the inward-facing concern mentioned above could be easily addressed by simply referencing, and adopting, the Report of The National Task Force for Lawyer Well-Being.

Related to the above-stated concern (though admittedly beyond the stated scope of the current Task Force), I would respectfully suggest that the Chicago Bar Foundation-- perhaps in conjunction with the Chicago Bar Association and at the direction of an appropriate organ of the Illinois Supreme Court -- take up the question of whether Rule 1.1 of the Rules of Professional Conduct ("Competence") ought not be further amended to reference well-being as a matter directly impacting one's professional competence.

A lawyer who is not well, in body and/or mind, may not be competent to serve either the community or individual clients, as a legal advisor or counselor, and I believe it would further the interests of both the
legal profession and the public it serves, to responsibly reference well-being as a component of competence, in the Comments to Rule 1.1.

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

Kathryn Liss, Executive Director of the Schiller DeCanto & Fleck Family Law Center and Assistant Director of Law Career Services at DePaul University College of Law

This is just common sense. The CBF has done a great job doing this in the past and should continue to do this going forward so that people who are pro se can understand what to do. As with this entire report, this is a major access to justice issue.

**Recommendation #10B: LTF and ARDC Should Work Together to Amend Rule 1.15 to Accommodate the Court’s Plain Language Objectives**

**Illinois State Bar Association (ISBA)**

See the ISBA’s comments on page 168 below.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

**Recommendation #11: Convene a New Committee to Explore the Potential Benefits and Harm Associated with Eliminating the 5.4 Prohibition on Ownership of Law Firms by People Who Are Not Lawyers**

Howard Ankin, Owner of Ankin Law Office, LLC

I respectfully disagree that consumers do not know how to find lawyers. More aptly, the problem is consumers cannot find a lawyer they can afford. Having a non-attorney have ownership in a law firm will not assist consumers and will instead drastically hurt the legal profession. I recommend two things: First, more judges and arbitrators. Consumers want more immediate satisfaction to their issues. The more immediate satisfaction, the less cost. Second, the parties should be entitled to agree to relax the rules of discovery or evidence for cost savings or submit to a relaxed rules of discovery or evidence Court calendar. If the parties agree to air out grievances with limited discovery this would drastically save attorney fees and the ability to "find" a lawyer. The CBA should advocate with the Court system to change its procedures to conform with modern day needs. Instead, recommendation 11 puts the change on the legal profession to its detriment. This is the wrong vantage point. In my childhood community the pharmacists all had the nicest houses. Today, my classmates who followed in their parents footsteps either work for Walgreens or CVS and are subject to its directives or otherwise have very little choice with their career. The third branch of government must have lawyers who are free and independent and especially economically independent to advocate properly. I am not a novice to lawyer marketing and advertising with my practice. Google already mandates how most lawyers advertise on-line. Instead of paying $50 a click, this proposal could lead to Google sharing in 50% of the fee. There is no dentist or physician happy with a couple of large corporations sapping their energy for what is felt as unfair compensation. The best and brightest in our society are not going to be physicians
and dentists. Following the failed model of other professionals who already resounding screamed from the rooftops how terrible their profession should teach lawyers a lesson. Lawyers do not have insurance policies for reimbursement for services and thus makes them different from other professionals. Lawyers should not turn on themselves. The best and the brightest are not going to work 10 to 15 hour days with no economic upside to obtain a reputation for success. Doctors are rewarded on providing procedures. Are lawyers going to have to win at all costs more than they do now to have a corporation pay them? The consumer is going to be drastically harmed when hedge funds, Walgreens, Google, AVVO, and the like control every aspect of a lawyer’s ability to advocate. We already know that the test model of what this proposal 11 does not work. The proliferation of the multi-state attorney firm is providing less than the caliber of legal services consumers demand. Lawyers are already upset feeling certain law firms control the market. Look at the Courthouse. Look at alternative dispute resolution. Enable laws which allow lawyers to independently provide justice for consumers cost effectively yet allow the lawyer to be paid for her time. Law firms selling out to hedge funds rolling up the industry like dentists is going to have the best and brightest go to business school, not law school. After you get past the satisfaction of being a lawyer the upside for hard work is the fantasy of achieving economic security. This is the lawyer motivator which provides great results for many consumers who have already "found" a lawyer. The vantage point of changing the need to help consumers by making lawyers the stooges of corporate bureaucrats is the antitheses of why most people want to be a lawyer. The advocacy consumers demand is not going to be achieved long term with this proposal. I implore you that this 11th suggestion is the beginning of the end and please do not proceed with it.

I am happy to speak with anyone about my comments in further detail. I do believe many of other proposals will have positive outcome for consumers and lawyers.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

Moving in the direction of liberalizing ownership has a lot of potential. While doing so in England and Australia has not solved all their access to justice problems, it can be another tool in the toolbox as we look for ways to do that. Bringing in both outside expertise, to help manage law firms ore offer holistic solutions to clients, and outside investment, to help fund the development of new offerings or technological tools, could help many clients if proper regulation is in place. Let’s focus on regulation that protects the public in a way that covers traditional firms and new entities which may have owners who are not lawyers.

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Rohan Pavuluri, CEO at Upsolve

This is a great idea. Many other professions where it's critical that consumers have high-quality experiences have non-practitioner owners -- namely medicine.

Keep in mind that these firms with non-lawyer owners would still be regulated. And also keep in mind that capitalism, coupled with the ease of online reviews, incentivizes firms to provide a high-quality service to keep getting more clients.
Darren Perconte, Principal Attorney at Perconte Law

The available research on alternative business structures has shown that they charge at the same rates as traditional law firms due to facing similar market pressures. The Task Force Report mentions that in jurisdictions outside the US, there has not been an increase in lawyer discipline issues due to lawyers sharing fees with non-lawyers. However, the Task Force Report is silent on any benefit to consumers or increased access to legal services due to lawyers sharing fees with non-lawyers. On the July 21 CLE for Regulatory Reform to Better Serve the Profession & Public, when asked about the lack of evidence of increased access to legal services due to these changes, the answer was that there has not been enough time to acquire that data. It is hard to square the notion that the data is in regarding ethical issues, but we need far more time for access to justice issues. At this time, the obvious risks of eliminating ownership restrictions are too substantial to seriously consider doing so without strong evidence of the benefits. I am wary of big businesses and private equity using their capital in law firms to promote interests that are not in line with the interests of clients. Convening a committee feels premature, but maybe with an appropriately deliberate timeline, it could be beneficial.

Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

Lucy Ricca, Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession & Special Project Advisor, IAALS Unlocking Legal Regulation Project

See Lucy’s comments on page 192 below.

Responsive Law

See Responsive Law’s comments on page 189 below.

Lynda Shely, Ethics Lawyer at The Shely Law Firm PC

See Lynda’s comments under Recommendation #1 above.

The Stanford Center on the Legal Profession

See the Center’s comments on page 195 below.

General Comments

Association of Professional Responsibility Lawyers (“APRL”)

See the Associations comments on page 164 below.

Dan Cotter, Attorney & Counselor at Howard & Howard Attorneys PLLC

I applaud this Task Force for the thoughtful review of the current legal market for consumers and small businesses. As many members of the Task Force know, I strongly share those views and have reviewed the report. I believe that the recommendations are well thought out and many should be adopted. I know, from the House of Delegates at the ABA and from serving on other committees with The CBA and talking with lawyers in various areas of the state and nation, that some recommendations will be resisted and push back will ensue on some of the recommendations. That is to be expected- change is
always difficult and humans are resistant to it. Lawyers as a group worry about the elimination or replacement of need for them. But what is clear from the CBF's unmet needs study and from my experience, including with the JEP, is that there are millions or individuals and small businesses for whom many professional services, including legal, are out of reach or inaccessible.

This Task Force Report thoughtfully seeks to explore how we can change the delivery and the services so that more needs may be met. To me, that is a win-win for all involved, including the lawyers. More clients who can pay some fees for limited or full services means that more legal needs can be met and that means a bigger pie, not smaller. I have seen many JEP lawyers thrive in a framework where clients can afford their services, and the JEP lawyers deliver high quality legal services, and make a decent living in doing so.

Again, I applaud the Task Force and thank its Co-Chairs and members for the thousands of hours and thoughtful work that went into the Report and, if needed in any way, I am more than willing to support it and help with its adoption.

Written in my individual capacity and not on behalf of Howard & Howard

J. Timothy Eaton, Partner at Taft, Stettinius & Hollister LLP

I write in support of the excellent Task Force Report of the CBA/ CBF Task Force on the Sustainable Practice of Law & Innovation. The recommendations are insightful and innovative and should achieve the twin goals of sustaining our legal profession while at the same time improving access to our justice system for low and moderate-income Illinois citizens. For years I have been involved in the mission of both making our legal practice more viable and enhancing the opportunity for more consumers to have legal services to meet their everyday needs. I have had the privilege of serving on the boards of both the Illinois Bar Foundation and the Chicago Bar Foundation and have witnessed firsthand the laudatory efforts both organizations have made to improve our profession and access to our legal system. As President of the Lawyers Trust Fund I also became aware of the strong commitment our Illinois Supreme Court has had, and continues to have, in fostering and funding legal services for those who do not have the financial means to obtain them. But even with the efforts of our major bar associations and our supreme court, there is so much more to be done. If anything, the need has become greater. The number of people not able to afford simple legal services has increased, and the number of self-represented litigants in our courts has seen a dramatic rise. This Task Force Report in my opinion provides many positive solutions to these issues and hopefully will enjoy the full support of all lawyers in this state.
What impressed me the most in serving as a member of the Task Force was the willingness of the Task Force members and leadership to consider new and bold approaches. Although I agree with all of the Task Force recommendations, I have read the comments to the report and I recognize that there can be honest disagreement about some of the recommendations. But we are lawyers and we resolve disputes. We do not simply withhold our support from innovative ideas because they are new and may have not been fully tested. No, as lawyers we roll up our sleeves, figure out our common ground and push for solutions where we can achieve a consensus. I recall when the Lawyers Trust Fund first introduced amendments to the supreme court rules to permit limited scope representation. There was opposition based primarily on an unfounded fear that it would take work away from lawyers who were providing full service representation for clients. In fact the opposite has occurred, and it has increased work for lawyers where the client may have otherwise have not been able to afford any legal services. Today, as is evident from comments to this report, there is unanimity in expanding limited scope representation rules. I know that every member of this task force is dedicated to protecting consumers, providing more work for lawyers, not less, and in the process not diluting in any way our professional obligations we have as lawyers. Our goal with these recommendations is to make our legal practice more robust within the parameters of our professional rules, and improve the access to our services by more legal consumers who need them.

I am convinced that there is more common ground than opposition to these recommendations. We cannot squander this opportunity to move forward with these recommendations because we may have some disagreement with a certain approach. We need to coalesce around those recommendations we fully support, and find a consensus on those recommendations where we differ. As a veteran of many bar associations, I know not much gets accomplished unless everyone is committed to achieving the same goals, are willing to compromise and be open minded. The stakes are too high both for our profession and our citizens if we do not move forward. I hope the Task Force Report will result in a robust dialogue on how to address the economic and legal needs of our profession and our citizens culminating in an improved framework of legal practice and access to justice. The cost will be too high if we fail.

Fred Headon, Assistant General Counsel – Labour and Employment Law at Air Canada

Well done! This report does a great job of learning from the work in other jurisdictions and focusing the discussion on how we can better serve those who need our services.

Illinois State Bar Association (ISBA)

See the ISBA’s comments on page 168 below.

Grant Kennedy, affiliation unknown

This is the "deregulation" confusion. Yes if you want cheaper oil fract. If you are so smart to have solutions to a problem, see if you are smart enough to create solutions without taking away protection. Letting businesses own law firms is wrong, even if you tell them not to control they will. Your premises is a fraud.

Jennifer Nijman, Partner at Nijman Franzetti, LLP

My comments are more general as to the report, rather than as to specific recommendations. I support each of the recommendations. This Task Force had a broad make up and incorporated some big ideas - they each need to be given due consideration as we re-think how we practice law.
Dennis A. Rendleman, Executive Inspector General at Office of Illinois State Treasurer

See Dennis’s comments on page 182 below.

John C. Sciacotta, Partner at Aronberg Goldgehn

First, I’d like to thanks you and the task force for its extraordinary efforts. I am thankful and appreciate these efforts.

I feel strongly that the time to has come for our profession to implement much needed changes that will assist our legal profession and the public at large. Lawyers dealing with consumer and other areas are struggling and the proposed rules will assist them and will also assist and benefit the public in being able to be educated and to receive the legal services needed.

I am in full & complete support of the recommendations and if anything else is needed, please advise.

Lynda Sheyl, Ethics Lawyer at The Shely Law Firm PC

I commend the Task Force for the diligent review and consideration of these issues.

Howard S. Suskin, Partner at Jenner & Block

I commend the Task Force, and particularly its Co-Chairs Judge Mason and Lynn Grayson, on their hard work and thoughtful perspectives on the various initiatives in the Report.
Kimball Anderson’s Feedback

To: CBA/CBF Task Force On Sustainable Practice of Law and Innovation

From: Kimball R. Anderson

Date: August 21, 2020


Thank you for this opportunity to comment on the draft Task Force Report dated July 22, 2020. I commend the Task Force for its initiative in improving access to justice in Illinois for those who might not otherwise be able to afford legal representation in the traditional sense. For the most part, the recommendations are well-conceived and, if adopted, will significantly improve access to justice in Illinois. Mindful of the hard work and good intentions of the Task Force, however, I respectfully suggest that the Task Force abandon two recommendations.

First, I do not believe that the Task Force’s recommendation regarding fee sharing with non-lawyers will promote the public interest. I believe that it will impair the independence of the legal profession. Accordingly, I agree with the comments on this proposed change submitted by the Attorneys’ Liability Assurance Society, Inc. (“ALAS”).

Second, I respectfully urge the Task Force to abandon its “PROPOSED ILLINOIS SUPREME COURT POLICY STATEMENT/RULE DEFINITION OF PRACTICE OF LAW/UNAUTHORIZED PRACTICE.” For reasons that I explain below, this proposed rule change is antithetical to the goal of improving access to justice in Illinois.

By way of background, I am a partner with the firm of Winston & Strawn LLP (Chicago office), where I have practiced law for 43 years. I served for many years as the General Counsel of the firm and as a member of the firm’s Executive Committee. As General Counsel, I was the chief ethics officer of the firm. For the past six years, in addition to my litigation practice, I have taught professional responsibility as an adjunct professor for the University of Illinois College of Law. I have also taught Illinois Constitutional Law as a guest lecturer for the University of Illinois College of Law. I also served for many years as a member of the Chicago Bar Foundation Board of Directors and, for two years, as the President of the CBF. I am a Fellow of the American College of Trial Lawyers and have litigated unauthorized practice of law (“UPL”) cases. As recognized by many public interest organizations and bar associations (including the CBA, ISBA, ABA, and American College of Trial Lawyers), I have championed access-to-justice causes throughout my career.

My comments regarding the proposed rule change reflect my own views. I am not writing on behalf of Winston & Strawn LLP, its clients, the University of Illinois College of Law, or any of the public interest organizations and professional associations that I have worked with over the years.

Although the draft Report says that the proposed rule change is intended to create a “safe harbor” that exempts certain activities from UPL enforcement, the proposed rule change does nothing of the sort. Instead, it effectively reserves to lawyers the exclusive right to represent persons and legal entities in many matters that state and federal courts, for good reasons, have held are not the exclusive province
of lawyers. I refer, for example, to administrative proceedings before county assessors, county boards of review, workers’ compensation panels, environmental enforcement agencies, and labor dispute agencies. In our federal administrative system, federal agencies have been left the sound discretion to set the standards for those who appear before them in representational capacities. So too should State of Illinois agencies be entrusted with the sound discretion to determine the required qualifications of those who appear in representational capacities before them. These agencies are the subject matters experts and are well-equipped to regulate persons who appear before them in representational capacities.

Article 6, Section 16, of the Illinois Constitution entrusts to the Supreme Court of Illinois the administration of the courts of our State. Thus, it is natural and proper that the Supreme Court set the standards for representing parties before the courts of the State. State agencies, in contrast, are created by the Illinois General Assembly which, pursuant to Article 4 of the Illinois Constitution, “has all powers not denied by the state or federal Constitution.” Miller, 1970 Constitution Annotated for Legislators (4th Ed.), at 25. Nothing in the Illinois or federal constitutions deny the Illinois General Assembly the power to prescribe the standards for representation before state agencies. Conversely, nothing in the Illinois Constitution specifically empowers the Supreme Court of Illinois to prescribe the standards for non-lawyer representation of parties with matters before state agencies created by the legislature. Pursuant to Article II, Section 1, of the Illinois Constitution, “[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.” To be sure, the Supreme Court of Illinois is empowered to regulate the conduct of lawyers who appear before state agencies. But it is not clear that the Supreme Court of Illinois properly can, or should, regulate the practice of non-lawyers appearing in representational capacities before agencies created by the Illinois General Assembly in and proceedings that are informal and subject to de novo review by courts.

Furthermore, the Task Force should be reminded that state and local bar associations are not immune from federal antitrust laws to the extent that they engage in concerted efforts to restrain trade or commerce, including the practice of law. Goldfarb v. Va. State Bar, 421 U.S. 773, 792 (1975) (fact that the practice of law was regulated by State Supreme Court did not shield bar association from liability under Section 1 of the Sherman Act). See also North Carolina State Board of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015) (agency that regulates the practice of dentistry not immune from antitrust laws).

Here, the Task Force’s proposed rule change restrains trade before Illinois state agencies in a way that benefits members of the Chicago Bar Association and Illinois State Bar Association, many of whom are Task Force members. To be sure, any professional licensing scheme restrains trade. The critical question, however, is whether such restraint passes muster under the Sherman Act’s rule of reason analysis. Such analysis will involve, among other things, a determination of whether less restrictive means exist for accomplishing the goals of assuring competent representation and protecting the public.

A total ban of non-lawyer representation activities before all state administrative proceedings, no matter how informal, may not survive scrutiny under a rule of reason analysis. In any event, no good reason exists for the Chicago Bar Association and Chicago Bar Foundation to test the boundaries of antitrust law.

Turning now from the legal questions surrounding the proposed rule change to its practical implications on access to justice in Illinois, I believe it indisputable that the proposed rule change will decrease access to justice rather than promote it. Set forth below are the Task Force’s proposed rule changes followed by my comments.

(a) It is the practice of law to:

- Give legal advice that is customized to a specific situation or set of circumstances to a person or entity,
- prepare or present arguments that involve interpretations or applications of the law or substantive legal rights and responsibilities,
- Represent a person or entity in court or in other legal proceedings, or
- Negotiate legal rights or responsibilities for a person or entity.

(b) It is not the practice of law:

- To provide general information on court procedures and court rules, including court-approved forms,
- To serve as a mediator, arbitrator, or neutral,
- For court personnel, Illinois Justice Corps members, or court-recognized community justice navigators to provide assistance in accord with the Court’s Safe Harbor policy, or
- For a person to self-represent

(c) Unless otherwise permitted by these Rules or by a federal administrative body with jurisdiction over a particular type of proceeding, it is the unauthorized practice of law to engage in the practice of law in Illinois without authorization from the Illinois Supreme Court, or for someone to represent to another person that they are a licensed Illinois lawyer when they are not.

For starters, subsection (a), in contrast to subsection (b), cannot be fairly characterized by the Task Force as a “safe harbor.” It is anything but a safe harbor. Subsection (a) broadly expands the definition of the practice of law beyond anything previously recognized under Illinois law. “Giving legal advice that is customized to a specific situation or circumstances” broadly captures routine and lawful activities of real estate brokers, insurance brokers, accountants, paralegals, real estate tax consultants, etc. The same is true for preparing or presenting arguments that involve the interpretation of law. That additionally sweeps in journalists, authors, and commentators on the law.

The next phrase—“represent a person or entity in court or in other legal proceedings”—leaves undefined “other legal proceedings.” Some bar associations, eager to please the economic interests of their members, surely will interpret “other legal proceedings” to include any and all administrative proceedings—even those that do not presently require legal representation, those that do not require adherence to any evidentiary rules, and those that are subject to de novo review by our courts. The result will be that a mom-and-pop lawn-care business, for example, that has incorporated the business to protect mom and pop from personal liability, and that wants representation in a real estate tax
assessment matter (or an environmental dispute, or a workers’ compensation dispute) now must hire a lawyer instead of some other lower-cost, and probably more knowledgeable, licensed professional. Moreover, under the Task Force’s prosed rule, that mom-and-pop corporation cannot even represent itself before state agencies because it is not a “person” allowed to self-represent under subsection (b). This is an unreasonable restraint of trade in favor of the bar association members that is not in the public interest and that does not promote greater access to justice.

The final phrase of subsection (a)—“Negotiate legal rights or responsibilities for a person or entity”—is equally problematic for the same reasons. This is not a safe harbor. It is a broad and vaguely worded attempt to capture, for the benefit of the members of the bar associations, the exclusive right to negotiate legal rights or responsibilities. In my example above, the mom-and-pop lawn-care business will be precluded from negotiating its own legal rights and responsibilities and will be precluded from retaining any licensed professional to negotiate on behalf of the business (e.g., accountant, nurse, doctor, real estate broker, tax advisor, workers’ compensation advisor, labor law negotiator, immigration counselor, etc.). This result would not be in the public interest and would not promote greater access to justice for the majority of citizens in our State who cannot always afford to hire a lawyer.

As for subsection (b), this represents a reasonable attempt to define a safe harbor. But any lawful safe harbor must include representation before state and federal administrative agencies consistent with the rules and regulations of the agency. The simple solution to the problem of ambiguity regarding UPL, as perceived by the Task Force, is to leave to the Supreme Court of Illinois the regulation of practice before the courts and to leave to the Illinois General Assembly and its agencies, the regulation of practices before administrative agencies. State and local bar associations, intentionally or unintentionally, should not urge unreasonable restraints of trade for the benefit of their members.

Thank you for this opportunity to comment on the draft Report and for the Task Force’s important contributions to improving equal access to justice in Illinois.
American Association for Paralegal and Legal Education’s (AAfPE) Feedback

American Association for Paralegal and Legal Education (AAfPE) Comments and Recommendations on the Chicago Bar Association and the Optimizing the Use of Other Professionals Committee’s Recommendation #5 to RECOGNIZE A NEW LICENSED PARALEGAL MODEL SO THAT LAWYERS CAN OFFER MORE EFFICIENT AND AFFORDABLE SERVICES IN HIGH VOLUME AREAS OF NEED

Submitted by Toni Marsh, Director of GW Paralegal Studies Program

The American Association for Paralegal and Legal Education (AAfPE), the nation’s largest and oldest continuously-operating organization dedicated to paralegal and legal studies education, supports and applauds the work of the committee and thoughtfulness of the proposal. AAfPE is uniquely qualified to support organizations seeking to understand and act upon educational opportunities and challenges for paralegals. AAfPE recognizes the access to justice crisis in the United States and asserts that although the issues surrounding it are complex and varied, better utilization of paralegals can remedy many of the issues.

Comments and Recommendations

The proposed rule mandates that Licensed Paralegals must have: an associate’s or baccalaureate degree in paralegal studies; or a baccalaureate degree in any discipline plus work experience; or a high school diploma plus work experience; or have received certification or accreditation from certain professional organizations; or have graduated from law school. There is no provision for those who have earned a baccalaureate degree in any discipline plus a post-baccalaureate certificate or master’s degree in a paralegal or legal studies program.

RECOMMENDATION: Include a baccalaureate degree in any discipline plus a post-baccalaureate certificate or master’s degree in a paralegal or legal studies program in the list of credentials a person must have to be eligible to obtain a license to provide services. Nearly a quarter of all AAfPE member programs nationwide and fully half of the Illinois programs offer these credentials. Students with post-baccalaureate certificates or master’s degrees have more education than those in paragraph (c) (I) (i).

SUGGESTED LANGUAGE: 7XX (c) (I) (xx) have an associate’s or baccalaureate degree and a certificate in paralegal education from an accredited institution.

RECOMMENDATION: References to education in a Paralegal Studies Program should be changed to a paralegal educational program.

COMMENT: Not all paralegal programs are titled paralegal studies. There are a variety of titles, including legal studies or simply paralegal.

The Committee proposes to gather data on [the program’s] utilization, effectiveness, and any problems that arise, and then later determine if these categories should be further restricted or expanded.

RECOMMENDATION: Metrics should be clearly defined to ensure the program measures the appropriate outcomes and accurately assesses whether it has achieved its goals. The Washington LLLT program ended in large part because the Court used metrics that were unrelated to the program’s mission: the cost of the program rather than costs saved by the program, and the number of participants rather than numbers served.
RECOMMENDATION: Metrics should be relevant to the program’s mission to increase lawyer efficiency and service affordability in high volume areas of unmet need.

The Committee proposes limiting services to those occurring before a matter goes to trial.

RECOMMENDATION: Services should be limited by the type and complexity of the cases; not by procedural stage. For example, while limitations on a contested divorce are reasonable, a Licensed Paralegal would be fully qualified to represent a party through the conclusion of an uncontested divorce. Under the proposed rule, a Licensed Paralegal can represent a party until the time of trial, at which time the paralegal would be forced to withdraw, leaving the party unrepresented at a crucial time. The party may opt to move forward pro se rather than hire an attorney at the last minute. In this situation, the attorney would enter just before trial with limited understanding and connection to the client. The attorney would be forced to redo much of the work to prepare for trial. This would result in higher costs and less effective representation and may cause parties not to employ Licensed Paralegals at all.

RECOMMENDATION: Should a limitation be placed on trial representation, a less restrictive and more supportive approach would be to: have a court-appointed staff attorney sit second chair to the paralegal at trial; OR require non-binding arbitration with all paralegal-represented cases, to allow the client to decide how to proceed after arbitration; AND require notice of limitations to representation in all contracts for representation.

The Committee would require malpractice insurance of lawyers and law firms that employ Licensed Paralegals although such insurance is not required for Illinois lawyers in general. The committee’s reason is that its proposal would implement an untested new concept that potentially carries some added risk to clients [and] protection of the public should be paramount.

RECOMMENDATION: Lawyers and law firms that employ Licensed Paralegals should be subject to the same malpractice insurance rules as all Illinois attorneys. The factors that drove the state of Illinois to forego requiring malpractice insurance of all Illinois lawyers -- that all lawyers are subject to discipline if they do not provide competent services, including services provided with the assistance of a paralegal -- apply here. Further, the committee’s initial suggestion that all Illinois lawyers are not required to carry such insurance, it is illogical to require this sub-category of lawyers to do so should stand. To require additional insurance of this sub-category of practitioners would penalize them financially for trying an innovative model and may suppress participation.

The program limits Licensed Paralegal practice to family law, evictions, and consumer debt matters below a certain threshold.

RECOMMENDATION: As the program grows, consider including all civil small claims cases.
Attorneys Liability Assurance Society’s (ALAS) feedback
August 20, 2020
VIA PUBLIC COMMENT FORUM
To: CBA/CBF Task Force on the Sustainable Practice of Law & Innovation
Re: CBA/CBF Task Force on the Sustainable Practice of Law & Innovation’s Request for Comment on Proposed Amendments to Rule 5.4 of the Illinois Rules of Professional Conduct

Attorneys Liability Assurance Society (ALAS) responds to the request of the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation (Task Force) for comments on its proposed amendments to Rule 5.4 of the Illinois Rules of Professional Conduct (Rule 5.4).

I. Introduction

ALAS is a Chicago based mutual insurance company that insures 217 law firms, including more than 66,000 lawyers in 49 states, the District of Columbia, and 30 foreign countries, and is the leading provider of professional liability insurance for large law firms in the United States. We insure 52 member firms with offices in Illinois with 4,842 total lawyers practicing in the state. In its 40+ years in business, ALAS has handled more than 16,000 claims and has developed substantial knowledge and experience concerning situations that give rise to legal malpractice claims. By virtue of the extensive loss prevention services it provides to its members, ALAS has a unique understanding of problems confronting lawyers and law firms today.

Lawyers from ALAS were actively involved in the American Law Institute’s development of the Restatement Third, The Law Governing Lawyers and in the American Bar Association’s (ABA) 2002 revision of the Model Rules of Professional Conduct. ALAS is also involved with other professional and bar associations that have defined the ethical and professional duties of lawyers and is mindful of the need to enhance access to justice for middle- and low-income individuals. ALAS applauds the Task Force for its efforts to improve the sustainability of the legal profession and increase access to justice for all.

The Task Force’s recent initiative to amend or explore elimination of certain rules governing the manner in which lawyers and law firms function seeks to create a more sustainable legal profession and a better and more accessible justice system, while protecting consumers of legal services from harm. Although some of the proposed recommendations appear to further those objectives, the proposed revisions to Rule 5.4 (Recommendations 1, 2A, 2B, and 11) do not promote these stated goals. Instead, the proposed revisions threaten to undermine the core values of the U.S. legal system and compromise client confidentiality and the attorney-client privilege without reliable evidence that the changes will increase access to justice. Accordingly, ALAS opposes Recommendations 1, 2A, 2B, and 11, which: (1) propose revisions to Rule 5.4; (2) advocate for the establishment of an intermediary entity model to allow fee sharing with non-lawyers; (3) establishes a new category of legal services providers called Approved Legal Technology Providers to partner with and share fees with law firms; and (4) recommends convening a committee to evaluate whether to eliminate Rule 5.4’s prohibition on non-lawyer ownership of law firms.
II. History of Select Rule 5.4 Proposed Revisions

The reasons that led other authorities to reject revising or eliminating Rule 5.4 apply equally in Illinois. The ABA has debated this very issue multiple times since the early 1980s. Each time, the ABA has ultimately rejected proposals to revise Model Rule 5.4, because such a change threatened the core values of the legal profession. For example, between 1977 and 1983, the Commission on Evaluation of Professional Standards (Kutak Commission) considered the issue of lawyers partnering with non-lawyers and proposed a draft Model Rule 5.4 allowing such conduct. The ABA House of Delegates rejected the proposal and instead adopted a version of Model Rule 5.4 that is substantially the same as the current version of the rule.[1] In 2000, the ABA House of Delegates again considered and rejected a proposal for fee sharing with non-lawyers and non-lawyer ownership, and instead adopted a recommendation stating that fee sharing of legal fees with non-lawyers and the ownership and control of the practice of law by non-lawyers are inconsistent with the core values of the legal profession.[2] We share the ABA’s view in this regard.[3] Most recently, in 2019, the ABA Center for Innovation released a resolution that would have again encouraged variations to Rule 5.4 as a way to address the access to justice problem. However, in the wake of strong opposition from multiple state bar presidents, the ABA House of Delegates adopted a version of the proposal that explicitly disclaimed any recommendation regarding changes to Rule 5.4.[4]

In March 2017, the United States Court of Appeals for the Second Circuit upheld the dismissal of a complaint by two related New York law firms alleging that New York’s version of Model Rule 5.4 infringed their First Amendment rights to petition and of association.[5] In that case, the plaintiffs alleged that New York Rule 5.4 improperly prohibited the law firms from accepting non-lawyer investment, which they claimed would enable the firms to improve the quality of the legal services offered, reduce fees, and expand their ability to serve needy clients.[6] In affirming the lower court’s decision dismissing the complaint, the Second Circuit held that New York Rule 5.4 serves New York’s well established interest in regulating attorney conduct and in maintaining ethical behavior and independence among members of the legal profession.[7]

The District of Columbia is the only jurisdiction in the United States that permits fee sharing with non-lawyers and non-lawyer ownership in law firms. D.C. Rule 5.4(a)(4) states: [s]haring of fees is permitted in a partnership or other form of organization which meets the requirements of paragraph (b). D.C. Rule 5.4 (b) provides:

[a] lawyer may practice in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual non-lawyer who performs professional services which assist the organization in providing legal services to clients, but only if: (1) the partnership or organization has as its sole purpose providing legal services to clients; (2) all persons having such managerial authority or holding a financial interest undertake to abide by the [D.C. Bar] Rules of Professional Conduct; (3) the lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the non-lawyer participants to the same extent as if non-lawyer participants were lawyers under Rule 5.1; [and] (4) the foregoing conditions are set forth in writing.[8]

Even though D.C. has allowed fee sharing with non-lawyers and non-lawyer investment in law firms since the 1980s, very few firms have done so, thereby making it difficult to assess the benefits of the D.C. rule.[9] We have also been unable to identify any D.C. law firm that has utilized D.C.’s Rule 5.4 to
improve legal access to middle- or lower-income individuals.

III. Rule 5.4 Should Not Be Revised

Rule 5.4 serves critical public-policy interests. The rule ensures that lawyers will protect client interests and uphold the principles of the profession, including lawyer independence. These core values will be threatened if the financial interests of non-lawyers, who have no ethical duty to the law firms’ clients, overshadow the best interest of clients.[10] Indeed, given that profit is the principal goal in most business ventures, there is substantial risk that non lawyer investors, Approved Legal Technology Providers, or intermediary entities will focus only on the bottom line at the expense of client interests and the quality of services. Potential consequences of this focus include a decrease both in the quality of law-related services and pro bono work.[11]

Based on ALAS’s extensive experience, we know that building and maintaining an effective risk management program in a law firm takes considerable resources. It is also a matter of culture and professionalism that puts ethical practice and client concerns above profit. We are very concerned that allowing fee sharing with non-lawyers and non-lawyer ownership will erode the culture and professionalism of law firms and result in a practice that is less protective of clients.

For example, consider what might happen if private equity investors were permitted to have an ownership stake in law firms. It is not unrealistic to envision those investors taking dividends out of the firm, cutting costs expended on risk management and quality control, and taking other steps to realize profits. These actions might benefit the investors financially, but they would undermine the firm’s lawyers’ professional obligations to their clients.[12] These concerns apply equally to firms that share fees with or co-own intermediary entities or Approved Legal Technology Providers.

These are not the only risks associated with fee sharing and non-lawyer ownership of law firms. The attorney-client privilege and client confidentiality are long-standing principles at the heart of every lawyer’s relationship with every client. See Illinois Rule of Professional Conduct 1.6. It is unrealistic to think that non-lawyer investors and other business partners will not want data on clients that is both confidential and privileged. Revealing such data will breach the lawyer’s duty of confidentiality (absent client consent) and likely waive the privilege.[13] In light of these concerns, the proposed revisions to Rule 5.4 do not achieve the Task Force’s goal of maintaining consumer protection.[14]

Nor will the proposed revisions of Rule 5.4 promote the Task Force’s stated purpose of access to justice. ALAS supports efforts to increase access to legal representation for all middle- and low-income individuals, but we have found no reliable evidence that fee sharing with non-lawyers or non-lawyer investment in law firms furthers that goal.

In fact, it was this lack of evidence that led Ontario, Canada, to decline a recommendation to allow non lawyers to become majority owners in firms.[15] That decision was premised on an Ontario-commissioned 2014 study by Jasminka Kalajdzic that sought to determine whether alternative business structures (ABS) had improved access to justice in England and Australia, two jurisdictions that allow non-lawyer ownership.[16] Ms. Kalajdzic’s study concluded that there is no empirical data to support the argument that non-lawyer ownership has improved access to justice. [17]

This lack of evidence was again manifest in the ABA Commission on the Future of Legal Services 2016
Report on the Future of Legal Services in the United States (Legal Services Report), which documented the commission’s findings stemming from a two-year study focused on access to legal services. [18] Here too, there was little reported evidence that ABS has had any material impact on improving access to legal services. [19] Similarly, in England, where non-lawyers have been allowed to own interests in law firms since 2011, the lack of access to justice persists for most of the low- and middle-income population. [20] According to a 2019 Solicitors Regulation Authority survey, 68% of those surveyed stated they cannot afford the cost of legal services, and 79% believe that it needs to be easier for people to access legal guidance. [21]

Instead of increasing access to justice, Australia and England have seen growth in a single practice area - personal injury cases - since allowing non-lawyer ownership of law firms. [22] Other areas where such access is desperately needed, such as family law; property and landlord/tenant law; and criminal law, have not seen the same growth. [23] Indeed, the rate of self-representation in family law matters in Australia was more than 50% in 2014. [24] This is entirely consistent with the conclusions of a 2014 study conducted by Nick Robinson, a fellow at the Program on the Legal Profession at Harvard Law School, which found that non-lawyer investment is likely to be attracted to legal sectors, like personal injury, where expected returns are high and that are relatively easy to commoditize, but where there may not be as much of an access need because of the long-standing practices like conditional or contingency fees. [25] This provides further evidence that allowing non-lawyer ownership of law firms will not serve the Task Force’s stated purpose of access to justice.

In addition, the proposed revisions are not limited to entities that provide legal services to middle- or low-income individuals or other under-served populations. Furthering that purpose would be better served by rule changes tailored to that objective.

Because the Task Force’s stated objectives, namely access to justice and consumer protection, will not be served by the proposed revisions to Rule 5.4, and there is a risk that the proposed changes will erode attorney independence and client service, ALAS opposes the Task Force’s proposals concerning this rule.

IV. Conclusion

ALAS thanks the Task Force for its consideration of these comments and recommendations. They do not necessarily reflect the views of all ALAS member firms. The Task Force has permission to reference these comments as being made by a major American legal malpractice insurer.

Mary Beth Robinson
Senior Vice President of Loss Prevention

Givonna St. Clair Long
Senior Loss Prevention Counsel

[2] Id. at 6.


[6] Id. at 181.

[7] Id. at 191.

[8] D.C. Rules of Professional Conduct 5.4 (2017). D.C. is currently considering revisions to its version of Rule 5.4 to further loosen the restrictions on non-lawyer ownership of law firms.


[14] ALAS understands that the Task Force also proposes a revision to the Rules of Evidence to clarify that communications to and through an intermediary entity for the purpose of obtaining legal services are privileged. This, however, does not address the lawyer’s duty of confidentiality. Nor does it address the danger that the privilege could be waived if the intermediary entity shares attorney-client communications with third parties.


[17] Id. at 1, 10-11, 14.


[19] Id. at 42.


[21] Id.


[23] Id.

[24] Id.

[25] Id.
Association of Professional Responsibility Lawyers’ (ARPRL) Feedback

Date: August 19, 2020

Comment on the July 22, 2020 CBA/CBF Task Force Report on the Sustainable Practice of Law & Innovation

Now in its thirtieth year, the Association of Professional Responsibility Lawyers (“APRL”) is the premier international organization for professional responsibility lawyers and legal ethicists. APRL now has more than 400 members, largely comprised of lawyers whose practice revolves around the law of lawyering.

Specifically, APRL’s membership includes lawyers who represent lawyers, law firms, in-house legal counsel, and judges in matters of legal ethics and professional responsibility. APRL’s membership also includes academics, judges, corporate counsel, risk management attorneys, and government lawyers.

Throughout its thirty year history, APRL has taken public positions on the rules governing lawyers, as well as professional discipline regulations, legal malpractice statutes and principles, and other developments in professional responsibility matters. For example, in 2015 and 2016, APRL issued landmark reports proposing reforms regarding lawyer advertising and solicitation rules, which have formed the basis of rule amendments and amendment proposals in several states and at the American Bar Association. APRL holds twice-yearly conferences on ethics topics, and submits public statements, reports, and amicus curiae briefs in pending state and federal litigation and rule amendment proceedings.

In 2018, APRL formed an internal committee called the Future of Lawyering Committee (the “FOL”), which has been tasked with examining various future of lawyering initiatives, making proposals where appropriate, and otherwise engaging the organized bar, the judiciary, the public, and other stakeholders on issues of legal regulatory reform. The FOL’s overarching task was to consider comprehensive regulatory reform for improving legal services delivery and for easing overly restrictive ethics rules that inhibit legal help for middle- and low-income Americans.

APRL’s FOL Committee submits this statement in support of the July 22, 2020 CBA/CBF Task Force Report on the Sustainable Practice of Law & Innovation (the “Task Force Report”). APRL is not offering comment as to the details of the specific regulatory and ethics rules changes being proposed by the Task Force Report, but submits this response to make clear that it supports bold action as a significant step in facilitating a crucial discussion about improving access to legal services.

APRL’s FOL Committee applauds the Chicago Bar Association, the Chicago Bar Foundation, and the Task Force that issued the Task Force Report on their collective acknowledgment of the judiciary’s primary role in regulating legal services delivery in the U.S., and their recognition that the rules and regulations that are in place in every U.S. jurisdiction simply are not working in light of technological developments in our 21st Century world. Not only is access to legal services largely inadequate and too expensive for a large segment of the population, but also the rules in place unnecessarily restrict innovation.

---

1 It is worth noting that many APRL members were deeply involved in the Task Force and the Task Force Report, including APRL Past Presidents Arthur Lachman and Lynda Shely, current APRL Secretary Trisha Rich, and many other APRL members, including Bob
The Task Force Report proposal seeks methods to correct these inequities. We agree with the Task Force’s conclusion that the reforms such as those recommended in the Task Force Report will make for a better and more sustainable legal profession, a better and more accessible justice system, and improved access to legal help for consumers and small business markets. We applaud the Task Force’s work, and note that if anything, it is more restrained and conservative than proposed reforms that the FOL Committee has supported generally in the past, including the Utah proposal that was recently adopted and enacted by the Utah Supreme Court.

In short, APRL’s FOL Committee believes the Task Force’s recommendations are helpful and timely, and we support the spirit that underlies these efforts. Illinois has an opportunity to be a leader in legal regulatory reform, which will contribute to APRL’s efforts, as well as efforts all over the country to implement necessary reforms that will improve the legal system for all participants. We urge the Illinois Supreme Court to take that opportunity.

The Task Force Report is a thoughtful attempt to strike an appropriate balance in broadening the availability of legal services to the public while maintaining the appropriate level of protection to consumers based on real risks and real outcomes. We note that, importantly, the Task Force report is for deregulation, not deregulation. APRL’s FOL Committee believes that the Task Force’s work will inform APRL’s continued efforts to develop a comprehensive regulatory reform proposal that can serve as a roadmap for adoption in multiple jurisdictions on a national or regional basis and that will apply broadly to lawyers and other individuals and entities who can and should be part of the solution. APRL’s FOL Committee commends the Task Force’s willingness to take action in attempting to improve access to affordable legal help for everyone and allowing us to learn from its experience.

The Chicago Paralegal Association is the leading professional association in Chicago dedicated to elevating the standards and ethics of all Illinois paralegals.

CPA strongly disagrees with the Committee’s comment that there is little evidence that there is a shortage of providers of legal services in most communities.

According to the Illinois Equal Justice Foundation (IEJF), Illinoisans need access to legal help now more than ever. Civil legal problems have spiked in the wake of the COVID-19 outbreak, especially for people already struggling to make ends meet and communities of color. Illinois Legal Aid Online (ILAO) reports a 40% increase in use of its unemployment tools and 84% increase in use of its emergency food stamp resources. https://iejf.org/press-room/news-releases/illinoisans-need-civil-legal-help-now-more-than-ever/.

__________________________

Bob Glaves, Jayne Reardon, Mary Robinson, Allison Wood, Wendy Muchman, William Hornsby, Tracy Kepler, and Josh King. These APRL members volunteered their time and considerable expertise in legal regulatory issues to provide what we believe is a bold and thoughtful end product.
Chicago Paralegal Association’s Feedback

Chicago Paralegal Association’s position statement in opposition to the current version of Recommendation #5: Recognize a New Licensed Paralegal Model so that Lawyers Can Offer More Efficient and Affordable Services in High Volume Areas of Need

CPA applauds the work of the Committee in realizing that better utilization of paralegals can help address and support access to justice efforts.

Pursuant to 5 ILCS 70 Section 1.35, "[P]aralegal means a person who is qualified through education, training, or work experience and is employed by a lawyer, law office, governmental agency, or other entity to work under the direction of an attorney in a capacity that involves the performance of substantive legal work that usually requires a sufficient knowledge of legal concepts and would be performed by the attorney in the absence of the paralegal.

CPA was disappointed to see the suggestion of a new paralegal category and the many restrictions and barriers created in Recommendation #5 by the Optimizing the Use of Other Legal Professionals Committee in the report of the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation.

CPA is a strong advocate of elevating the standards and credentials of paralegals to expand access to justice, but it is our opinion that the Task Force’s Recommendation #5 misses the mark by creating an unnecessary Licensed Paralegal category, and adding layers of unnecessary rules and regulations. This category is simply not needed to support access to justice efforts.

The Recommendation purports to authorize Licensed Paralegals to provide a broader range of client services, however all services would still be performed under the direction and supervision of a licensed attorney.

Licensed Paralegals would be subject to discipline and withdrawal of their license by the Attorney Registration and Disciplinary Commission, however any and all acts performed would still be performed under the direction and supervision of a licensed attorney.

Licensed Paralegals would only perform allowed services in limited areas such as where there is documented high unmet need.

The Recommendation further mandates that any lawyer or law firm who employs this category of paralegal would be required to carry malpractice insurance to cover the acts of the paralegal, which would be performed under the direction and supervision of a licensed attorney.

Paralegals already work under the direction and supervision of licensed Illinois lawyers, and Illinois lawyers are not required to carry malpractice insurance to employ any paralegal.

Having certified paralegals available to provide limited legal services directly to the public would facilitate improved access to the legal system, and expand the pool of providers able to serve consumers with
legal services.

Paralegal certification is a process in which applicants who satisfy strict requirements, including completion of an approved educational program, passage of a qualifying exam (which includes ethics) or documented work experience, are certified. Certified paralegals have the demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer. Certification is distinct from a certificate of completion, which generally is awarded upon successful completion of a paralegal educational program.

While paralegals in Illinois are not currently required to be certified, they do follow rules of professional conduct and ethics as set forth by the state, the American Bar Association, and the national paralegal associations, which require members to adhere to standards and a code of ethics.

Our national paralegal organizations have already defined the education and work experience just to qualify to sit for a certification exam.

In fact, according to the website of NALA The Paralegal Association:

NALA is the only National Commission for Certifying Agencies (NCCA) accredited paralegal certification program. NALA’s Certified Paralegal program has been recognized both nationally and internationally for over 40 years! Our CP credential has been acknowledged by the American Bar Association as a mark of high professional achievement, and more than 47 other paralegal organizations and numerous bar associations also acknowledge the credential as the paralegal standard.

Further refinement and modification of this Recommendation should, at a minimum, be assisted by review and comment from paralegals, certified paralegals, paralegal associations, and paralegal educators.

We do agree with the Committee that allowing paralegals to appear in court for routine status hearings or preliminary court appearances, and to assume an expanded role in the areas of family law, evictions, and small consumer debt matters, would allow the lawyer to focus their attention on the more complex aspects of a case. This would also have a meaningful impact on addressing the access to justice issue, and protect the public, since this expanded paralegal role would still be under the direction and supervision of a licensed attorney.

Board of Directors of the Chicago Paralegal Association
Tisha Delgado, President
Kristie Black Hansen, Secretary and Director of Operations
Kristina Judge, Vice President and Director of Membership
Gabriel Evelyn, Director-At-Large
Cecily Boley, Director-At-Large
August 20, 2020

E. Lynn Grayson Nijman Franzetti, LLP  
10 S. LaSalle St., Suite 3600  
Chicago, IL 60603

Hon. Mary Anne Mason (Ret.) JAMS  
71 S. Wacker Dr., Suite 2400  
Chicago, IL 60606

Re: Illinois State Bar Association Comments on the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation

Dear Co-Chairs Grayson and Mason:

On behalf of the 35,000 member Illinois State Bar Association, I am pleased to provide comments to the recently published CBA/CBF Task Force on the Sustainable Practice of Law & Innovation Report (the "Report") and to thank you for this opportunity.

The ISBA appreciates the well-intended work of the Task Force that produced the Report. For many years, the ISBA has actively monitored, and when considered appropriate taken a leadership role in the national debate within the organized bar on "re-regulating" the legal profession. The ISBA understands that these issues are important but also recognizes that they are complex and not susceptible to easy solutions. The ISBA shares the Task Force's goals of working toward a more sustainable legal profession, a better and more accessible justice system, and improved system of access to legal help for low- and moderate-income consumers and small businesses – the express focus of the Report. However, the ISBA does not support the overwhelming majority of the recommendations set forth in the Report. The ISBA considers the recommendations to be flawed in many respects and, if adopted, will be ultimately harmful to the public and the profession.

I. General Comments

A. Absence of Data Supporting the Recommendations
The Report’s premise to solving the identified problem of low- and middle-income consumers and small businesses accessing legal services is based on lowering the cost of those services. It is contended that lower cost can be achieved by many forms whether it is “one-to-many” technology platforms, "licensed paralegals" providing legal advice and services, or simply redefining the practice of law to exclude certain legal services such that they can be offered by nonlawyers. However, the Report provides no data that demonstrates in any way lowering the cost of legal services through these, or any other means, results in an improvement in access to justice by low- and middle-income consumers and small businesses. Conversely, recent studies tend to indicate that positive impacts on improving access to justice by these types of reforms are elusive.

As an example, the State of Washington in June 2020 ended its "Limited License Legal Technology Program" based on overall cost and the small number of participants. That program’s impact on access to justice had been earlier identified as providing no improvement in access to justice.


Other US jurisdictions have had similar reforms in place for many years without any demonstrable improvements in low- and moderate-income individual or small business access to justice. Arizona has had "Certified Legal Document Preparers" since 2003, but no data is available that shows it has had any positive impact on access to justice (and given Arizona’s current efforts to re-regulate the legal marketplace it would appear that certified legal document preparers have not had a measurable beneficial impact). Also, Washington D.C. has allowed nonlawyer participation in the ownership of law firms for many years, and yet no data is available that demonstrates low or moderate income consumers or small businesses in DC have had greater access to legal services or are using legal services at an increased rate.

Studies that rely on data from the UK where nontraditional forms of legal practice were introduced in 2007 also point toward a lack of any improvement in access to justice or a reduction in self-represented litigants. Robinson, When Lawyers Don't Get All the Profits, 29 Geo. J. Legal Ethics 1 (2016). Additionally, the UK Legal Services Board has reported that: "Research evidence suggests more people are handling legal issues alone and fewer are obtaining professional advice; however, the proportion of those who do nothing when faced with a legal issue appears unchanged." Evaluation: Changes in the legal services market 2006/07 – 2014/15 -Summary, LSB, July 2016.

Similarly, the ABA’s Center for Innovation as recently as February 2020, has commented "there is not yet sufficient evidence to endorse any particular [Legal Services Provider]" and that "it is also clear that there is not yet enough data to know what ‘model’ approach of this subject [regulatory reform] should be or what effect ABS will have on addressing the access to justice crisis." ABA Center for Innovation, et al., Report to the House of Delegates (February 2020).

In addition, cost alone may not be the determinative factor in consumers employing lawyers or seeking out legal services (both expressed goals of the Report). As such, recommendations that are focused solely on lowering the cost of legal services may likely have no measurable positive effect on increased use of legal services. Reluctance to use legal services is more closely linked to consumer attitudes about the legal system. As noted above, the UK reports an increase in consumers handling legal problems on their own. The reasons vary but include consumer perceptions that the legal matter is straightforward, that lawyers are not required, that there is nothing that can be done to help, or that self-help technology is inadequate to resolve the issue. These trends are also seen in the US
as demonstrated by the growing number of self-represented litigants. In addition, the 2018 Clio "Legal Trends Report" indicates that 26% of consumers prefer to handle legal matters on their own. An earlier study from the American Bar Foundation also reported that 46% of people faced with a civil justice problem handled it on their own. "Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study," Rebecca Sandefur, ABF (August 2014). This growing number of consumers who "do it on their own" will not see any benefit from, nor likely embrace the services of, the Report's recommendations.

The conspicuous absence of any meaningful data or support for the recommendations strongly suggest such fundamental and sweeping changes to the legal services marketplace are premature and unwarranted.

B. Lack of Meaningful Detail and Overbroad Recommendations

The Report lacks important detail on many of its recommendations. During the discussions by ISBA groups and the Board of Governors, many comments focused on a lack of detail with respect to the specific recommendations. Even with respect to those recommendations that the ISBA could potentially support in concept, the absence of detail and comprehensive discussion presented problems in assessing the merit of the proposals.

C. Public Harm

The impact on the public is critically important in any discussion of legal marketplace reform. In addition to the data referenced above that tends to demonstrate that the public may not seek out new forms of legal services made available by the recommended reforms, serious questions remain about the ability of these new nonlawyer entities to deliver competent and useful legal services to low and moderate consumers and small businesses. The "one-to-many" technology models envisioned by the recommendations will certainly not provide the quality of services associated with individualized lawyer advice. Whether the "just good enough" model of legal services is appropriate is an open question. Just as predatory lenders are not a substitute for funding legal aid for low-income individuals, legal advice generated by a chatbot created in a joint venture between an attorney and a tech company does not give middle-class families and small businesses access to justice. Finally, it is also important to recognize that the exclusion of lawyers from the delivery of legal services also eliminates all the client protections lawyers are compelled – for good reason - to provide clients as required by the Rules of Professional Conduct.

D. Professional Harm

The recommendations intended to increase competition with lawyers (and presumably lower cost) presents problems for an association that represents lawyers. Particularly solo and small firm lawyers. Nevertheless, we are not myopic on this point. We understand that lawyers have a higher calling and professional obligation to clients and the public rather than to their own pecuniary gain or self-interest. The ISBA understands that in some practice areas and situations, lawyers may not be negatively impacted by nonlawyer competition or technology derived one-to-many legal solutions. In fact, there are many examples of lawyer support for legal services that might be considered to be against their self-interest. However, the breadth and generality of the Report does not allow the ISBA to make the necessary analysis to reach those conclusions about the recommended regulatory reform or identify where such reforms may be appropriate. In the end, the ISBA has a responsibility to defend,
the role of a strong, vibrant, and independent legal profession. When the provision of legal services becomes solely a matter of "who can provide legal services at the lowest cost," the ability of the profession to attract the best and brightest will be adversely affected. That in turn will have long term impacts not only on the profession but potentially on the law’s development, the respect for the law, the preservation of legal rights, the availability of truly independent advice to those in need, and the legal profession as a model of civility and justice.

E. Recommendation Omissions

The focus of the Report recommendations and the responsibility for solving the identified issues associated with low- and moderate-income consumers are almost exclusively addressed to lawyers and the means by which lawyers provide legal services to consumers. However, the Report also raises serious concerns about an "antiquated" court system. Nevertheless, the Report is silent on many reforms other jurisdictions are employing to make their court systems more consumer friendly and navigable. Often these reforms are targeted in specific areas and make use of new and innovative technologies. The ISBA believes these areas should be explored in a much more depth and detail as they may go a long way in furthering the goals of the Report.

II. Specific CBA/CBF Recommendations

Notwithstanding the very brief 30-day time period allowed to submit comments on the Report and its recommendations, the ISBA promptly sought input from more than 25 of its substantive member groups in order to get the perspective of its membership and the practicing bar. In view of the significance of the Report recommendations, those groups met on short notice and voted the time and energy to provide meaningful comments to ISBA leadership. In turn, the Board of Governor met on two separate occasions and fully considered the group comments. The comments, and Board discussion, reflected a clear and unique unanimity of opinion on many of the Report recommendations. The ISBA is pleased to provide its comments on the specific Report recommendations noted below (using the same numbering system as in the Report).

Recommendation #1: "Recognize a New Intermediary Entity Model to Help Connect Lawyers to Legal Consumers." The ISBA supports the concept of regulating "matching services." However, the ISBA does not support the CBA/CBF recommendation. In contrast, the ISBA in concept is supportive of the more comprehensive regulatory proposal of the ARDC with respect to Intermediary Connecting Services and continues to work with the ARDC on an acceptable regulatory program.

Recommendation #2A: "Modernize the Rules So that Lawyers Can More Actively Participate in the Development and Delivery of Technology-Based Products and Services." This recommendation envisions nonlawyer ownership of legal practices and the delivery of legal services to the public by nonlawyers. For the reasons stated above in Section I, the ISBA does not support this recommendation.

Recommendation #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." For the reasons stated above in section I, the ISBA does not support this recommendation.

Recommendation #3A: "Streamline Rules to Expand the Use of Limited Scope Court Appearances." The ISBA supports this concept. As you may know, on February 4, 2020 the ISBA submitted a similar
Proposal to the Court to amend S. Ct. Rule 13 to make withdrawal from a limited scope representation automatic upon completion of the representation. The proposal is still pending with the Court. The ISBA would be happy to work with the CBA/CBF to accomplish this recommendation.

Recommendation #3B: "Enhance Educational Programming for Law Students, Attorneys, Judges, and Court Staff." The ISBA supports this concept.

Recommendation #3C: "Expand and Improve Data Collection on Limited Scope Representation." The ISBA supports this concept. The collection of detailed data on this, and other types of court appearances and representations, such as self-represented litigants, would be very helpful in analyzing the need for potentially more precise regulatory reforms.

Recommendation #3D: "Consider Expansion of Limited Scope Representation in Federal Court." The ISBA supports this concept but notes it typically does not routinely pursue rule changes in the federal courts.

Recommendation #4: "Develop New/Amended Rules on Alternative Fees and Fee Petitions." The ISBA takes no position on this recommendation at this time. While the use of alternative fee arrangements has demonstrated benefits for both lawyers and consumers, and should be given effect by the courts, particular fee arrangements should not be expressly preferred over others in the IRPC Comments. In addition, the impact of this recommendation on existing attorney fee law is unknown.

Recommendation #5: "Recognize a New Licensed Paralegal Model So that Lawyers Can Offer More Efficient and Affordable Services in High Volume Areas of Need." The ISBA does not support this recommendation. The ISBA recognizes the Report’s acknowledgment that "there is scant data to support the proposition that the creation of new independent categories of providers in some jurisdictions have had a meaningful impact on access to justice." However, the recommendation itself, focused on supervised providers within a law practice, provides insufficient detail for it to be fully assessed. Based on the information provided, important details about a number of features of the recommendation are absent including supervisory requirements, applicable areas of practice, the scope of available services, the impact on lowering cost of legal services, and the likely negative impact on new lawyers. We believe there is serious doubt as to the practicality and efficacy of the proposal as drafted.

Recommendation #6: "Streamline and Modernize the Rules Around Lawyer Advertising." The ISBA does not support this recommendation. The ISBA finds the Report’s commentary that the IRPC advertising rules are "confusing, unnecessary, duplicative, overly prescriptive," and have a "chilling effect" on lawyers making their services known entirely conclusory and without support. In addition, to the extent there is any impediment in the ability of consumers to find lawyers because of a defect in the current advertising rules it is likely de minimis. According to the 2019 Clio Trends Report, 59% of consumers find lawyers through referrals from family or friends, 35% use a lawyer’s website or an online search engine, and only approximately 6% rely on advertisements.

Recommendation #7: "Recognize a New Community Justice Navigator Model to Build Off the Success of Illinois JusticeCorps in the Courts." The ISBA does not support this recommendation. Like the proposal with respect to licensed paralegals, too many questions about a number of aspects of the recommendation remain including training requirements, the nature of sponsoring organizations, liability, and avoiding the unauthorized practice of law. Several ISBA groups specifically wanted a
description of the perceived successes of the JusticeCorps, and noted that if it was successful, a new "navigator" program could possibly be incorporated into the existing program.

**Recommendation #8:** "Create a Hub Where the Public Can Find Court Approved Sources for Information and Assistance." The ISBA does not support this recommendation. The recommendation provides insufficient detail to be fully assessed. Of particular concern are proposal features that would "vet" and "approve" information included on such an information Hub. In addition, there appears to be no recognition of the vast amount of legal information already online and available in the legal marketplace.

**Recommendation #9:** "Adopt a Clearer Practice of Law Definition with a Recognized Safe Harbor." The ISBA does not support this recommendation. Determining what constitutes the practice of law is a matter of public protection and ensuring the integrity of the legal system. *E.g.* *Downtown Disposal Services v. Chicago*, 2012 IL 112040. The Illinois Supreme Court has also repeatedly held that there is no mechanistic formula to define what is and what is not the practice of law. *Id.* The flexibility of this "case by case" approach is sound and necessary in order to address changes in the law and individual factual situations. Development of a static definition of the practice of law would likely only be a vehicle for nonlawyer special interests to obtain authorization to provide their particular version of legal services without regulation. The well-established purposes behind the law surrounding the unauthorized practice of law would be undermined. In addition, crafting a static definition of the practice of law that is meaningful is likely a very complicated task, and as the Report itself discusses, efforts by other organizations to do so (the ABA) have failed in the past.

**Recommendation #10A:** "Undertake a Broader Plain Language Review of the Rules to Modernize Them With the Lightest Hand of Regulation Needed to Achieve the Court's Regulatory Objectives." The ISBA does not support this recommendation. The recommendation provides insufficient detail for it to be fully assessed, especially the meaning of phrase "the lightest hand of regulation needed." In addition, there is value to the legal profession in ensuring consistency with the ABA Model Rules of Professional Conduct wherever possible and that deviations from the ABA Model Rules, as perhaps contemplated in the recommendation, should be undertaken only with the substantial and well-reasoned justification.

**Recommendation #10B:** "LTF and ARDC Should Work Together to Amend Rule 1.15 to Accommodate the Court's Plain Language Initiatives." The ISBA takes no position on this recommendation. However, some ISBA groups provided commentary that the current IRPC 1.15 is not a model of clarity.

**Recommendation #11:** "Convene a New Committee to Explore the Potential Benefits and Harm Associated with Eliminating the 5.4 Prohibition on Ownership of Law Firms by People Who are Not Lawyers." The ISBA does not support this recommendation. As you may know, the ISBA strongly believes that IRPC 5.4 represents and protects certain core values of the profession, among others preserving the independence of a lawyer's judgment on behalf of clients. This has been a longstanding position of the ISBA clearly supported by the vast majority of members of the profession across the country as evidenced by the significant resistance the ABA's Center for Innovation experienced at the ABA's 2020 Midyear meeting in Austin when the subject of revisions to Rule 5.4 was considered. Of course, the ISBA is not blind to the ongoing debate surrounding Rule 5.4 and the calls for change, often made or supported by those who would stand to gain by the elimination of Rule 5.4. Nevertheless, in the absence of any process by which the outcome is not prejudiced or pre-ordained, any formalized discussions on this subject remain problematic.
The ISBA again thanks the CBA/CBF for the opportunity to provide comments on the Report. There is no question that the Report recommendations envision sweeping and fundamental change to the legal marketplace in Illinois, which may significantly affect the ISBA membership but also the administration of justice in Illinois. The ISBA looks forward to continued opportunities to comment on and discuss them as may be appropriate.

Very truly yours,

Dennis J. Orsey
President, Illinois State Bar Association

cc: Rob Glaves (CBF)
    Jessica Bednarz (CBF)
    Hon. Robert Anderson (Ret.)
    James M. Lestikow
Comment on the Task Force Report (the “Report”) by the Chicago Bar Association/Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation (the “Task Force”)

We write on behalf of IAALS, the Institute for the Advancement of the American Legal System at the University of Denver. We are generally in support of the Recommendations in the Task Force Report (the “Report”) by the Chicago Bar Association/Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation (the “Task Force”), which embody what we view as the correct policy to shift our industry in the right direction toward greater affordability and accessibility of legal services, while at the same time providing lawyers with greater opportunity to expand their clientele. We believe, though, that many current recommendations do not go far enough to make the impact needed to address these problems. Consequently, we urge the Task Force to exercise its leadership by making amendments to its Recommendations to more fully close the access to justice gap that is not only deteriorating the public’s trust in the legal system, but that is also perpetuating racial injustice.

We Support the Wider Use of Limited Scope Representation

IAALS supports the Recommendation on improving the rules for limited scope representation. More than 70% of civil and family cases include at least one self-represented party, with the primary driver of self-representation being the inability to afford a lawyer. An increase in limited scope representation in both state and federal court will increase the number of litigants that can afford help from a lawyer, and lawyers who practice limited scope representation will benefit as well with a larger pool of potential clients that can afford their services.¹

We strongly support the amendments to Supreme Court Rule 13 that will make use of standardized, plain language forms for entering and terminating limited scope appearance, in addition to objections to

¹ IAALS has extensively studied this issue in the context of family law, an area where most people in the United States will encounter the civil justice system and where many people must navigate the system alone. Our support for these recommendations is based on our expertise in this issue. See NATALIE ANN KNOWLTON, BETTER ACCESS THROUGH UNBUNDLING: FROM IDEATION TO IMPLEMENTATION (Aug. 2018), https://iaals.du.edu/sites/default/files/documents/publications/better_access_through_unbundling.pdf and our various guides on and toolkits on our Unbundling Legal Services project page, https://iaals.du.edu/projects/unbundling-legal-services#tab=guides--toolkits.
motions to withdraw. We also support the amendment to Supreme Court Rule 13 to automatically terminate representation at the time of filing or presenting the motion to withdraw. This will clear up some of the ambiguity that likely keeps lawyers from participating in limited representation. That being said, in order for limited scope representation to take hold, the support and guidance of judicial leadership is essential.

We also support the amendments to Supreme Court Rules 793 and 794 that aim to expand access to educational programming on limited scope representation in law school, the new lawyer Basic Skills Course, and in CLE courses. In addition to some of the ethical/malpractice concerns some lawyers have on limited scope representation, which the amendments above help to alleviate, a large factor in its limited use is a lack of knowledge and understanding. One cannot use what one does not know exists. If lawyers learn about limited scope representation as early as law school, and are provided resources to increase that knowledge throughout their career, there is a greater likelihood they will adopt a limited scope model into their practice. The more it is taught and normalized, the more it will be utilized.

**We Support in Part the Creation of a New Licensed Paralegal Model**

IAALS supports the Recommendation of authorizing Licensed Paralegals to provide a broader range of services beyond those currently permitted for traditional paralegals. The expansion of both the duties and areas of law allowed for Licensed Paralegals can be extremely beneficial to consumers, especially as this pandemic has caused and will continue to cause for the next few years an increase in the areas of consumer debt, family law, and evictions. We believe that the greater the number of professionals able to aid in these matters, the better.

This is the right step toward the ultimate goal of increased access to justice; however, the requirement that Licensed Paralegals must practice under the supervision of a lawyer ensures that the recommendation’s impact on the problem of access to affordable legal services will be limited, if there is any at all. This requirement will impede the achievement of access to justice by forcing a duplication of efforts, creating time commitment issues, and increasing the likelihood of little to no change in the overall cost of legal services. It is not feasible for a lawyer to review all the work of a Licensed Paralegal, in addition to his/her own work, while in the meantime also significantly lowering the cost to the consumer. But if Licensed Paralegals are allowed to work independently, they can set their own rates and create much needed competition in the legal marketplace. That is why we strongly recommend the removal of the requirement that Licensed Paralegals must practice under the supervision of a lawyer.

This Task Force notes that there is little data to support the view that creating a new independent category of providers will have a meaningful impact on addressing the issue of access to justice. What is clear is that the few examples within the United States have either been far too restrictive and difficult to attain licensure (e.g., Washington LLLT), making them unable to actually expand the delivery of affordable legal services, or are too new to truly measure their success (e.g., Utah LPP). That does not mean that we do not have useful data on the matter. For instance, one need go no further than Ontario, Canada, which offers a successful model for independent paralegal services. Over ten years ago, the legal regulator there supported the adaptation of paralegals as independent legal service providers, allowing them to represent clients in a number of areas of law (e.g., small claims up to $35,000 and less serious criminal matters) by giving them legal advice, drafting documents, and negotiating on the client’s behalf. The data shows us that not only is the program robust in its ability to expand affordable legal
services, with well over 8,000 independent paralegals currently offering assistance, but that the program made legal services more accessible without lowering the quality of service.

We Support in Part the Creation of a New Intermediary Entity Model to Connect Lawyers with Consumers

IAALS supports the Recommendation to amend Rule 5.4 to allow lawyers the ability to collaborate with other professional disciplines in order to better connect with more clients. However, this Recommendation can and should go further by amending Rule 5.4 to allow other professionals to have an ownership stake in law firms.

As we have written in comments to task forces in Arizona and Washington, D.C., Rule 5.4 purports to project the independent judgment of lawyers by prohibiting lawyers from sharing legal fees with others, prohibiting others from having any financial interest in law firms, and prohibiting lawyers from forming partnerships with anyone other than a lawyer if any of the partnership’s activities consist of the practice of law. But these business practices are linked to independent professional judgment by the thinnest of unsupported assumptions. In fact, IAALS has not identified any evidence that these business practices inherently compromise the independent judgment of lawyers, and certainly not in any way that requires their categorical prohibition. And, when the rule was originally drafted, there was no evidence that the corporations then supplying lawyers to clients were harming the public. Today, lawyers currently work within corporations, insurance companies, and accounting firms and have been doing so for years. There is no evidence that this arrangement destroys these attorneys’ independent judgment. Absent the need for Rule 5.4 to protect the independent judgment of a lawyer—protection amply afforded elsewhere in the rules—the lack of any real evidence behind Rule 5.4 is alarming, given that the rule’s economic restrictions have had severe consequences for lawyers and for people in need of legal services.

The reality that lawyers must wear many different hats in order to run their firm invariably takes their focus away from actually helping their clients. One report suggests that some solo and small firm practitioners earn just 1.6 hours in billable work per day, after factoring in the number of billable hours that never make it to an invoice and the amounts forfeited by unpaid bills.² Allowing lawyers to partner with business, marketing, technology, and other professional disciplines can help them to expand their business while focusing on their clients, but forbidding nonlawyer ownership unnecessarily leaves out successful partnership options created in other professions. These partnerships range from a solo lawyer bringing in a spouse as part-owner to run the business side of the firm, to a law firm bringing in an investment company to provide the necessary capital to grow. Other professions have shown that these partnerships can be successful to growing a company without sacrificing their integrity, and there is no reason to assume the legal profession will be any different.

---

On the other hand, there is ample evidence to suggest that when restrictions over business practices such as those found in Rule 5.4 are eliminated, these changes could lead to more innovation in the delivery of legal services, more available services for those who need them, and better quality services in general.

Research from England and Wales on alternative business structures (ABS) operating under the Solicitors Regulation Authority (SRA), where lawyers and other professionals share ownership, suggests that overall innovation among legal services providers, including innovation that reduces the cost of delivery legal services, is higher than among traditional providers. ABSs are three times as likely to make use of technology compared to other providers. Specifically, ABSs are twice as likely as other providers to use any of the following ten emerging technologies: interactive websites, live chat or virtual assistants, cloud or similar data storage mechanisms, ID-checking tools, custom-built smart device apps, technology assisted review (TAR), automated document assembly (ADA), robotic process automation (RPA), predictive technology, and smart contracts/distributed ledger technology (DLT).

The beneficial impacts of technology on the quality of services is widely recognized, and technology has also been shown to reduce the costs of legal services delivery. Along with ABS entities, larger organizations and newer providers operating under the SRA were also more likely to innovate in a way that would result in more efficiency (reduced costs/increased profitability).

We consider this Task Force as one of the pioneering groups leading the way for better solutions in a time of crisis. In the United States, Utah and Arizona have shown we can create different models of regulatory frameworks to monitor organizations like ABSs. The demands of the time require nothing short of such bold action. That is why we urge the Task Force to take this recommendation further.

We Support in Part the Enhancement of Available Technology-Based Legal Services

IAALS supports the Recommendation to enhance the availability of technology-based legal products and services by certifying and authorizing an “Approved Legal Technology Provider” designation.

While this is another important step in the right direction, to have the impact this recommendation needs to address our current crisis in access to affordable legal services, the certification should be open to any individual or entity that comes forward with a product or service that meets the criteria set forth by the Committee.

3 TECHNOLOGY AND INNOVATION IN LEGAL SERVICES – MAIN REPORT: AN ANALYSIS OF A SURVEY OF

LEGAL SERVICE PROVIDERS, LEGAL SERVICES BOARD 1, 11 (November 2018),

4 Id. at 43.
As the Task Force notes, one cause of the gulf between legal needs and the utilization of legal services is lawyers’ monopoly on the practice of law. IAALS firmly supports the idea that an increase in technology-based solutions can greatly enhance the affordability and accessibility of legal help to consumers who otherwise would be forced to go without. However, access and affordability can be enhanced even greater by expanding beyond this narrow classification of Approved Legal Technology Providers and allowing anyone to become an approved legal provider so long as they provide an innovative product or service that meets the Committee’s criteria. Opening the legal market would force entities to either innovate to create the best, most affordable product for the consumer, or risk the consumer going elsewhere, which would ultimately increase innovation in the legal field.

**Make Change that Will Truly Make a Difference**

In these unprecedented times, our legal system needs unprecedented solutions. This Proposal has the potential to positively affect the legal industry by removing some of the barriers that stand in the way of consumers receiving the help they need. But we are living in a time where failing to receive the legal help needed will cause more than just an inconvenience. An exceptional amount of people are facing homelessness, wage garnishment, and domestic violence all while their access to legal help is becoming further from their grasp. It is essential that this Task Force be a leader to other jurisdictions and propose bolder, wider-sweeping reforms to the legal profession that consumers desperately need and that lawyers can greatly benefit from.

Thank you for your dedication toward improving the legal industry for the betterment of everyone.

Zachariah J. DeMeola  
Director of Legal Education & the Legal Profession

Natalie Knowlton  
Director of Special Projects

Michael Houlberg  
Manager
Art Lachman’s Feedback

Mr. Glaves & Ms. Bednarz,

I am submitting comments in my personal capacity regarding the Report of the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation, dated July 22, 2020, on which I was privileged to serve as a member of the National Advisory Council. I am a practitioner of legal ethics and law firm risk management in the Seattle area, and I serve as Co-Chair of the APRL Future of Lawyering (FOL) Committee. I wholeheartedly agree with comments separately submitted by the FOL Committee generally supporting the Task Force’s proposals of significant regulatory and rule changes that will no doubt improve access to legal services by the consuming public in Illinois if adopted. I am writing separately because I think the Task Force should take the opportunity at this time to go even further in its reform recommendations.

The Task Force has no doubt “gone big” in some of its proposals. For example, the proposed changes to the advertising and solicitation ethics rules follow the lead of APRL and several other states in reducing the chilling effect of these regulations and recognizing that lawyers’ ability to talk honestly and in a non-coercive way with consumers of legal services about their legal needs is a good thing, not a bad thing. Creating a new delivery mechanism for competent licensed paralegals is also a positive step in my view. And several of the other innovations proposed, including limited scope representations, alternative legal fees, a new community justice navigator model, and a hub for accessible legal resources are creative ideas for improving legal services delivery.

But some of the proposals for regulatory change do not go far enough in my view, and I’m concerned that nibbling around the edges on some issues, and deferring action on others, will substantially reduce the benefits that could otherwise be achieved in enacting reform. On this score, I will focus on the proposal’s lawyer referral and technology innovations, as well as potential changes to ethics rules regarding nonlawyer fee sharing and investment in law firms (Rule 5.4), and make three main points.

First, the incremental approach of creating new exceptions to the general prohibitions against fee sharing with nonlawyers in proposed Rule 5.4 is the wrong one in my view. This approach ignores the fact that these rule restrictions dating back over a century were not enacted based on evidence of actual consumer harm, and are covered sufficiently by other ethics rules in any event (on this issue, you might want to review a piece I wrote for the ABA’s national ethics conference last year on the history and purported bases for the Rule 5.4 restrictions, which can be found here). As a practical matter, this “exception” approach to Rule 5.4 may well lock Illinois regulatory reform in this area into one that forecloses the possibility later of considering removing altogether unnecessarily restrictive prohibitions (not to mention potentially necessitating the piecemeal creation of new boards or bureaucracies when innovations occur in the future).

Second, with regard to encouraging innovation in legal services delivery by lawyers, it’s not only about technology as the Task Force’s proposed change to Rule 5.4 seems to suggest. A critical component of regulatory reform is how lawyers can work together with people possessing relevant skills who are not licensed lawyers, and without running afoul of unauthorized practice of law restrictions. I know from my own experience in advising and representing lawyers here in Washington state that Rule 5.4 unduly chills lawyers’ ability to collaborate with other professionals to provide holistic services for clients efficiently and at a reasonable price. In short, enacting changes in Rule 5.4 regarding the delivery of legal services by lawyers to technology innovation, while necessary, is insufficient in my view.
Third, the time is now on Rule 5.4, and study of further changes to the rule should not be deferred for consideration by another committee. Models now exist for more broad reform in the area of multidisciplinary practice, including the potential use of a regulatory sandbox as just enacted in Utah and under consideration in Arizona. And our recent experiences with COVID-19 and racial injustice issues have highlighted in glaring terms the urgency for improving legal services delivery now. If it means taking another three to six months for the Task Force to create a more comprehensive proposal that takes into account all relevant issues and considerations, striking while the iron is hot seems like the best course in my opinion.

I have appreciated the opportunity to assist with the Task Force’s effort, and I look forward to working with you further as needed to get meaningful reform adopted in Illinois and the rest of the country. Thank you again for allowing me to be involved in your effort, and please feel free to call or write me if you have any questions.

Sincerely,

Art Lachman
Attorney at Law
Lake Forest Park, Washington
Co-Chair, APRL Future of Lawyering Committee
206-295-7667
artlachman@lawasart.com
Dennis Rendleman’s Feedback

To: CBA/CBF Task Force
Fr: Dennis A Rendleman
Date: 14 August 2020
Re: CBA/CBF Task Force on the Sustainable Practice of Law & Innovation Report

The opinions expressed herein are my personal opinions and do not reflect opinions or positions of any entity.

Background

Throughout my legal career I have monitored, analyzed, and opinion on the practice of law. As counsel at ISBA from 1981-2003, I worked with, among others, Committees on Professional Responsibility, Unauthorized Practice of Law, Delivery of Legal Services, and the Illinois Pro Bono Center. I served on various iterations of the Illinois Equal Justice project. While an Assistant Professor of Legal Studies and Pre-Law Director at University of Illinois Springfield, I also served from 2004-2012 as a member of the Supreme Court Committee on Professional Responsibility. Following the end of my term, and in conjunction with my position at ABA Center for Professional Responsibility, I have served as an informal advisor to the Committee. During my ten years at ABA, I have served as counsel to Committees on Professionalism and Specialization and, for eight years, Ethics Counsel to the Standing Committee on Ethics and Professional Responsibility. I have also been in private practice advising on legal and judicial ethics and professional responsibility and admission and disciplinary matters. I am a new member of the ISBA Committee on Professional Conduct. This recitation is to establish my bonafides for commenting on the Task Force Report. A portion of my thinking on this matter can be found in a column I did for the ABA “There Are Other Ways”

Overview:

Fundamentally the concept of a broad Approved Legal Technology Provider is too expansive and insufficiently defined. Throughout the Report, it is contemplated that an Approved Legal Technology Provider can employ lawyers to provide legal services. While lawyer collaboration and business affiliation with third-parties is reasonable, ownership of entities providing legal services through employment of lawyers is “a bridge too far”. Rather than a sandbox, it has the potential for being a kitty litter box.

But more seriously, the majority of the recommendations treat the symptom and not the underlying disease. The disease is an anarchic civil dispute resolution system in the courts.

Rather, a more rational – but also more difficult – approach is to make substantive structural changes in the legal system. Why does every divorce have to go before a judge? Why not an expansion of the mediation systems that exist for dissolution matters and convert it to a meaningful arbitration system.

For example, the Workers’ Compensation administrative adjudicative process though imperfect, could be a starting point.
Other civil disputes would be amenable to a system similar to the British Columbia Civil Resolution System. That system has proven that it works for the Canadian equivalent of landlord/tenant matters and the civil areas cited above. A similar system would save money for consumers and time for judges. https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/legislation-policy/legislation-updates/civil-resolution-tribunal.

There are consumer matters, where evidence is showing individuals come to court pro se, that could be addressed in a less adversarial and more efficient dispute resolution system. Not every dispute needs to require a physical trip(s) to the courthouse. How often have you visited the courthouse on “collections day,” when there are people who had to take off work to stand in line to talk to the creditor’s lawyer and get some agreement for payment. That needn’t be done physically. How often do we see lines of people with minor traffic violations in line in court to resolve a deal with the State’s Attorney who hasn’t seen the file until the carts are wheeled into the courtroom? What other adaptations have been made during the Covid Pandemic that can serve as models for alternative resolution models?

Nor does every dispute need each party represented by counsel or non-lawyers in the more informal, less adversarial dispute resolution system. Lawyers trained to mediate, arbitrate and memorialize final agreements into binding orders saves time and expense for everyone.

But, it has to be done in a manner that balances the power between the parties equitably. For example, mandatory arbitration clauses in consumer and employment contracts are inherently unfair and unbalanced. Despite the misbegotten U.S. Supreme Court rulings in cases such as DirectTV Inc. v. Imburgia, 577 U.S. __, (2015), and Epic Systems Corp v. Lewis, 584 US __ (2018), illustrate the disturbing trend of allowing corporations to force individuals into expensive private arbitration processes weighted heavily in favor of the corporations.

On the other hand, an area where the Report (see, Recommendation #11) does not go far enough is third-party investment in law firms. This does not mean that non-lawyer ownership of entities providing legal services should continue to be prohibited, but other models exist. While the UK allows non-lawyer ownership, other countries have more reasonable approaches. As I note in my column “There Are Other Ways”

The experience from Australia, Canada and the United Kingdom has been mixed. Perhaps most intriguing is the European approach where, in various jurisdictions, there is a limit to the percentage of ownership/investment that can come from non-lawyers. For example, “Europe permits alternative business structures on a more limited scale with 49 % of Scotland, 33% of Italy, 25 % of Spain and 10% of Denmark requiring lawyers to have primary control of legal firms.”


It is contradictory to allow “Approved Legal Technology Providers” without changes to Rule 5.4. While the notion that lawyers participate in more legal technology by ownership is reasonable, it is not reasonable to allow third-party non-lawyer ownership that may have lawyer employees or “advisors”. Moreover, the experience with third-party litigation funding has demonstrated that outside “investment” in litigation can be done without interference with a lawyer/client relationship and lawyer independent professional judgment.
**Recommendation #1:** Recognize a new intermediary entity model to help connect lawyers to legal consumers.

Comment: The rhetoric of this recommendation is amorphous. This is presumably “the sandbox”. Courts generally are not good at developing abstract programs without specific examples presented.

While claiming that the Illinois Rules of Professional Conduct (“Illinois Rules” or “the Rules”) contain “artificial business model limitations”, it fails to identify what alternative business models are contemplated. It also fails to explain what type of “larger entities and networks” with which lawyers should “collaborate” despite claiming that they exist. This omission is disingenuous. While accurately stating that “[l]awyers can and should be at the center of these innovations and solutions but need more flexibility to responsibly collaborate with other professionals to do so”, there is little elaboration of how and what aspects of “[o]ther professions like the medical, dental, accounting, and financial services sectors offer guidance on what a better functioning market would look like while also protecting the public and ensuring professional independence.”

As to the specific proposed amendments to Rule 5.4, the structure presented is technically convoluted. The Rule begins with existing Rule 5.4 (a) and its four numbered paragraphs. But it then adds new number (5) with four subsections and number (6) with subparagraphs that omit an (a). Finally, there is a proposed Rule 5.4(e), but there is nothing between 5.4(a) and 5.4(e). Moreover, new 5.4(e) refers to a Section (d) of the Rule that does not seem to exist.

Substantively, the proposed amendments to Rule 5.4 are problematic. New 5.4(a)(5) refers, but does not define what an “intermediary entity” actually is. There are a range of entities that could fit this category. For example, a classic “runner”, that would appear to violate 705 ILCS 210/ Legal Business Solicitation Act, is one situation that could comply as an intermediary. Alternatively, American Bar Association Ethics Opinion 465 illustrates methods and issues that can arise in certain types of such “intermediary entity”

[https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_465.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_465.authcheckdam.pdf)

The propose new Comments [3] and [4] are generally constructive. However, Comment [4] is problematic in its first sentence: “The traditional limitations on fee sharing and practicing law as part of an entity owned or controlled by persons who are not lawyers do not have the same impact in the case of technology based legal products and services.” This sentence would seem to imply that fee sharing and the practice of law by some technology providers would be allowed. That is significantly different that allowing a lawyer or law firm to utilize marketing and administrative support services from a third-party.

Rather than glittering generalities, it is best to look to past examples. Consider situations that have resulted in ISBA Opinions. For example, ISBA Advisory Opinion on Professional Conduct 14-01 (outlining how credit cards may be accepted for fee payments), 06-02 (lawyer use of marketing firm and non-lawyer screening of clients), 832 (prohibiting in person solicitation by lawyer or third party), demonstrate methods that work under the current rule and would be further authorized by the new rule.
Some “sandbox” schemes from the past have been disapproved, such as ISBA Op. 88-88 (improper for a paraprofessional employed by client to use lawyer’s office for client business), ISBA Op. 90-35 (improper for lawyer to participate with a non-for-profit organization that gathers member information for lawyer to draft wills for return to NFP organization), ISBA Op. 94-11 (improper to firm to participate in cellular telephone service offering legal advice), and ISBA Op. 97-03 (“management services organization that provides services, including legal, is improper and lawyer participation in aiding the organization in legal services is improper). These factual situations of lawyer and third-party illustrate problems.

Some situations would seem to be possible collaborations that could be approved, but are seemingly unaddressed in the proposed amendments. For example: ISBA Opinions 84-14 (lawyer who is also Realtor), ISBA Op. 89-1 (lawyer may not serve as business broker representing both buyer and seller), ISBA Op. 90-19 (lawyer assisting financial planner in providing joint services), ISBA Op. 91-10 (lawyer actively participates with financial planning company’s delivery of legal services), ISBA Op. 98-03 (patent law firm may not serve as matchmaker between inventor and product promoters).

Recommendations for proposed Supreme Court Rules 801 are as over broad as are the proposed Rule 5.4 amendments. Two categories of entities seem to be contemplated under the definition of “intermediary entity.” First, and most reasonable, is “an entity that connects potential clients with lawyers.” More problematic is the extension to include undefined “other business and administrative services supporting lawyers’ practices.” As the above noted ISBA ethics opinions illustrate, the mind of the non-lawyer entrepreneur seeking to profit from the delivery of legal services is boundless. More specific definition should be used to provide guidance as to what is and what is not acceptable.

Recommendation #2: Enhancing the availability of technology-based legal products and services and authorizing greater participation by lawyers in technology solutions.

Comment: This recommendation is meritorious, but the devil is in the details. One example of a positive use of technology is found in the British Columbia Civil Resolution Tribunal (CRT).

https://civilresolutionbc.ca/ Simply put, the CRT resolves: Motor vehicle injury disputes up to $50,000; Small claims disputes up to $5,000; Strata property (condominium) disputes of any amount; and Societies and cooperative associations disputes of any amount. The latter two categories are real property disputes under British Columbia’s laws. However, they could be equally applicable to Landlord/Tenant law in Illinois. The online dispute resolution systems functions through an administrator reviewing applications for compliance with system rules, the parties then negotiate online (a resolution is binding). If the parties cannot resolve the dispute, and approved facilitator can assist. If no resolution is achieved, then a lawyer steps in to review and arrive at a resolution.

This is a specific example of how to implement a technologically-based program. In British Columbia, the program is run by the state government. It is not a commercial, for profit, endeavor that is contemplated by the Task Force Report. Nor does it create a new interest group of “Approved Legal Technology Providers” that has a vested financial interest.

The fundamental flaw in the Task Force Report is the creation of a competing—not complimentary—commercial for profit interest group. Basic studies of bureaucratic/commercial demonstrate that once an organization is established, it has two intrinsic inexorable characteristics—self-preservation and expansion. Creation of Approved Legal Technology Providers with independent authority separate from lawyers is a recipe for institutional contradiction to the management of the administration of justice.
More realistic is the recommendation that would authorize lawyers to serve as owners—but not employees of—the Approved Legal Technology Providers and to develop law-related services also known as ancillary business activities.

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

This recommendation is very positive to the extent it keeps lawyers in charge and not commercial non-lawyer profit seeking entities. Inclusion of the Approved Legal Technology Providers in these amendments is too expansive, while expanding lawyer’s ability to develop, own, and have ultimate responsibility would be acceptable. The approach to non-lawyer interest in these entities should be mirrored by the ability of non-lawyers to financially participate in law firms as noted above in the Overview.

**Recommendation #2B: Explicitly authorize the delivery of technology-based legal products and services by individual or entities and appoint a board to develop an appropriate regulatory mechanism responsible for registering and vetting approved legal technology providers.**

This recommendation fails to provide distinction between licensing paralegals and approving technology providers. The definition is problematic:

“Approved Legal Technology Providers” would be defined as individuals or entities that offer electronically accessible systems which generate legal advice, identify legal strategies, and/or generate documents intended to be legally binding through collection of factual information, goals, and preferences from consumers residing or doing business in Illinois.

This brings to mind the litigation ISBA pursued regarding the pseudo-technology entity We The People that purported to provide legal forms while not practicing law, but sending the completed forms to employed lawyers out of state for review. This definition would authorize that and variations thereof.

Moreover, rather than actually address what these entities might be, the Task Force pushes the specifics off to the Supreme Court. This is disingenuous.

**Recommendation #3: Improve the Rules for Limited Scope Representation and #3A, #3B, #3C, and #3D**

This is a valid recommendation (without expressly approving the specific proposed rule amendments) but should also explicitly include mandatory education and direction to the courts in processing such limited representation. As noted in the Report, anecdotal evidence indicates that a problem with implementation is individual judges. Further, trying to take on the federal court system while our state court systems has not solved the problem may be presumptuous.

**Recommendation #4: Develop new/amended rules on alternative fees and fee petitions.**

Without endorsing specific language, this is a positive recommendation requiring greater research and evaluation.

**Recommendation #5: Recognize a new licensed paralegal model so that lawyers can offer more efficient and affordable services in high volume areas of need.**
Wisely, the Report does not recommend licensure of independent paralegal practice. It has not been successful in other jurisdictions. However, a model that would be more akin to a physician’s assistant or a form of lawyer “prescription” telling the paralegal what forms/actions are required are possible approaches.

It is noteworthy that the explanation for this recommendation notes:

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

This illustrates the point made earlier that the proposal is a band aid. Rather than adding another player to the existing structure, the systems for resolving these disputes should be reformed and made more usable by the consumer without the need for that third-party non-lawyer advocate.

Of further concern is that such a licensed paralegal program will serve as the camel's nose in the court tent for independent practice.

Recommendation #6: Streamline and modernize the rules around lawyer advertising.

The amendments by the ABA to the Model Rules of Professional Conduct were the result of significant study and input. See, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/ Rules 7.1, 7.2, and 7.3. This is a reasonable starting place rather than jumping into the more radical Virginia or Arizona versions.

Recommendation #7: Recognize a new community justice navigator model to build off the success of Illinois Justicecorps in the courts.

The court navigator is a good start. Thirty years ago, through the Illinois Pro Bono Center, a program was contemplated that would utilize the State library system to provide computer kiosk and librarian support for consumer education and assistance. In most downstate counties, the local library is near the county courthouse. This model is worth pursuing. One imperfect model is the Arizona experiment with courthouse kiosks. That process required additional direct support either in person or telephone/online.

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

I am unclear what differentiates Recommendations #7 and #8, They should be part of an integrated public access system for courts and dispute resolution programs and funded as a part of the court system.

Recommendation #9: Adopt a clearer practice of law definition with a recognized safe harbor.

And

Recommendation #10A: Undertake a broader plain language review of the Rules to modernize the Rules with the lightest had of regulation needed to achieve the Court’s regulatory objectives.
These two recommendations are proposing much the same thing—deregulation of the practice of law. This should only be considered in connection with revision of the court system and adding more consumer-friendly administrative dispute resolution. No “safe harbor” can exist without reform of the broader dispute resolution system. Simply trying to define UPL within the current system is a fool’s errand opening the door for non-lawyer practice. The proposed Rule in the Report is impractical as a whole, but should be addressed for specific areas of law.

Recommendation #10B: LTF and ARDC should work together to amend Rule 1.15 to accommodate the court’s plain language initiatives.

The Report is correct that Rule 1.15 is in “need of review, modernization, modification, and editing.” However, the process should include more than just LTF and ARDC. Bar association participation must be included.

Recommendation #11: Convene a new committee to explore the potential benefits and harm associated with eliminating the 5.4 prohibition on ownership of law firms by people who are not lawyers.

The concept of non-lawyer ownership simply opens the door for the Big Four (or however many) accounting/consulting firms to subsume the practice of law. The assets and marketing ability of these entities exceeds that of the top 100 or more law firms combined. Rather, to repeat my earlier quotation:

[the European approach] where, in various jurisdictions, there is a limit to the percentage of ownership/investment that can come from non-lawyers. For example, “Europe permits alternative business structures on a more limited scale with 49% of Scotland, 33% of Italy, 25% of Spain and 10% of Denmark requiring lawyers to have primary control of legal firms.”

... 

Finally, while there is insufficient time at this point to analyze the ARDC report, to address John Thies’ letter of dissent. To coin a phrase, I concur in part and dissent in part. In particular, the emphasis on client protection must be paramount and requires improvement in the Client Security Fund system and greater standards for mandatory professional liability insurance in matters where client assets and financial interests are involved. The current system of ARDC disclosure is insufficient.

However, as noted above, I disagree with the disinclination to revise Rule 5.4.

Obviously, the limited time made available for reviewing the Report does not allow the further research necessary to fully analyze the specific proposed rule amendments.

Thank you.
Responsive Law’s Feedback

Responsive Law

The Consumer’s Voice in the Legal System

Comments on: CBA/CBF Task Force Report

August 21, 2020

Tom Gordon Executive Director, Responsive Law

Submitted to the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation

Responsive Law thanks the Task Force for the opportunity to present these comments on its Report. Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. While some of the Task Force’s recommendations would greatly benefit consumers, others would do little to help them, and some would make their situation worse.

The Good: Streamlining Lawyer Advertising Rules

Consumers face multiple barriers in finding legal help. Often the first barrier they face is recognizing that the problem they’re trying to solve has a legal component.

The Task Force, citing Rebecca Sandefur’s groundbreaking study, has acknowledged this barrier. It has also drawn the appropriate conclusion—that “[t]he ability for lawyers to advertise to raise awareness and stimulate the market is a crucial part of helping people recognize they have legal problems with potential legal solutions.”

The proposed changes to the lawyer advertising rules would simplify them to essentially a prohibition on false or misleading statements and a prohibition on coercion and harassment. This is the essence of consumer protection in lawyer advertising. The rest of the lawyer advertising rules are, at best, a labyrinthine morass of outdated attempts to codify how these principles apply to specific situations.

Streamlining the rules would allow lawyers to spend more energy on reaching consumers in innovative ways and less energy on parsing (for example) whether one needs to place the words “Advertising Material” on a firm website. And consumers would welcome access to previously prohibited information such as a lawyer’s areas of expertise.

The Bad: The Task Force Moved Too Timidly with Respect to Restrictions on Law Firm Ownership

A few years ago, when I was in Chicago for a family trip, my wife and I needed a babysitter for our then-toddler. We used an online platform to find a babysitter, whom we left alone with our daughter for the evening. It’s likely that a portion of the money we paid the sitter went to the platform, but we didn’t worry for a moment that she would put the company’s interests ahead of the safety of our daughter. If we’re not concerned about corporate pressure on teenage babysitters watching our children, then why should we believe that lawyers—who have been trained in legal ethics and are required by rules of
professional conduct to act in their clients’ interest—would crumble under the corporate pressure applied by their employer?

The prohibition on fee splitting and non-lawyer ownership serves no consumer protection purpose that is not already accomplished by the other rules that protect a lawyer’s professional independence. But it does stifle innovation by requiring lawyers to provide artisanal services in every case, when people often are searching for a mass-market service.

Just this week, the Utah Supreme Court has agreed to implement a regulatory sandbox where innovative companies with non-lawyer ownership will be able to provide services to consumers, with the Court using data from the sandbox to determine how to best adapt regulation of such providers. The Arizona Supreme Court is on the verge of eliminating Rule 5.4 altogether. At a minimum, the Task Force should have recommended that a committee study how to regulate in the absence of Rule 5.4, rather than whether to do so.

**The Bad: The Licensed Paralegal Model Would Create A New Licensing Scheme Without Any Consumer Benefit**

We dispute the Task Force’s premise that allowing more professionals to provide services won’t increase access and affordability of those services. This is a simple matter of supply and demand. The cost of legal help is high in large part because there are not enough providers to meet all of the public’s legal needs. This is especially true in the areas where most people need help, such as landlord-tenant, family law, and consumer debt. Allowing independent legal providers without a J.D. to provide services in these areas could greatly reduce the cost of those services.

Unfortunately, the proposal to create a licensed paralegal model would provide only a minuscule boost to the supply of legal assistance. Requiring these professionals to work under a lawyer’s supervision will have at best a small impact on the cost of these services. Consumers could benefit far more by having access to independent legal service providers, without having to pay for lawyer to supervise them.

We recommend that the Task Force amend its recommendation to allow professional paralegals meeting the proposed licensing requirements to operate independently of lawyer supervision, with an insurance requirement for the individual service provider sufficient to protect consumers.

**The Ugly: The Proposals for Regulation of Intermediate Entities and Legal Technology Providers Would Make It More Difficult to Use Such Providers**

Better use of technology is an important component of increasing access to legal help. However, the Task Force’s proposals in this area miss the mark in improving access to legal help through technology.

We appreciate the Task Force’s goal of maintaining lawyers’ independent judgment in its proposal regarding intermediate entities that connect lawyers with consumers. In particular, we strongly support the proposed Evidence Rule 503, which would ensure that communication with intermediate entities about obtaining legal representation is privileged. We also approve of the proposed Rule 5.4(a)(5), allowing lawyers to share fees with registered intermediate entities as long as they don’t engage in behavior that could harm consumers, such as interfering with the lawyer’s professional independence of judgment.
There are, unfortunately, two problems with the proposed rule regarding intermediate entities. First, the proposed Legal Technology Regulation Board could potentially consist of a majority of lawyers. Proposed Rule 800 recommends that there be representation by lawyers representing various types of users of legal services. However, the Board would be more representative—and less likely to run afoul of antitrust law under the U.S. Supreme Court’s decision in North Carolina Dental Examiners v. FTC—if it were composed primarily of those users themselves. We urge the Task Force to change this proposed rule to prohibit a lawyer majority. The rule should also require that, where feasible, membership on the Board should include low- and middle-income individuals and representatives of small companies, rather than lawyers who have those groups as clients. Making these changes would ensure sufficient representation of consumer interest on the Board.

More importantly, the language of Proposed Rule 801 appears to require registration of all intermediate entities, whether or not they share fees with lawyers. Many business models for attorney-client matching services currently operate legally without registration, and without evidence of consumer harm. Requiring registration for these providers would increase the costs of such services, which would then be passed on to consumers.

Additionally, it is not within the power of the Illinois Supreme Court to regulate a business merely because it provides services to lawyers. We urge the Task Force to revise this rule so that registration is only required for companies that share fees with lawyers.

Proposed Rule 802, governing Approved Legal Technology Providers has a nearly identical problem to Proposed Rule 801. Section (a) states, “No individual or entity may offer access to services and products through such systems unless approved and registered under this Rule.” The “systems” covered by the rule include anything from advanced artificial intelligence to a simple fill-in-the-blanks PDF document. The latter is clearly permissible under current interpretation of unauthorized practice restrictions, and even the former is, at a minimum, in a legal gray area.

Given the evolving (and often murky) case law regarding UPL, and the desire to provide additional protection to consumers, we urge the Task Force to convert this section to a UPL safe harbor, by changing the last sentence of section (a) to read, “No individual or entity offering access to services and products through such systems shall be considered to be engaging in the unauthorized practice of law if approved and registered under this Rule.”

**Conclusion**

The Task Force has made some promising recommendations, but has also made some flawed recommendations that need to be fixed so that they don’t constrain access to legal help rather than increase it. We urge the Task Force to make those changes to meet its goal of making legal services more affordable and accessible.
Lucy Ricca’s Feedback

I am a member of the Utah Implementation Task Force, a Fellow at the Stanford Center on the Legal Profession, and the Special Project Advisor for the IAALS Unlocking Legal Regulation Project.

I commend the Task Force on a well-written and thoughtful report. It is evident how much careful and hard work went into the report. Overall, I support the objectives and direction of the report. I make this comment to urge the Task Force, and the Illinois Supreme Court, to think both more boldly and more simply about reforming the market for legal services in the state. In particular, I urge the Task Force to take on the challenge of rolling back Rule 5.4 and opening up the practice of law to nonlawyers.

As the Task Force report lays out so eloquently, the American legal services market is not working for the majority of people. Although there are many variables impacting this this state of affairs, the dysfunction of our legal services market is the result of excessively restrictive regulation. The two fundamental restraints are: (1) Rule 5.4’s limitations on who may own or fund legal services and how business models may be structured, and (2) the limitation of the “practice of law” (everything a lawyer could possibly do) to lawyers. Although couched in ethical terms around the protection of the public, these two rules are economic restrictions on the legal services market. We lawyers believe these rules are needed to protect the public from harm caused by nonlawyers because we are taught that from the start of our legal education. As the work of Professors Rebecca Sandefur, Deborah Rhode, Gillian Hadfield and others has shown us, there is no evidence that either of these rules protect the public from harm. In fact, the overwhelming evidence is the opposite, as shown by the vast numbers of Americans unable to understand, afford, or access legal help. We have protected the public right out of the system and, along the way, painted lawyers into a corner, unable to access the financial or human capital needed to truly innovate and serve their clients.

Fixing our American legal services market requires far-reaching and bold reform. It requires changing the lens with which we view legal help from a provider-centric perspective to a consumer-centric perspective. It means turning away from assumptions about potential harm and looking at the actual evidence of harm in front of us. And it means truly putting the public before lawyers. Changes at the edges, modifications to the rules, creations of carve-outs...these things will not get us to where we need to be. This is why I urge the Task Force to take a hard look at the long and complicated list of proposals and try to distill it down to the fundamentals: How might we open the market to allow more providers, more services, more innovation, and more engagements while protecting consumers from actual harm?

This is the question that drives the Utah Supreme Court and galvanized its approval of regulatory reform in that State. The Court both enacted significant reforms to Rule 5.4, including permitting fee sharing and nonlawyer investment and ownership, and established a new regulatory body (Office of Legal Services Innovation) to assess and oversee new entities and services seeking to operate under the new rules in the “regulatory sandbox”.

This is not deregulation. Taking advantage of the relaxed restrictions requires submitting to a new regulator and supplying detailed data on consumer experience. The sandbox is a carefully controlled, limited pilot program to license legal service entities to practice law, permit lawyers to work with and for those entities, and enable policymakers to study and learn about what works and what doesn’t. Entities that would fall into any one of the recommendation categories outlined in the Chicago Task Force report, entities that would fall across multiple categories, and (perhaps most importantly) entities and services that we cannot even imagine yet - all can enter into the sandbox and be assessed under the same regulatory principles of empiricism and risk.

Here’s how the sandbox works: entities wanting to provide legal services must apply and provide detailed information on their proposed services. They must undergo a rigorous process of review conducted by a team of lawyers and other experts on the legal services market. The review is focused on understanding the risks involved in what is being proposed - what are the potential risks to the consumer, how can we measure whether they are occurring or not, and how can we mitigate them? If the risks are too great, the application is denied. In Utah, we are planning to use reporting requirements, expert audits, and secret shopper tests to further protect consumers. Let me note - lawyers are not subject to anything like these regulatory requirements under the current system. The beginning, middle, and end of the sandbox approach is driven by consumers - increasing consumer access and choice and protecting consumers from harm.

Further, the Utah model does not build in assumptions around quality or appropriateness of a business model or legal service. We know that not every legal need requires a lawyer. We know that many lawyers provide less than stellar legal assistance. We cannot start from the assumption that any service that is not a lawyer is inherently limited, less-than, or harmful.

We have seen a great deal of interest from entities and providers in Utah and beyond. Under the Court’s leadership, we were able to begin accepting and reviewing applications to enter the sandbox during the public comment period. We also received several informal presentations from potential applicants. We have received 16 applications. We have heard from many lawyers and others who have innovative ideas on how to serve individuals with modest incomes and small businesses. We have seen presentations around a variety of services including (speaking at a general level): technology platforms and remote assistance for those seeking unemployment or other benefits, including (potentially) Covid-relief benefits and entities focused on enabling lawyers’ to serve more clients in rural areas and work with other professionals in the family law, estate planning, housing, and expungement spaces. We are hearing from nonprofit organizations interested in furthering their impact through technology platforms and nonlawyer advocates.

As I have engaged with these reforms and worked on the Utah sandbox, the overwhelming theme that has emerged is: opportunity. These reforms - if done correctly - will increase the opportunity for regular people to get legal help. They will also increase the opportunity for lawyers to provide that help in new ways to new people. But to recognize this opportunity, the
reforms have to directly address the true economic obstacles to innovation and access and remove them - not just for legal technology providers or intermediary models but across all potential service sectors. I urge the Task Force to take on Rule 5.4 and the unauthorized practice of law directly and boldly and consider recommending adoption of the Utah regulatory sandbox and risk-based regulator model.

Thank you, Lucy Ricca

Member, Utah Regulatory Reform Implementation Task Force Fellow, Stanford Center on the Legal Profession

Special Project Advisor, IAALS Unlocking Legal Regulation Project
Dear Members of the Task Force on the Sustainable Practice of Law & Innovation:

I write to provide feedback on your terrific report and recommendations. Our general reaction is that your recommendations are exactly right directionally, but should go much faster and further than they currently do in order to benefit lawyers and the public.

In what follows, I will provide some quick background on our Center, some general thoughts on this issue of regulatory reform in legal services (some of which is already reflected in your report), and some more specific thoughts on the recommendations.

Stanford CLP. The Stanford Center on the Legal Profession is devoted to the study of precisely the kinds of questions that the Task Force has tackled: how should lawyers be regulated in order to preserve the profession’s core values while increasing access to justice. Our faculty director, Professor Deborah Rhode, has taught legal ethics at Stanford Law School for more than 30 years, was the founding president of the International Association of Legal Ethics, is the nation’s most frequently cited scholar on legal ethics, and has won multiple awards for her scholarship on regulation of the legal profession and access to justice.

Traditional Business Model is Obstacle to Access. The principal obstacle to increasing access to legal assistance is the business model in which legal services have conventionally been available to ordinary individual consumers and small businesses. That model relies largely on one-on-one lawyering, through traditional solo and small firm practices, generally billed on an hourly basis, supplemented by online assistance. The model forgoes the cost-reducing benefits of scale, branding, technology, and the ordinary efficiencies that would come from having lawyers specialize in legal functions, while others (software engineers, financial analysts, business managers, marketing experts, etc.) specialize in all the other functions.
Why has the traditional model of legal service delivery not achieved greater efficiencies and lower costs? The American approach to professional regulation is not the only answer, but it is clearly a major contributing factor. That approach is expressed primarily in the expansive rules on unauthorized practice of law and the restrictions on the corporate practice of law and fee sharing. These rules make the markets for legal services among the most, if not the most, intrusively regulated in the modern American economy. Even the practice of medicine is far more openly organized, particularly since the advent of health maintenance organizations.

The legal profession can be stronger – and consumers of legal services can be better served – if we make it easier for new “one to many” business models to emerge through greater use of technology, and partnerships with and service from allied professionals. One theme of these comments is that the Task Force report – in its current iteration – does not go far enough to make this happen.

Covid-19 Implications. The one big thing that has changed since the Task Force begun this work, of course, is the Covid-19 crisis, which has increased legal needs significantly. We have already seen in Illinois and nationwide the effect of the justice gap: Large businesses with lawyers and connections at banks were able to get access to the PPP loans, while smaller businesses -- many of them minority-owned -- were left out. Hundreds of thousands of individuals in Illinois face justice problems related to housing, employment, debt, and more. Jim Sandman, the current chair of the American Bar Association's Task Force on Legal Needs Arising Out of the 2020 Pandemic and former president of the Legal Services Corporation, has suggested that the "current Covid-19 pandemic makes this a particularly appropriate time to move ahead with regulatory reform."

Task Force Recommendations: Below are comments on three of the recommendations: (a) Intermediary-Entity Model (Recc 1); (b) the Licensed Paralegal proposal (Recc 5); and (c) the Technology-Provider proposal (Recc 2) and Rule 5.4 more generally (Recc 11).

Intermediary-Entity Model (Recc 1)

We think that this proposal is a sensible one that can readily be enacted as soon as possible. Clarifying that such relationships do not violate Rule 5.4 is a significant step to addressing the untapped market for legal services for the benefit for both lawyers and consumers. Our only concern is twofold: Registration with the basic information the report describes makes sense. But for example, we agree that the ARDC model is overly complicated and burdensome, and there is a risk that a new regulatory mechanism will introduce additional requirements. Related, to the extent this creates an exception to Rule 5.4, a superior approach would be to simply repeal Rule 5.4 altogether, as Arizona is on the verge of doing, or create a broader if time-limited and consumer-focused pilot program (or “sandbox”) as Utah is doing.

Licensed Paralegal (Recc 5)

This is also an important proposal that we support directionally, but hope it can be strengthened before sending to the Illinois Supreme Court. In its current form, this proposal relies too much on the traditional model of a paralegal operating under the direct supervision of a lawyer. This keeps the cost of legal services unnecessarily high, harming the consumer. While we believe that future models of legal services provision should place lawyers at the center, with other legal professionals playing important roles, licensed paraprofessionals need to be able to exercise independent judgment in order for providers to scale sufficiently to meet the vast consumer need. This proposal would also be stronger if it was combined with repeal of Rule 5.4 (or a “sandbox” to experiment with loosening such restrictions) so that providers could bring in the capital or expertise needed for such scale.
In explaining why the Task Force rejected the LLLT or Legal Document Preparer model, the Report says “The cost of services is driven primarily by the cost of operations – office space, technology, licensing, personnel, etc. There has been scant data to support the proposition that the creation of new independent categories of providers in some other jurisdictions have had a meaningful impact on addressing the access to justice issue.” This is both contradictory and misleading.

It is contradictory because one of the reasons these licensed providers benefit consumers is that they can charge less than lawyers for basic services – so the cost of “personnel” is lower. This is in part because they do not need to invest seven years of expensive higher education, and so can charge less and still get a good return on their investment in training. Moreover, one of the reasons the LLLT program in Washington has not been even more impactful is because the State Bar imposed overly onerous (and therefore) training requirements. Better calibrated training requirements for the job will mean lower debt for the providers, and the ability to charge less. Along similar lines, comment 4 to the proposed rule argues “The Committee reasons that the inaccessibility of legal services is not due to a provider pool that is too small.” But this is a straw man; no one is making an argument to the contrary.

Or consider the medical analogy. A health care provider like Kaiser Permanente can provide affordable medical care to families in part because it uses nurse practitioners and physician assistants to provide basic medical services while reserving higher-paid doctors for more complicated problems and procedures. As Utah Supreme Court Justice Deno Himonas has said, the legal system essentially forces the equivalent of a thoracic surgeon to draw blood. And as a forthcoming white paper from our Center explains, there is considerable evidence that the creation of nurse practitioners – resisted initially by doctors – has increased access to medical care and lowered cost.

And the quoted passage is misleading because the reference to “scant data” implies that studies have shown no effect on access to justice. There simply are no large-scale studies – likely in part because there have not been enough providers for enough time, and perhaps also because no one has funded such a study. But there is preliminary evidence that these providers have had a positive impact, and if the Task Force is interested in revisiting this issue, we would be happy to help look at that evidence.

To take one important example, consider the award-winning Hello Divorce model from the family lawyer Erin Levine in California, currently expanding to other states. The average cost of divorce in Illinois is $13,800 per person, and up to $30,000 if children are involved. Levine has used Legal Document Preparers and technology to help people going through divorce in California for an average of $1500 through her Hello Divorce platform. She was recently hiring LLLTs in Washington in order to expand in that state, helping consumers there. I suspect that the many satisfied Hello Divorce users – nurses, teachers, retail workers – would strongly disagree with the claim that Legal Document Preparers have not had a “meaningful impact” on access to justice even if they have not yet served enough consumers to bring the average cost of divorce in California (or number of unrepresented litigants) down significantly.

Technology Provider and Rule 5.4 generally (Reccs 2, 11)

This is an excellent proposal that will accelerate the launch of “one to many” products and services that will benefit consumers. Our one suggestion is similar to that offered above regarding intermediaries. Rather than simply creating a category of “Intermediary Entities” and another for “Legal Technology Providers,” with more exceptions to Rule 5.4 to come in the future, a better course would be to do as Utah has done: charge a new Office of Legal Services Innovation with receiving and authorizing applications from nontraditional legal service providers of all kinds to operate in a consumer-focused pilot program or “sandbox.” Utah has received several applications already, almost all of the proposals from lawyers. Many, if not most, do involve the use of technology.

Reforming Rule 5.4 Is Critical. Before closing, it is worth pausing on the importance of repealing or significantly revising Rule 5.4 more generally. In our view, the current prohibitions on fee sharing and outside investment by nonlawyers contribute to the lack of affordable choices for many individuals and organizations. Without the ability to enlist management and technology experts as full partners or investors, legal service providers are not able to benefit from the best expertise in how to reach and serve potential consumers. Countries that allow lay investment in or ownership of legal service providers consistently rank ahead of the United States in access to and affordability of legal services. Moreover, there is no evidence to support the claims of ethical problems that opponents of reform often invoke.

The experience of the UK and Australia is particularly instructive. England and Wales have allowed nonlawyer ownership and investment since 2011, and research from the Solicitors Regulation Authority finds no evidence that these models result in adverse effects on consumers. Rather, the research indicates increased choice and competition, improved services to consumers, reduced prices, and increased innovation in the provision of legal services. Australia has also successfully allowed such ownership and investment, which has helped enable the development of widely accessible law firms serving consumers in a breadth and scope not available in the U.S.

Some worry that if multidisciplinary practices and non-lawyer investment were allowed, lawyers’ independent professional judgment would be compromised. But the experience in the United Kingdom is that alternative business structures have thus far dealt better with complaints and had no more disciplinary sanctions than traditional lawyer-owned practices. Indeed, regulating legal service providers as entities can help improve practices that mitigate the risk of ethical violations. And of course, the existing ethical rules around conflicts of interest, confidentiality, and other issues would still apply to individual lawyers.

Critics often claim that allowing nonlawyer ownership and investment would somehow introduce the “profit motive” to the legal services market. But private-sector lawyers are already driven by their desire to maximize their own profits while providing ethical service. Reforming Rule 5.4 to permit full participation by other profit-seeking entities would not appreciably increase the risk of misconduct if appropriate regulatory safeguards are in place. A regulatory sandbox, for example, is a proven way to monitor potential problems and devise appropriate rules without risk to the public.
Thank you again for the tremendous contribution of the task force to people in Illinois, and to the national conversation on these important issues.

Sincerely,

Jason Solomon