

Task Force on the Delivery of Legal Services: An Overview

BY HON. ANN A. SCOTT TIMMER

In the fall of 2018, then-Chief Justice Scott Bales asked me to chair the Court's Legal Services Task Force. I welcomed the opportunity to lead a group of lawyers, nonlawyers, educators, and judges in examining the delivery of legal services in Arizona with the primary goal of expanding access to legal services and the secondary goal of considering amendments to the ethical rules to accommodate modern-day practice. Scrutiny of our profession in the twenty-first century was overdue.

Most of us know that many people simply can't afford lawyers. They therefore either ignore legal problems or tap into the technology-based "do it yourself" market that operates without any regulatory oversight. According to one ABA report, more than 100 million Americans have civil justice problems, and lawyers would have to provide an additional 900 pro bono hours each to assist all households.¹

Unsurprisingly, courts are clogged with people trying to represent themselves and looking for self-help resources. Meanwhile, many small-firm lawyers, who typically represent ordinary people, are struggling to earn a living. A 2017 trends report based on information gathered from more than 60,000 solo and small-firm lawyers found that the surveyed lawyers gross \$422 per day on average.² This translates to \$105,000 per year (assuming a two-week vacation)—before paying overhead. It would certainly be unfair to expect these lawyers to work pro bono or "low bono" to assist more people with legal problems.

Against this backdrop, the Task Force was charged with making recommendations concerning existing and potential new programs and the utility of existing ethical rules for lawyers. The entire Task Force met publicly from January through September 2019, taking comments from both spectators and

invited speakers with expertise in or experience with different modes of practicing law. The Task Force issued its report in October 2019 (www.azcourts.gov/Publications-Reports), making 10 recommendations:

1 recommendation

Remove the barrier to lawyers and nonlawyers sharing legal fees or co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public. To accomplish this, ER.s 5.4 and 5.7 would be eliminated and ER.s 1.0 through 5.3 would be amended to tighten rules concerning client confidentiality, lawyer independence, and conflicts of interest. Notably, it was reported to the Task Force that Washington, D.C., and places outside the United States that permit lawyers and nonlawyers to co-own legal entities have not received significant complaints about the delivery of legal services through these entities.

The Task Force also recommended that a steering committee convene to construct a separate regulatory framework for legal entities owned by lawyers and nonlawyers. This framework would include licensing requirements, ethical rules and a discipline system.

2 recommendation

Amend the "advertising rules," ER.s 7.1 through 7.5, to conform with 2018 amendments to the ABA Model Rules, which account for technological advances in the delivery of legal services as well as cross-border marketing of legal services. The recom-

mended amendments simplify the rules and accommodate multijurisdiction advertising. Of particular interest, the proposed amendment to ER 7.3 defines "solicitation" and permits solicitation of people who regularly hire lawyers for business legal services. The advertising rules retain the primary regulatory standard for advertising—communications must be truthful and not misleading.

Perhaps the most significant proposed amendment, which is not part of the ABA Model Rule amendments, would eliminate ER 7.2(b)'s prohibition against giving anyone anything of "value" for client referrals. Taken literally, the provision prohibits giving a firm paralegal a gift card for referring a family member to the firm. The Task Force concluded that ER 7.2(b)'s prohibition serves no productive regulatory purpose as no quantifiable data suggests that paying for referrals confuses or harm consumers.

3 recommendation

Promote education and provide information about "unbundled legal services" to the bench, bar and public to encourage expanded use of these services. Arizona has allowed lawyers to engage in limited scope representation since 2003.³ Although family law practitioners engage in limited scope representation, lawyers practicing in other areas of law do not generally do so. Education is needed to kickstart use of these services.

4 recommendation

Revise Supreme Court Rule 38(d) to clarify that graduates from accredited law schools can practice law under the supervision of a lawyer while awaiting bar results and admission to the bar. The qualifications for this



Read Petition R-20-0034
and comment on it at:

<https://www.azcourts.gov/Rules-Forum>
(under the sub-forum "Rules of the Supreme Court").

program are set forth in the proposed rule.

5 recommendation

Restyle Supreme Court Rule 31(d), which currently provides 31 licensing exemptions for practicing law, to make the rule easier to navigate and understand.

6 recommendation

Develop a tier of "limited license legal practitioners" (LLLPs), qualified by education, training and examination, to provide limited legal services to clients, including representation in court and in administrative proceedings. Because the Task Force lacked the time and expertise to identify permissible practice areas and construct a regulatory framework for LLLPs, it recommended appointment of a steering committee to perform that function. Specifically, that committee would identify the appropriate scope of practice for LLLPs, set education and licensing requirements, draft an ethics code, and establish a discipline regime.

The goal of this recommendation is not to replace lawyers—the gold standard for legal representation—but to provide competent legal assistance to people who otherwise would not hire a lawyer (or when a lawyer would not otherwise represent the person) due to the economics of the matter or the person's finances. It also permits lawyers to employ LLLPs to assist clients, where warranted, in a more cost-effective manner. Other places outside the United States, such as Ontario, Canada, have experienced success with such limited license practitioners.

7 recommendation

Authorize a pilot program for licensed legal advocates to expand the delivery of legal services to domestic violence survivors. This program was developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law and would operate in Tucson through the Emerge! Center Against Domestic Abuse.

8 recommendation

Authorize a pilot program for legal document preparers serving domestic violence survivors serviced by the Bar Foundation's Domestic Violence Legal Assistance Project.

9 recommendation

Make changes to improve access to and the quality of legal services provided by certified legal document preparers.

10 recommendation

Encourage local courts to establish "navigator" programs in which trained nonlawyers provide legal information about court processes to self-represented litigants.

In January, the Task Force filed rule petitions asking the Supreme Court to amend its rules as recommended. These petitions can be read and commented upon in the Court's rules forum, <https://www.azcourts.gov/Publications-Reports>. The details regarding proposed legal entity regulation (recommendation 1) and LLLP

practice (recommendation 6) will be set forth in the Code of Judicial Administration. Those proposed code sections will be set forth in the Code forum, and the public can comment on them. Initial comments are due on March 30. After any response by the Task Force by April 27, more comments will be accepted until May 26. The Court will meet in late August to discuss the rule petitions and either grant, grant as modified, deny, or continue the petitions for further study.

The Task Force recognized that many of its recommendations would encounter resistance. Change is difficult. The knee-jerk reaction of many of us was that some of these changes were unworkable or inadvisable. But pushing past first impressions resulted in creative thinking and robust debates that resulted in these recommendations. I ask that lawyers similarly keep an open mind, carefully review the rule petitions, and provide constructive commentary in the rules and Code forums.

endnotes

1. ABA Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States* 14 (2016) (citing Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, DAEDALUS 5 (2014)). [ABA Report available at <https://bit.ly/2Ttx1YJ>].
2. Clio, *2017 Legal Trends Report*, 17 (2017), <https://www.clio.com/resources/legal-trends/2017-report/>.
3. ER 1.2(c), ARIZ.R.S.CT. 42.

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