



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 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

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>.

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 protect 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,

² LEGAL TRENDS REPORT 10-11, CLIO (2018), <https://www.clio.com/wp-content/uploads/2018/10/Legal-Trends-Report-2018.pdf>.

technology assisted review (TAR), automated document assembly (ADA), robotic process automation (RPA), predictive technology, and smart contracts/distributed ledger technology (DLT).³ 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).⁴ 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.

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.

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), <https://www.legalservicesboard.org.uk/wp-content/media/Innovation-survey-2018-report-FINAL-2.pdf>.

⁴ *Id.* at 43.

Thank you for your dedication toward improving the legal industry for the betterment of everyone.

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