

## **Comment on Intermediary Connecting Services Proposal and recommendations to amend Rule of Professional Conduct 7.2 and Supreme Court Ruled 730 & 220**

We write on behalf of IAALS, the Institute for the Advancement of the American Legal System, in response to the Illinois Attorney Registration and Disciplinary Commission (ARDC) request for comment to proposed changes to lawyer advertising and referral rules included in its Intermediary Connecting Services Proposal (the “Proposal”).<sup>1</sup> We applaud the ARDC’s efforts to offer badly needed guidance to attorneys and allow for less restricted access to modern technological means of connecting attorneys to those who seek their legal services. However, we are concerned that the proposed changes to Rule 7.2 and Supreme Court Rules 730 and 220 will create an overly complicated, burdensome, unnecessary, and expensive scheme that will undermine the ARDC’s laudable goal of addressing market inefficiencies that prevent lawyers from finding clients and people in need of legal services from finding lawyers.

The crisis in access to legal services has had severe consequences for lawyers and for people in need of legal services. For example, lawyers restricted in their ability to use modern communication techniques, such as intermediary connecting services, face inefficiencies in finding clients that don’t exist in other industries. A recent report on legal trends suggests that many lawyers spend much (if not most) of their day-to-day time on administrative tasks and work related to marketing and earning new clients.<sup>2</sup> The same report also 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.<sup>3</sup> This restriction puts lawyers in the unenviable position of having to run a business with structural impediments to making services more efficient. These inefficiencies have significantly contributed to a business model in which lawyers must charge fees that most people in the United States simply cannot afford.

This is not to say that demand for legal services is declining. In a study IAALS conducted on the experience of self-representation in family court, more than 85 percent of the people surveyed wanted legal advice or representation, but they could not get the help they needed because the

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<sup>1</sup> IAALS is a national, independent research center at the University of Denver dedicated to continuous improvement of the civil justice system.

<sup>2</sup> LEGAL TRENDS REPORT 14, CLIO (2018), <https://www.clio.com/wp-content/uploads/2018/10/Legal-Trends-Report-2018.pdf>.

<sup>3</sup> *Id.* at 10-11.

cost was too high and they were unclear on where to find the right resources.<sup>4</sup> Lawyers, however, are at a severe disadvantage to competitors in an economy characterized by technologically adept consumers expecting solutions to be readily available and accessible. According to the 2019 Altman Weil Law Firms in Transition study, 63 percent of attorneys indicated their firms were losing business to corporate law departments and 14 percent reported losing business to alternative legal providers.<sup>5</sup> And unregulated companies such as LegalZoom or Rocket Lawyer have the ability to scale in a way lawyers do not.

Restrictions imposed on lawyers by the current regulations effectively keep them out of touch with, and out of reach of, the people they are meant to serve at a time when the legal profession is in crisis. Studies show that there are likely over one hundred million people in the U.S. living with civil justice problems, but Americans seek lawyers for help or consider doing so for only 16 percent of the civil justice situations they encounter, and 76 percent of cases in state courts involve at least one self-represented party.<sup>6</sup> The problem reaches far up the income scale. It is not only the poorest who lack access to legal services, it is also the middle class and small businesses. According to the ABA, in some jurisdictions over 80 percent of the civil legal needs of lower- to middle-income individuals are unmet.<sup>7</sup>

Access to legal services for consumers and sustainable practices for lawyers appear to be two sides of the same coin. The profession is facing declining business at a time when there is

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<sup>4</sup> NATALIE ANNE KNOWLTON, LOGAN CORNETT, CORINA D. GERETY, & JANET DROBINSKE, *CASES WITHOUT COUNSEL, RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT 12* (May 2016),

[https://iaals.du.edu/sites/default/files/documents/publications/cases\\_without\\_counsel\\_research\\_report.pdf](https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf).

<sup>5</sup> Eric A. Seeger & Thomas S. Clay, *Law Firms in Transition: An Altman Weil Flash Survey 4*, ALTMAN WEIL, INC. (2019), [http://www.altmanweil.com/dir\\_docs/resource/28BC6AB5-10E9-418D-AED2-B63D1145F989\\_document.pdf](http://www.altmanweil.com/dir_docs/resource/28BC6AB5-10E9-418D-AED2-B63D1145F989_document.pdf).

<sup>6</sup> See Rebecca L. Sandefur, *Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services*, in MIDDLE INCOME ACCESS TO JUSTICE 222 (Anthony Duggan, Lorne Sossin, & Michael Trebilcock, eds., 2012); Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, AM. B. FOUND. 14 (2014),

[http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf); and CIVIL JUSTICE INITIATIVE, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS, NATIONAL CENTER FOR STATE COURTS, STATE JUSTICE INSTITUTE, p. iv (2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>, respectively.

<sup>7</sup> Victor Li & James Podgers, *Can the access-to-justice gap be closed? These recommendations might make it possible*, ABA JOURNAL (Aug. 6, 2016), [http://www.abajournal.com/news/article/aba\\_commission\\_future\\_legal\\_services\\_report\\_access\\_to\\_justice](http://www.abajournal.com/news/article/aba_commission_future_legal_services_report_access_to_justice).

enormous demand for affordable legal services. This is due to the fact that lawyers are locked into a 19th century model for delivering legal services; a model developed before there were trains, penicillin, or telephones, much less the internet. Change is required now, more than ever, given the disruptions and restrictions resulting from the COVID-19 pandemic.

The Illinois Supreme Court and the ARDC have correctly recognized that much of this crisis is created by a dysfunctional market for legal services. We cannot, however, support the current Proposal because we believe it is structured in a way that will not effectively address those inefficiencies. The Proposal purports to remove the blanket proscription on referral fees for “intermediary connecting services,” but substitutes instead an excessively complicated and expensive scheme of registration and requirements without any evidence that such a scheme is necessary. These services, also known as online lawyer marketplaces or platforms, are a fast growing segment of the larger legal technology industry. These services do not practice law themselves; they may offer legal information services or form completion services and include connection to a lawyer to supplement those services. Lawyers remain independent. The engagement and practice of law occurs in the context of a traditional lawyer/client relationship.<sup>8</sup> IAALS has not identified any evidence that such services present any risk of harm to the public.

Despite this, the ARDC proposal requires “intermediary connecting services” to submit extensive information about their business structure, corporate governance, leadership, and even marketing strategy.<sup>9</sup> They must submit annual financial records.<sup>10</sup> They must pay annual fees.<sup>11</sup> The ARDC argues that this approach is needed to weed out shady services that may engage in “deceptive or pressure tactics” without offering any evidence that such services present a quantifiable risk requiring such a heavy-handed regulatory response.<sup>12</sup> The Proposal also includes no mechanism by which the ARDC or the Court can make ongoing assessments of whether consumer harm is actually occurring, such as reporting requirements around complaints or outcomes. In addition, the Proposal does not accommodate innovation or the adoption of future technology that would further improve how lawyers and consumers can connect. The rigid definition of “intermediary connecting services” presumes a stasis in the market that simply does not exist, particularly given the rapid advances of technology and the impact of globalization.

We believe there is a better way, exemplified by the reforms underway in states like Utah and Arizona. Each of these states has undertaken broad assessments of the anti-competitive impacts

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<sup>8</sup> Business models vary across entities of course. LegalZoom and Rocket Lawyer, for example, have both adopted prepaid legal plans as their model for lawyer services to supplement their legal information and forms.

<sup>9</sup> Proposal at 8-10.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1.

of the ethical rules, including but not limited to those at issue here. The supreme courts in each state have recognized that the overly restrictive rules on advertising, solicitation, and referral fees lack evidentiary support and are redundant of other ethical rules. Neither state found evidence requiring implementation of a complex and expensive registration and requirements system to govern for-profit referral platforms.

Instead, Arizona and Utah have both carefully assessed the impact and risk around lawyer referrals and both recommended removing the proscription entirely.<sup>13</sup> Acknowledging that the ethical command of Rule 7.1 prohibiting false or misleading communications sufficiently and clearly addresses the primary risk of harm, these courts have approved recommendations completely eliminating the prohibition on referral fees and for-profit referral platforms. The Arizona task force stated: “Rule 7.2(b)’s prohibition against ‘giving anything of value’ exists although there is no quantifiable data evidencing that for-profit referral services or even paying for referrals confuses or harms consumers.”<sup>14</sup> The Utah working group stated: “The main concern should be the protection of the public from false, misleading, or overreaching solicitations and advertising. Any other regulation of lawyer advertising seems to serve no legitimate purpose; indeed, it is blunt, ex ante, and—like so many current regulations—neither outcomes-based nor risk-appropriate.”<sup>15</sup>

Arizona and Utah, supported by IAALS and our *Unlocking Legal Regulation* project, would remove the restrictions around advertising and referral fees as part of a larger reexamination of the regulation of the legal system and a drive towards a well-developed, high-quality, innovative, and competitive market for legal services. Not only is this approach concretely based on an examination of actual harm, as opposed to unproven assumptions, but it also establishes a framework far more adaptable to innovation, which will empower attorneys to meet technologically adept consumers where they are in the market.

The crisis we face demands bold action. Our vision is a legal system that works for all people by being accessible, fair, reliable, efficient, and accountable: a system that earns trust, because a trusted and trustworthy legal system is essential to our democracy, our economy, and our freedom. That is why we respectfully urge the ARDC to critically reexamine its proposals, and

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<sup>13</sup> The Arizona and Utah Supreme Courts are expected to act on these recommendations this summer.

<sup>14</sup> ARIZONA TASK FORCE ON THE DELIVERY OF LEGAL SERVICES, REPORT AND RECOMMENDATIONS 24 (Oct. 4, 2019), <https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750>.

<sup>15</sup> NARROWING THE ACCESS TO JUSTICE GAP BY REIMAGINING REGULATION, REPORT AND RECOMMENDATIONS OF THE UTAH WORK GROUP ON REGULATORY REFORM 13 (August 2019), <https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf>.



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*of the* AMERICAN LEGAL SYSTEM



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DENVER

carefully consider the work done by Utah and Arizona and the model rules they are proposing around this same issue.

Sincerely,

Scott Bales  
Executive Director

Zachariah J. DeMeola  
Manager

Natalie Knowlton  
Director of Special Projects

Lucy Ricca  
Special Projects Advisor