



CHAMBERS OF
JEROD E. TUFTE
JUSTICE

State of North Dakota
SUPREME COURT

11 October 2024

Representative Mike Lefor
Chairman, Legislative Management
State Capitol
600 East Boulevard Ave.
Bismarck, ND 58505

Re: Report of HCR3023 Lawyer Licensing Task Force

House Concurrent Resolution 3023 encouraged the judicial branch to study alternative pathways to bar admission. Chief Justice Jon Jensen appointed a seven-member task force to study occupational licensing of lawyers in the state and whether changes in licensing or other legal reforms may be advisable to respond to an increasing shortage of available lawyers in the state.

As stated in our report, we examined several alternatives to the bar examination. We determined that the bar exam does not appear to be a significant factor in limiting the number of lawyers serving the people of our state. Over one recent three-year period, UND School of Law graduated 103 non-residents. Of those, only six stayed in state to practice law. As our report indicates, we have identified two reforms we believe are feasible in terms of implementation time and required resources and begin to address the unmet legal needs of our state.

Primary Recommendations:

1. Allied Legal Professionals (ALP) Program.

An ALP is an individual not licensed as an attorney who is trained and authorized to provide legal advice in specified areas. Several states, including Arizona, Utah, Minnesota, and Texas have begun programs in this area. There is significant variation among state programs, but ALPs typically are authorized to work in one or more specified areas of law, such as family law, landlord-tenant, and consumer debt collection. This can be a cost-effective option to fill legal service needs, particularly where there are few attorneys practicing in an area relative to the demand for services or where the amount in controversy or the ability to pay may unduly restrict the feasibility of hiring a lawyer for a particular matter. We expect an ALP program would reduce the number of self-represented people in court and as a result reduce associated challenges for judges and court staff when working with litigants unfamiliar with court rules and other requirements.

2. Court Navigator Program.

A Court Navigator Program would be an expansion of the court's current legal self help center. A navigator would be authorized by the court to review documents, answer questions about legal interpretation and completion of court forms, and offer limited legal advice in designated areas of law to inform people about the options available to them.

Additional Considerations:

1. Bar Exam Alternatives: The task force recommends no further study on alternative pathways to bar admission at this time, noting that reassessment may be appropriate when more information is available about other states' experiences and the impact of the NextGen Bar Exam, which will replace the current bar exam in July 2027.
2. UND Law Class Sizes: No further action by the judicial branch is recommended. Any increase in the number of lawyers in the state will likely come from the one law school in the state, and UND Law should be encouraged to increase its class size while incentivizing graduates to practice within North Dakota.

This task force has conducted a broad review of potential innovations and reforms relating to legal service providers and demand in North Dakota. The recommendations aim to address the attorney shortage, improve access to justice, and reform the state's licensing and regulatory framework. The task force recommends that the Legislative Assembly and the Supreme Court consider these findings and pursue one or more of these initiatives in order to secure a more accessible and effective legal system for the people of North Dakota.

Sincerely,

A handwritten signature in black ink, reading "Jerod E. Tufte". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Jerod E. Tufte
Chairman, Lawyer Licensing Task Force

REPORT OF THE LAWYER LICENSING TASK FORCE

TO THE CHIEF JUSTICE OF THE NORTH DAKOTA SUPREME COURT:

Introduction.

Purpose. The Lawyer Licensing Task Force (task force) was created after the adoption of House Concurrent Resolution No. 3023 of the 68th Legislative Assembly, which encouraged the judicial branch to consider forming a task force to study **alternative pathways to bar admission** that ensure attorney competence, **retention** of University of North Dakota law school (UND Law) graduates in the state, and to **report any finding and recommendations** to the 69th Legislative Assembly, including any **legislation required to implement** the recommendations. This report is provided so the judicial branch may send its report to the 69th Legislative Assembly.

Members. The task force was chaired by **Jerod Tufte**, justice of the North Dakota Supreme Court, and its other members were **Michelle Axtman**, senator for the 7th legislative district; **Jane Dynes**, president of the Board of Law Examiners; **Shannon Roers Jones**, representative for the 46th legislative district; **Brian Pappas**, dean of UND Law; **Kirsten Sjue**, district judge for the northwest judicial district; and **Tony Weiler**, executive director of the State Bar Association of North Dakota (SBAND). The task force held six meetings and was staffed by Garrick Voigt, staff attorney for the Office of the State Court Administrator.

Interested Observers. Also participating in the meetings were **Daniel Crothers**, justice of the North Dakota Supreme Court; **Stephanie Engebretson**, counsel for the League of Cities; **Kara Erickson**, disciplinary counsel for the Judicial Conduct Commission and lawyer Disciplinary Board; **Laurie Guenther**, director of admissions for the State Board of Law Examiners; **Petra Mandigo Hulm**, clerk of the North Dakota Supreme Court; **Michael Hurly**, district judge for the northeast judicial district; **Mary Kae Kelsch**, assistant attorney general; **Jen Lee**, executive director of Legal Services of North Dakota; and **Bradley Myers**, Associate Dean for Academic Affairs & Administration of UND Law (acting as proxy for Brian Pappas during the task force's August 26, 2024 meeting).

Guest Speakers. The task force had **Michael Houlberg**, director of special projects for the Institute for Advancement of the American Legal System (IAALS), present an overview of allied legal professional programs being developed throughout the United States; and **Paula Amelsberg** and **Kathy Krause** from the North Dakota Legal Self Help Center (LSHC) explain services provided by the LSHC.

Materials. See Appendix 1 attached for task force meeting minutes and material.

Summary of Discussion Topics.

The Task Force focused on several critical areas concerning the future of the legal profession in North Dakota. These included service-based programs, alternative pathways to bar admission, recruitment & retention programs for UND Law graduates and attorneys, and data analysis. A summary of each subtopic discussed is below while a more detailed discussion of each subtopic can be found in the Detailed Discussion section of this report.

Service-Based Programs. The task force discussed the potential of implementing an allied legal professional (ALP) and court navigator program. ALP is the term used by IAALS to refer to a relatively new tier of legal professionals having different titles in different jurisdictions but generally authorized to provide legal advice and services in specific areas of law under certain conditions, without the need to obtain a law degree or pass the traditional bar exam. In states that have authorized them, ALPs are analogous to a nurse practitioner and are intended to address the access to justice gap by offering more affordable legal services, particularly to middle-income individuals who do not qualify for legal aid but cannot readily afford traditional attorney fees.

Navigators are non-lawyers who assist self-represented litigants (SRLs) with legal matters. Navigators are trained but are not required to have formal legal credentials. Within the scope of their training, they may provide assistance with completing legal forms, offer guidance on court procedures, and help SRLs navigate the legal system more effectively. Navigators also provide legal information, make referrals to legal and community recourses, review and explain documents, provide language and technological assistance, and, in some jurisdictions, accompany SRLs to court to explain court proceedings.

Alternatives to the Bar Exam. The task force discussed the following potential pathways to bar admission: diploma privilege, clinical, apprenticeship, and portfolio. The task force also discussed adopting a bar score exception for those who agree to practice in underserved legal communities under the supervision of a licensed attorney.

Recruitment & Retention Programs. The task force discussed: implementing an online program at UND Law; changing UND Law class section sizes; expanding the Rural Attorney and Recruitment Program; developing a rural attorney partnership program; establishing a student loan repayment program for attorneys serving underserved legal communities; increasing attorney presence in rural areas; and increasing court and SBAND outreach to high schools, colleges, and universities to increase public interest in joining the legal profession.

Data Analysis. The task force analyzed data generated by the Court's IT

department and the results of the SBAND economic survey to ascertain: whether county population or attorney concentration correlated with attorneys appearing in court, cases being filed, and SRL appearances; the number of different attorneys appearing in court; whether any counties were unusually dependent on one attorney to meet their legal needs; and the economic outlook among attorneys.

Findings.

1. North Dakota has a shortage of attorneys available to meet the legal services needs of its residents. The statewide average of attorneys per 1,000 residents is 2.04, significantly lower than some neighboring states, such as Minnesota (4.71) and Montana (3.06), and is slightly higher than South Dakota (1.94).
2. No attorney has a business address in Golden Valley, Griggs, Sheridan, Slope, or Steele County.
3. There are 22 counties with increasing population trends, mostly counties with higher populations. There are 41 counties with decreasing populations. The overall population of North Dakota is increasing.
4. Because many attorneys serve clients across multiple counties, the number of attorneys with an office in North Dakota, rather than the number of attorneys with an office in a specific county, has a more significant impact on legal service availability.
5. The court system has no objective metric to measure the legal needs of each community to determine the extent to which a community is legally underserved.
6. Programs incentivizing attorneys to practice in rural communities have not supplied enough attorneys to meet the apparent demand for legal services; therefore, the introduction of an ALP program could provide a supplemental solution by expanding the class of professionals able to provide legal assistance.
7. The LSHC consistently faces a high demand for assistance with completing legal forms and understanding court procedures but is limited in its capacity to provide the necessary support to SRLs, particularly in form completion.

Recommendations.

1. The task force recommends that the Court establish a work group or committee to:
 - a. Develop an implementation plan for an ALP program. The ALP program should identify one or more high-demand areas likely to have the greatest shortage of available legal providers.
 - b. Develop an implementation plan for a court navigator program, or expand the scope of the LSHC so it may offer limited legal services traditionally offered by

navigator programs. If a navigator program is developed, it is recommended that the navigator be part of the LSHC, be located in Bismarck, and have regularly scheduled, in-person availability in courthouses throughout the state.

2. Requirements for any work group or committee tasked with developing an implementation plan include:
 - a. Conducting a cost analysis for each initiative, including estimating the financial and resource requirements needed for implementation. For example, requirement estimates for an ALP program should include the cost of educating, certifying, licensing, and disciplining ALPs.
 - b. Drafting any necessary legislation and court rules to implement its recommendations. Particular attention should be given to defining the authorized scope of ALPs or court navigators under the unauthorized practice of law rules and statutes.
 - c. Providing periodic reports of findings and recommendations to the Chief Justice and State Court Administrator.
3. The Court should authorize the task force to continue its operations so it may:
 - a. Conduct an in-depth study on the feasibility of implementing lawyer student loan repayment programs.
 - b. Further study the Rural Attorney Recruitment Program and other attorney recruiting and retention programs.
 - c. Further study outreach methods to increase public interest in pursuing a legal career in North Dakota.
 - d. Investigate potential strategies to enhance attorney presence in rural communities.
 - e. Submit a subsequent report to the Chief Justice, to include a cost analysis and drafts of all necessary legislation and court rules to implement its recommendations.
4. If the Court elects to continue this task force, then it may wish to appoint several new members to the task force to bring additional perspectives relevant to the assigned tasks and also consider providing additional staff support to the task force.
5. It is recommended that the task force conduct no further study on: developing an online program at UND Law; UND Law class section sizes; developing a rural attorney partnership program; alternative pathways to bar admission; and the SBAND economic survey. The task force recognizes the importance of these issues and that further research may be warranted; however, the task has determined the court would have a supporting role or that other initiatives are more suitable for further development at this time. The task force also recommends it conduct no further study on developing a comprehensive metric that measures legal needs across all North Dakota communities because Legal Services of North Dakota is currently forming a workgroup to conduct a legal needs assessment of the state. The task force should review the results of the legal needs assessment and determine whether any further task force study is warranted at that time.

6. The Court should encourage UND Law to undertake a comprehensive cost analysis of implementing an online program, a market assessment to determine if there are sufficient potential students likely to serve North Dakota's legal needs, and request UND Law to share its findings with both the Court and the Legislature.

Required Resources.

1. Developing an ALP program is estimated to require an appropriation of **\$354,038** and one fulltime employee (FTE). The estimated appropriation includes the salary of a staff attorney, who would develop and manage the program. Assumptions made in preparing the estimate follow.
 - a. Staff will work with a committee to establish the parameters, rules and procedures necessary to create the navigator position.
 - b. Program development will take 12 to 18 months.
 - c. Either program staff or the Board of Law Examiners will be responsible for administering any testing requirement and doing a character & fitness check.
 - d. Discipline will be handled through either the disciplinary counsel of the Judicial Conduct Commission and Disciplinary Board or an ad hoc review board similar to parenting investigators.
 - e. Six ALP exams will be developed and administered (one general exam and five subject specific exams).
 - f. There will be an application fee and a separate fee per test to offset costs.
2. Developing a navigator program is estimated to require an appropriation of **\$299,206** and one FTE position. The estimated appropriation includes the salary of a staff attorney, who would develop the program and act as the navigator. The FTE slot is an additional FTE position to the other FTE staff attorney for the LSHC already in the Court's budget. In preparing the estimate, it was assumed the navigator's duties will include onsite courthouse visits. Which courthouses are visited, the frequency of visits, and the travel plan for achieving the visits greatly impacts program costs. The range of travel costs could be from \$4,287 to \$21,533, plus lodging and meals. The following assumptions were made in preparing the program estimate:
 - a. The navigator will be a LSHC staff attorney who is authorized by court rule to provide limited legal advice.
 - b. The navigator will make two trips per year to the eight busiest courthouses in each judicial district.
 - c. The court will adopt a safe harbor rule eliminating the need for malpractice insurance.
3. The task force would require staffing from the Office of the State Court Administrator if its operations continue.

Legislation.

No legislation is required to implement these recommendations.

Detailed Discussion.

1. Allied Legal Professionals Program.

Discussion. Overall, ALP programs provide a practical solution to the growing access to justice problem, offering benefits to both legal consumers and the broader legal system. ALPs can help bridge the gap in rural or underserved areas where there are few practicing attorneys. This is particularly important in regions where legal needs are high, but the attorney population is low. ALPs can help improve court efficiency by representing clients in routine legal matters, reducing the number of self-represented litigants who often require more court resources. By handling less complex cases, ALPs can help reduce case backlogs in courts, allowing judges and attorneys to focus on more complex legal issues. The licensing process for ALPs varies by state, but there are some common elements across programs.

Background. Seven states have implemented an ALP program (AZ, CO, MN, NH, OR, UT, and WA). Washington is the only state that started but later ended an ALP program. The Supreme Court of Texas recently issued an order preliminarily approving rules governing a new ALP program. Seven other states are considering recommendations to implement an ALP program (CT, MI, NC, NM, NY, SC, and VT). Three states considered but decided not to pursue an ALP program (CA, FL, and IL). Three states (IA, MD, and VA) and the District of Columbia are currently studying ALP programs.

Education. Applicants are typically required to have a certain level of education. This could include a paralegal degree, a bachelor's degree, or an associate degree, sometimes paired with a paralegal certificate. Most programs also accept candidates with a JD degree who choose not to pursue traditional licensure as an attorney (NH is the only state that does not accept JD applicants). Minnesota is the only program that has an ALP pathway for individuals with a high school diploma with sufficient paralegal experience.

Practical Training. Many states require a specified number of hours of practical training or experience in legal settings. This can range from 120 to 4,000 hours. Arizona requires 120 hours of training for those with a law-related degree. Otherwise, one year of substantive law-related experience is required to meet the training requirement in AZ. Oregon has different standards based on practice area (500 hours for family law and 250 hours for landlord-tenant). Colorado, Utah, and Washington require 1,500 hours of practical training. New Hampshire does not use an hour-based threshold, but instead requires two-years work experience.

General Examination. ALP candidates must pass a general examination that assesses their knowledge of legal terminology, substantive law, ethics, and their

ability to provide legal services. The format can include multiple-choice questions, essays, and practical scenarios. Oregon is unique in having a portfolio requirement in addition to a traditional examination. To fulfill the portfolio requirement, an applicant must provide materials to evidence a significant body of competent work in the area of law in which an applicant is seeking endorsement.

Practice Area Specific Examination. In addition to the general exam, candidates may need to pass exams specific to the practice areas they intend to work in, such as family law, landlord-tenant law, or debt collection. These exams ensure that ALPs are competent in the specific legal services they will be providing. Five states require practice area specific exams.

Character and Fitness. Similar to the process for attorneys, ALP candidates are typically subject to a character and fitness review. This process examines the applicant's background, including any criminal or civil violations, financial history, and any other factors that may affect their ability to practice law ethically.

Licensing. Upon successful completion of the educational, training, examination, and character review requirements, candidates are granted a license to practice as an ALP. This license is typically limited to specific areas of law and does not allow the ALP to provide legal advice in other practice areas.

Practice Areas. States generally determine authorized ALP practice areas based on the unmet legal needs of their populations and the capabilities of non-attorney legal professionals. All current ALP programs allow the ALP to practice varying degrees of family law. Other practice areas include landlord-tenant, debt collection, administrative, housing, immigration, and employment law. Some programs also permit ALP to represent clients in estate planning and limited criminal and juvenile law matters. Jurisdictions vary on whether ALPs may appear in court.

Continuing Education. Licensed ALPs are usually required to fulfill ongoing continuing legal education (CLE) requirements to maintain their license. Arizona require 15 CLE credits every year; Colorado requires 30 credits every three years; Minnesota does not require any CLE credits to maintain an ALP license but CLE credits is one pathway to obtain licensure; Oregon requires 40 CLE credits every three years; and Utah only require six credits every year.

Ethical Standards and Insurance. Generally, ALPs must also adhere to ethical standards similar to those governing attorneys, and in some cases, they may need to carry malpractice insurance. Arizona, Colorado, and Utah do not require liability or malpractice insurance for ALPs while Minnesota, New Hampshire, and Oregon do require insurance.

Presumptions. Implementation of an ALP program in North Dakota may alleviate pressure on the existing legal system by providing affordable legal services in areas of high demand and with a high proportion of SRLs, such as family law and landlord-tenant. The presumption is based on data from other states that have implemented similar programs, where ALPs have successfully filled gaps in legal services. However, ALP programs are fairly new, so data is limited. Additionally, it is presumed that there is a sufficient pool of candidates, such as paralegals or former court clerks, who could be trained and licensed as ALPs to serve a share of the state's unmet legal needs.

Findings. Programs incentivizing attorneys to practice in rural communities have not supplied enough attorneys to meet the demand for legal services; therefore, the introduction of an ALP program could provide a more sustainable solution by leveraging non-attorney professionals.

Recommendations. The task force recommends that the Court establish a work group or committee to develop an implementation plan for an ALP program. The ALP program should: identify one or more high-demand areas likely to have the greatest shortage of available legal providers. The work group or committee should conduct a cost analysis for each initiative, including estimating the financial and resource requirements needed for implementation, including the cost of educating, certifying, licensing, and disciplining ALPs; draft any necessary legislation and court rules to implement its recommendations; and provide periodic reports of findings and recommendations to the Chief Justice and State Court Administrator.

Required Resources. Developing an ALP program will cost \$354,038 and one FTE staff attorney position.

2. Navigator Program.

Background. The LSHC primarily assists with landlord-tenant, family law, small claims, municipal, and debt issues. Despite its efforts, the LSHC faces challenges, including assisting individuals with language barriers. A court navigator program could be a way to enhance and expand the services currently offered by the LSHC. Such a program could provide in-person assistance, help with form completion, and potentially reduce the burden on the court system by ensuring that SRLs are better prepared and informed. There are 25 states and the District of Columbia with court navigator programs.

Discussion. The LSHC and Legal Services of North Dakota are collaborating to increase access to justice and expand services offered by both entities. This initiative directly impacts the development and implementation of a navigator

program. It may be more economical to expand the scope of services offered by the LSHC than developing and implementing a navigator program.

Presumptions.

- a. A court navigator program would improve access to justice for SRLs, particularly in areas with high volumes of unrepresented parties. A navigator program would reduce the administrative burden on the courts by decreasing the number of improperly filed documents and reducing the need for multiple hearings resulting from unprepared litigants or other errors by SRLs.
- b. Navigators could serve as a bridge between SRLs and the court, helping to ensure that individuals are better informed about their rights and the legal process.
- c. A pilot program could be launched with minimal disruption to existing services and it could be gradually expanded based on its success.

Findings. The LSHC consistently faces a high demand for assistance with completing legal forms and understanding court procedures but is limited in its capacity to provide the necessary support to SRLs.

Recommendations. The task force recommends the Court establish a work group or committee to develop an implementation plan for a court navigator program or expand the scope of the LSHC so it may offer limited legal services traditionally offered by navigator programs. If a navigator program is developed, it is recommended that the navigator be part of the LSHC, be located in Bismarck, and have regularly scheduled, in-person availability in courthouses throughout the state. The work group or committee should conduct a cost analysis for each of its recommendations; draft any necessary legislation and court rules to implement its recommendations; and provide periodic reports of findings and recommendations to the Chief Justice and State Court Administrator. The work group or committee should determine whether developing a navigator program is more beneficial and preferable than expanding the scope of the LSHC.

Required Resources. Developing a navigator program is estimated to require an appropriation of \$299,206 and one FTE staff attorney position.

3. **Bar Exam Alternatives.**

Background.

Diploma Privilege. Only two U.S. states have law schools that offer diploma privilege, which allows graduates to practice law without taking the bar exam: Wisconsin and New Hampshire. Wisconsin is the only state with a long-standing diploma privilege. Graduates from the University of Wisconsin Law School and Marquette University Law School who meet certain criteria (such as taking specific courses and maintaining a certain GPA) are eligible for diploma privilege and can

be admitted to practice law in Wisconsin without taking the bar exam. The University of New Hampshire Franklin Pierce School of Law offers a limited diploma privilege through its Daniel Webster Scholar Honors Program. Students who complete this program and meet the requirements can be admitted to the New Hampshire bar without taking the traditional bar exam.

Clinical Pathway. Some law schools and legal education reform advocates have proposed ideas for clinical pathways, where students could be admitted to the bar after completing extensive, supervised clinical work. However, these ideas have not been widely adopted or formalized into state bar admission rules. Arizona and a few other states have been exploring the integration of experiential learning, including clinical work, into bar admission processes. These programs often involve a combination of supervised practice, coursework, and other practical experiences but do not allow bar admission solely based on clinical hours. New York has the Pro Bono Scholars Program, which allows students to spend their last semester of law school working full-time in a pro bono legal capacity.

Apprenticeship Pathway. Several states allow bar admission through an apprenticeship pathway where candidates can become admitted to their state's bar without passing the bar exam. Some of these programs allow candidates to become lawyers without attending traditional law school, while others require the candidates to obtain a JD. Both versions involve studying under the supervision of a practicing attorney or judge. These apprenticeship pathways are rigorous and require a significant commitment of time and effort, often including specific study requirements and evaluations. The Supreme Court of Washington adopted this type of pathway on March 15, 2024.

Portfolio Examination. Oregon's new Supervised Practice Portfolio Examination is an alternative pathway to traditional bar admission. This pathway allows law graduates to be admitted to the Oregon bar through a combination of supervised legal practice and a portfolio of work that demonstrates their competence in essential legal skills. The program is generally open to recent law graduates who have completed an accredited legal education program. Candidates may also need to meet specific eligibility criteria, such as having completed a certain number of hours of practical legal training during law school. Candidates must complete a specified number of hours of supervised legal work under the guidance of a licensed attorney in good standing. Instead of taking the traditional bar exam, candidates submit a portfolio of work. This portfolio typically includes written assignments, legal research, drafting of legal documents, client communications, and other materials that demonstrate the candidate's ability to perform core legal tasks. The portfolio is evaluated by a panel of reviewers, which may include attorneys, judges, or other legal professionals. The review focuses on the quality of the work, the candidate's

understanding of legal principles, and their ability to apply those principles in practice.

Bar Score Exception. Arizona recently introduced the Arizona Lawyer Apprentice Program, which provides a pathway to bar admission for law graduates who score between 260 and 269 on the Uniform Bar Exam, just below the state's usual passing score of 270. This program is designed to address the shortage of lawyers, particularly in rural areas of the state. Under this program, candidates who score in this range may still practice law in Arizona, but they are required to work two years under the guidance of an attorney who has at least five years of experience. Importantly, they must work either in a public law office anywhere in the state or a private law office located in a rural Arizona community. After completing this apprenticeship period, they may be recommended for full bar admission.

Discussion. These alternatives to bar admission would require significant allocation of resources and leadership by UND Law. Introducing alternative pathways such as a clinical or apprenticeship model would require significant effort to develop additions, changes, or alternatives to existing curricula. Designing courses and clinical experiences that meet the requirements for bar admission while ensuring UND Law provides a comprehensive legal education is challenging. UND Law must also adhere to accreditation standards set by the ABA. Creating new programs, such as those required for supervised practice or portfolio examinations, demands substantial resources, including faculty time, administrative support, and physical space for clinics and apprenticeships.

Developing standardized criteria for evaluating the competence of students in alternative pathways, such as through clinical work or portfolios, is complex. There may be concerns about maintaining the rigor and reputation of the law degree. Implementing apprenticeship or clinical pathways requires establishing partnerships with law firms, courts, and public interest organizations to provide supervised practice opportunities. Coordinating these placements and ensuring quality supervision can be logistically challenging. Continuous monitoring of students' progress in alternative pathways, such as through portfolio reviews or supervision logs, requires robust administrative processes. This can be demanding in terms of both time and financial resources.

Presumptions.

- a. UND Law does not currently have the resources required to accommodate diploma privilege, clinical, apprenticeship, or portfolio pathways to bar admission.
- b. UND Law would require general fund appropriations to accommodate alternative pathways to bar admission.
- c. Implementing alternative pathways to bar admission may not be advisable at this

time because the Supreme Court is considering adoption of the NextGen Bar Exam in North Dakota and, if adopted, the new bar exam may have positive effects on attorney recruitment, retention, and competency.

Recommendations. The task force recommends that it conduct no further study on this topic, but acknowledges reassessment may be appropriate when more information is available about the results of other states' alternative pathways to bar admission and the NextGen Bar Exam.

4. UND Law Online Program.

Background. As of 2024, there are several law schools in the United States that offer online Juris Doctor (JD) programs, though the exact number varies depending on the definition of "online." Many of these programs are hybrid, combining online coursework with some in-person components. In total, there are more than a dozen American Bar Association (ABA)-approved law schools offering fully or partially online JD programs. However, fully online JD programs are still relatively rare, with most schools opting for hybrid formats to comply with ABA requirements.

Discussion. Online programs make legal education more accessible to a broader range of students, including those who may be unable to relocate or attend classes in person due to work, family, or geographic constraints. This flexibility could help UND Law attract a more diverse student body. An online program could attract North Dakotans who have connections to rural communities, who would then serve the legal needs of those communities after licensure. Online programs also expand market reach and can be more cost-effective for students and institutions, though initial implementation of online programs is extremely expensive. The task force discussed that developing an online program was primarily the prerogative of UND Law, and that it would be appropriate for UND Law to further study the issue. The task force noted that the Legislature would be interested on the costs of implementing an online program.

Presumption. The resources required to develop an online program are highly dependent on whether the program is asynchronous, synchronous, or hybrid. Resources are also dependent on the strategic initiatives and priorities of UND Law. UND Law may require a general fund appropriation to fund the development of an online program.

Recommendations. The task force recommends concluding its study on this topic but recognizes the potential need for further research. Given that an online program could impact the lawyer shortage, the task force advises the Court to encourage UND Law to undertake a comprehensive cost analysis of implementing an online program and request UND Law to share its findings with both the Court and the Legislature.

5. UND Law Section Size.

Background. Some prospective law students factor in class size when picking a law school. The national average entering class has four sections, with 52 students in each section. UND Law has one of the largest section sizes in the country, comparable to the University of San Diego, Yale University, and American University with one section of approximately 85 students. Dividing the cohort into two sections may allow UND Law to recruit more students and has the potential to attract more students to UND Law.

Discussion. UND Law utilizes a classroom with a capacity of approximately 85 students to facilitate its full 1L section lectures. If UND Law does not divide its 1L cohorts into sections, the law school may require substantial renovations if UND Law wants to recruit more students. If UND Law does divide the cohorts into sections, that would require faculty to teach duplicative or additional courses. The potential faculty requirements may impact resource allocation to other projects or programs, such as developing an online program. It is uncertain whether smaller section sizes would attract more students to UND Law.

Presumptions. The importance of 1L class size largely depends on a student's learning style, career goals, and preferences for their law school experience. There are pros and cons for larger and smaller sections.

Recommendation. The task force recommends that it conduct no further study on this topic, but recognizes UND Law may have an interest in further studying its class section sizes.

6. Rural Attorney Recruitment Program.

Background. The Rural Attorney Recruitment Program is an initiative designed to address the shortage of attorneys in rural areas of North Dakota. The program was established to incentivize recent law graduates and practicing attorneys to establish a practice in an underserved rural community. Under the program, the state of North Dakota, SBAND, and a participating community agree to pay an eligible attorney an incentive of \$45,000 to work full-time in the participating community and to live within close proximity to the community for five years. A county population must be 16,000 or fewer to qualify for the program while a municipality must have a population of 5,000 or fewer to qualify. Five of the eight attorneys slots are occupied.

Discussion. The task force discussed expanding the program to 16 attorneys. Other proposals included expanding community eligibility criteria by eliminating the population criteria. Proponents for removing the population limitations argued the

attorney shortage is a statewide problem, even in counties with higher attorney numbers, such as Burleigh County. It was suggested that the program may have greater effect if targeted at identified underserved communities and based on demonstrated need for legal services in particular geographic and practice areas rather than using a population threshold because of consistent issues with a lack of attorneys and specific legal services in communities of all sizes. Proponents of removing the population threshold expressed difficulty in filling various attorney general, state' attorney, and indigent defense positions.

Eliminating the population threshold requires the development of a metric that measures legal supply and demand. Legal Service of North Dakota is forming a workgroup to conduct a legal needs assessment of the state, which may identify legally underserved communities. If the task force continues to operate, the task force would review the results of the legal needs assessment and determine whether any further task force study is warranted at that time.

Presumptions. There is an overreliance on solely using county and municipality populations and the number of attorneys within a county to determine which counties are underserved.

Findings. The court system has no objective metric to measure the legal needs of each community to determine the extent to which a community is legally underserved.

Recommendations. The task force recommends it conduct no further study on developing a comprehensive metric that measures legal needs across all North Dakota communities until Legal Services of North Dakota completes its legal needs assessment.

Required Resources. No additional resources are required to effectuate this recommendation.

7. Rural Attorney Partnership Program.

Discussion. The task force discussed the possibility of UND Law and SBAND partnering together to establish a program that connected rural attorneys with law students interested in practicing in rural North Dakota. The task force agreed this initiative could be led by UND Law and SBAND and that significant Court involvement is not necessary.

Presumptions. There may be interest among rural attorneys and law students to participate in a rural attorney partnership program.

Recommendation. The task force recommends that it conduct no further study on

this topic so UND Law and SBAND may freely collaborate with one another to conduct further study.

8. Student Loan Repayment Program.

Background. The task force looked at the possibility of modeling a lawyer student loan repayment program after the repayment programs available to medical professionals. The Department of Health and Human Services administers the Health Care Professional Student Loan Repayment Program under Chapter 43-12.3. Eligible communities must be located in an area that is statistically underserved and be located at least 20 miles outside the boundary of a city with more than 40,000 residents. The department determines which areas of the state are underserved, and then a healthcare professional agrees to practice full-time in one of the designated areas and may receive reimbursement for a maximum of five years. The amount the state and service community contribute to the loan provider is dependent on the type of service provided. Payments are made at the conclusion of each 12-month period of service. Furthermore, 24 other jurisdictions utilize loan repayment assistance programs (LRAPs) to recruit attorneys. These 24 LRAPs range in size and scope. Almost all require participants to work in public interest law. Some are funded through state legislative appropriations while others rely on funding from the private sector or from Interest on Lawyers Trust Accounts funding.

Discussion. The task force had an interest in developing a lawyer student loan repayment program similar to the one available to medical students who practice in rural North Dakota. The task force had an issue with developing eligibility criteria for communities and whether it should include population thresholds or focus on public interest needs more generally.

Recommendation. The Court should authorize the continued operation of the task force so it may further study the feasibility of establishing lawyer student loan repayment programs.

Required Resources. The task force does not require additional resources to implement this recommendation.

9. Attorney Presence In Rural Areas.

Background. Some attorneys have their primary law office in a larger city and have a satellite office in a rural community. The satellite office is typically only open one day a week or a few days a month. The satellite office generally requires minimal part-time staffing.

Discussion. The task force briefly discussed potential ways to incentivize attorneys

to establish satellite offices in rural communities. The discussion also included the potential for an attorney to use meeting rooms in rural courthouses to increase their presence and provide expanded service to rural communities. One issue identified with opening rural courthouses to practitioners is the complex relationship between the state and counties. Courthouses are county property and the Court has limited authority in mandating how those assets are used.

Presumption. It would be uneconomical for the Court or SBAND to provide a cash incentive for firms to establish a satellite office in a rural community.

Recommendation. The Court should authorize the continued operation of the task force so it may further study potential ways to increase attorney presence in rural communities.

Required Resources. The task force does not require additional resources to implement this recommendation.

10. Outreach to High Schools, Colleges, and Universities.

Background and Discussion. The judicial branch often has judges visit schools to educate about the legal system and increase interest in the legal profession. The task force discussed the potential of Court, SBAND, and UND Law collaboration to increase and coordinate outreach to potential law students to ensure outreach efforts are being made in all communities. The task force also discussed potential barriers of entering the legal profession. Many people misunderstand the scope and breadth of services a lawyer may provide. Effective outreach to alleviate that misunderstanding may increase the number of people interested in a legal career. Another potential barrier is the actual and opportunity cost of preparing and taking the Law School Admission Test (LSAT). Preparing for the LSAT could cost thousands of dollars, but extensive LSAT preparation is not necessary for all individuals.

Recommendations. The Court should authorize the continued operation of the task force so it may further study outreach methods to increase the number of individuals pursuing legal careers in North Dakota.

Required Resources. The task force does not require additional resources to implement this recommendation.

11. Court Reports.

Background. With assistance from the Court IT department, the task force analyzed data stored in the Odyssey case management system. Supplemental information from the Court's website and population data from various sources was also

analyzed. The purpose of the analysis was to obtain an understanding of population and attorney distribution, attorney density, court appearances, filing rates, and whether any county is dependent on an attorney to meet its legal needs.

Preliminary Results of Data Queries.

- a. The number of attorneys appearing in civil district court proceedings has declined steadily from 2018 to 2023. A small percentage of attorneys handle the majority of appearances in cases, with roughly 3% of attorneys taking on more than 150 cases per year.
- b. Attorney appearance rates in civil proceedings have no apparent correlation with county population or attorney concentration.
- c. Logan and Mercer counties were the only counties that had one attorney make up 30% or more civil appearances in each county for cases filed in 2023. Adams, Cavalier, Hettinger, and Pierce counties each had an attorney that made up 20 to 29.99% of all civil appearances in each county for cases filed in 2023.
- d. The rate of civil cases where all parties are self-represented is higher in less populated counties. However, some of the most populated counties, such as Burleigh and Ramsey, also have significant numbers of such cases.
- e. The rate of civil cases where all parties are represented by a lawyer is substantially higher in less populated counties.
- f. The rate of civil cases where an SRL is against an attorney is substantially higher in more populated counties.

Findings.

- a. North Dakota has a shortage of attorneys available to meet the legal services needs of its residents. The statewide average of attorneys per 1,000 residents is 2.04, significantly lower than some neighboring states, such as Minnesota (4.71) and Montana (3.06), and is slightly higher than South Dakota (1.94).
- b. No attorney has a business address in Golden Valley, Griggs, Sheridan, Slope, or Steele County.
- c. There are 22 counties with upward population trends, mostly higher populated counties. There are 41 counties with decreasing populations. The overall population of North Dakota is increasing.
- d. Because many lawyers serve clients across multiple counties, the number of attorneys with an office in North Dakota, rather than the number of attorneys with an office in a specific county, has a more significant impact on legal service availability.

Recommendation. The task force recommends it conduct no further study on developing a comprehensive metric that measures legal needs across all North Dakota communities until Legal Services of North Dakota completes its legal needs assessment.

Required Resources. The task force does not require additional resources to implement this recommendation.

12. SBAND Economic Survey.

Background. SBAND conducted a survey in 2024, aiming to understand the economic conditions, career satisfaction, and general well-being of lawyers practicing within the state. This survey response included 217 members, representing 7.5% of the total active members. The survey covered various aspects of legal practice, including income levels, billing practices, working hours, and career satisfaction. The report also includes demographic information, with a focus on the geographic distribution of practitioners within North Dakota, emphasizing the concentration in metropolitan areas such as Cass and Burleigh counties.

Discussion. The survey results revealed insights into the economic landscape of legal practice in North Dakota. A majority of respondents reported that their income has increased over the past three years, with a mean income of \$171,150 and a median income of \$130,000 for full-time lawyers in 2023. The data indicates a relatively optimistic outlook, with 66% of lawyers anticipating further income growth in 2024. Billing rates have also seen adjustments, with a substantial portion of respondents having increased their rates by 5% to 10% in the past year. However, there is variability in income and billing rates based on firm size, practice area, and geographical location, highlighting the diverse economic experiences of lawyers across the state. The survey signaled many attorneys were unsatisfied with the lack of mentorship they received early in their careers. This prompted discussion of how to reinvigorate SBAND's mentorship program, which has been underutilized by potential mentees because they assume participation in the program is unnecessary if they are associated with another firm.

Background on SBAND's Mentorship Program. The SBAND Mentorship Program is designed to support new attorneys in North Dakota by pairing them with experienced attorneys for guidance, support, and professional development. The program aims to help new lawyers navigate the early years of their legal careers by offering them advice on ethical issues, practical lawyering skills, and career development. The mentorship program typically includes one-on-one meetings between the mentor and mentee, participation in various professional activities, and a structured set of goals to ensure the new attorney gains the necessary skills and knowledge to succeed in the legal field. This program helps to foster a sense of community within the legal profession in North Dakota and ensures that new attorneys are well-prepared for their careers.

Presumptions.

- a. The economic trends observed in this survey are reflective of broader national trends, where law firms have seen increasing overhead costs and have been steadily increasing their billing rates.
- b. The anticipated income growth among North Dakota lawyers suggests a stable or

- growing demand for legal services, particularly in private practice.
- c. Job satisfaction is high among North Dakota attorneys.
 - d. Newer attorneys are more likely to change employment, and are unlikely to remain in one position for five years or longer.
 - e. Many attorneys are dissatisfied with the lack of mentorship they received early in their careers.

Recommendation. The task force recommends that it conduct no further study on this topic.

Conclusion.

The task force has conducted a wide ranging review and analysis of potential innovation and reform relating to the providers of and demand for legal services in North Dakota. This report has highlighted areas of concern, including the attorney shortage, access to justice, and the potential for reforms within the state's licensing and regulatory framework. The task force has identified several avenues that appear to be well suited for implementation in North Dakota and recommends the Court establish an implementation committee for ALP and court navigator programs.

The task force believes it necessary to further examine alternative pathways to bar admission, enhancements to the Rural Attorney Recruitment Program, and other courses of action to address North Dakota's attorney shortage. These recommendations are intended to strengthen the legal system in North Dakota, and broaden the available options to residents. It is the strong recommendation of this task force that the Court give due consideration to these findings and take the necessary actions to implement the proposed measures, thereby securing a more accessible and effective legal system for the future of North Dakota

Appendix 1 – Lawyer Licensing Task Force Minutes and Material

Minutes

1. [Lawyer Licensing Task Force, *Meeting Minutes*, August 26, 2024.](#)
2. [Lawyer Licensing Task Force, *Meeting Minutes*, July 29, 2024.](#)
3. [Lawyer Licensing Task Force, *Meeting Minutes*, May 22, 2024.](#)
4. [Lawyer Licensing Task Force, *Meeting Minutes*, April 12, 2024.](#)
5. [Lawyer Licensing Task Force, *Meeting Minutes*, February 16, 2024.](#)

ALP Material

6. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals: A National Framework for Program Growth* \(2023\).](#)
7. [Institute for the Advancement of the American Legal System, *The Landscape of Allied Legal Professionals in the United States* \(2022\).](#)
8. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals: A National Movement of New Legal Service Providers*, North Dakota Task Force PowerPoint Presentation \(2023\).](#)
9. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals Knowledge Center* \(last visited Sept. 4, 2024\).](#)
10. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals Regulatory Requirements* \(last visited Sept. 4, 2024\).](#)
11. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals Examinations* \(last visited Sept. 4, 2024\).](#)
12. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals Practical Training* \(last visited Sept. 4, 2024\).](#)
13. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals Education* \(last visited Sept. 4, 2024\).](#)
14. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals Ownership Interest* \(last visited Sept. 4, 2024\).](#)
15. [Institute for the Advancement of the American Legal System, *Allied Legal Professionals Roles and Responsibilities* \(last visited Sept. 4, 2024\).](#)
16. [Walker Orenstein, *Could a Solution to Provide Legal Care in Alaska Work in Rural Minnesota?*, MinnPost \(Nov. 2023\).](#)

Navigator Material

17. [Georgetown Law Center for Innovations in Community Safety, *Nonlawyer Navigators in State Courts Update* \(Aug. 2024\).](#)
18. [National Center for State Courts, Justice Lab: Evaluating Nonlawyer Navigator Programs in State Courts \(June 11, 2019\).](#)
19. [Legal Services of North Dakota, *North Dakota Legal Self-Help Proposal* \(Aug. 29, 2024\).](#)

Law School & Alternatives to Bar Admission

20. [Institute for the Advancement of the American Legal System, *Building a Better Bar: Capturing Minimum Competence* \(2021\).](#)
21. [Lawyer Licensing Task Force, *Meeting Material*, 16-36, April 12, 2024 \(The National Jurist's preLaw, *Best Schools for Practical Training* \(2024\)\).](#)
22. [Bob Mercer, *South Dakota Might Add a New Path for New Lawyers*, KELOLAND \(Aug. 30, 2023\).](#)

Student Loan Repayment Programs

23. [North Dakota Department of Health, *Loan Repayment Program Snapshot*, \(last visited Sept. 4, 2024\).](#)
24. [American Bar Association, *State Loan Repayment Assistance Program \(LRAP\) Summary Chart* \(last visited Sept. 4, 2024\).](#)
25. [American Bar Association, *State Loan Repayment Assistance Program \(LRAP\) Funding Chart* \(last visited Sept. 4, 2024\).](#)
26. [American Bar Association, *State Loan Repayment Assistance Program \(LRAP\) Eligible Loans Chart* \(last visited Sept. 4, 2024\).](#)
27. [American Bar Association, *State Loan Repayment Assistance Program \(LRAP\) Eligible Employment Chart* \(last visited Sept. 4, 2024\).](#)

Surveys & Database Inquiries

28. [UND School of Law, *Strategic Planning Survey Results* \(Mar. 8, 2024\).](#)
29. [State Bar Association of North Dakota, *Economics of Practice Survey* \(2024\).](#)
30. [North Dakota Office of the State Court Administrator, *Summary Charts of Court IT Department Data* \(2024\).](#)