FUTURE

THE FUTURE OF LEGAL SERVICES IN OREGON

OSB Futures Task Force

Executive Summary | June 2017

FUTURE of Legal Services in Oregon

The relentless growth of technology and the effects of globalization are upending the legal services market, feeding innovation, exposing inefficiencies, and presenting opportunities for growth.

Consumers are voting with their wallets. The alternative legal services market has quickly become a multibillion dollar industry.

Oregon's access-to-justice gap disproportionately affects the most vulnerable among us.

Lawyers and nonlawyer entrepreneurs see the legal market as ripe for innovation.

OSB Futures Task Force, 2017

"It will not do for Bar members to stand still or to rage against the tide as the world around us evolves."

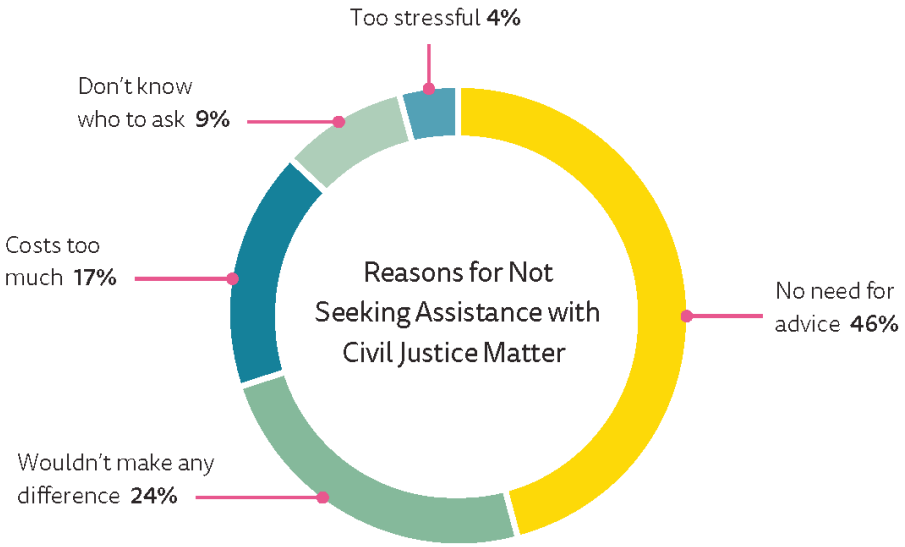
OSB Advertising Task Force Report, 2009

I. Background

The legal services market has entered a period of intense disruption. Technological advances are transforming how we deliver legal services, resolve legal disputes, and engage in legal learning. Consumers of legal services—including sophisticated corporations[1] as well as individual clients—are demanding more for less and are apt to employ self-help rather than to hire a professional.

Many lawyers are so accustomed to thinking of the law as a "full service" profession—where a client with an incipient legal issue engages a lawyer or law firm to provide a full complement of legal services until the "matter" is concluded—that it is difficult to imagine legal services being provided any other way. But they are. The future is here. Oregonians are using websites not merely to gather information about lawyers, but to actually obtain legal advice. Services traditionally provided in person-to-person interactions between lawyers and clients are now being offered by online providers such as LegalZoom and Avvo.[2] Customized legal forms, short telephonic consultations, and advice via chat are all available at the touch of a button. Consumers are bypassing the traditional full-service lawyer-client relationship in favor of "unbundled" legal services—limited-scope legal services that enable consumers to pick and choose the services or tasks for which they are willing to pay. Or, they are bypassing the lawyer-client relationship altogether and using "intelligent" online software to create their own wills, trusts, and other "routine" legal documents that they believe are sufficient to meet their needs.

Consumers are voting with their wallets. The alternative legal services market has quickly become a multibillion dollar industry. And why not? Consumers naturally want to resolve their legal issues efficiently and cost-effectively, as they do any other problem. Commoditization of services and the instant availability of information at the click of a mouse now set their expectations; they demand easy access to qualified lawyers and legal resources as well as



Sandefur, Rebecca. *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*. University of Illinois at Urbana-Champaign: American Bar Foundation, August 8, 2014.

transparent, competitive pricing. And it is more tempting to simply not hire a lawyer, because the Internet's infinite amount of knowledge on any subject makes a do-it-yourself approach seem feasible for many legal matters.

Against this backdrop, one might think that the public is finding it easier than ever to access legal services. It is startling, therefore, to learn that the increased availability of *information* about the law and legal services has done nothing to reduce the access-to-justice gap. The American Bar Association Commission on the Future of Legal Services recently found that "[d]espite sustained efforts to expand the public's access to legal services [over the past century], significant unmet needs persist" and that "[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need."[3] Specific findings from the Commission include:

> *Low-income Americans receive inadequate or no professional legal help for* ***86%*** *of the civil legal problems they face in a given year.*
>
> Legal Services Corporation, The Justice Gap, 2017

- As of the last census, 63 million people, or one-fifth of the population, met the financial requirements for legal aid, yet funding for the Legal Services Corporation (the primary vehicle for federal legal aid funding) is inadequate. "[I]n some jurisdictions, more than eighty percent of litigants in poverty are unrepresented in matters involving basic life needs, such as evictions, mortgage foreclosures, child custody disputes, child support proceedings, and debt collection cases."[4]

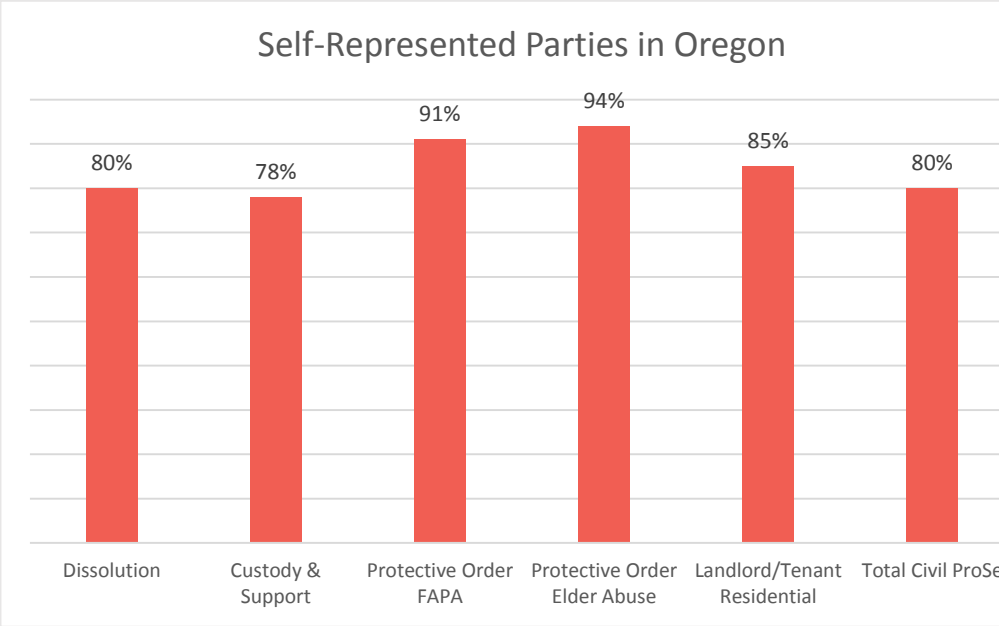
- Access to justice is not just a problem for the poor. One study showed that "well over 100 million Americans [are] living with civil justice problems, many involving what the American Bar Association has termed 'basic human needs,'" "including matters related to shelter, sustenance, safety, health, and child custody."[5]

- Although financial cost is the most often cited reason for not seeking legal services,[6] awareness may play an even larger role. The study found that "[i]ndividuals of all income levels often do not recognize when they have a legal need, and even when they do, they frequently do not seek legal assistance."[7] And when financial cost is an issue, it is not only direct costs "but also indirect economic costs, such as time away from work or the difficulty of making special arrangements for childcare."[8]

- Pro bono and "low bono" efforts are insufficient to meet the needs of low- and moderate-income Americans. "U.S. lawyers would have to increase their pro bono efforts ... to over nine hundred hours each to provide some measure of assistance to all households with legal needs."[9] Nor have other programs across the country designed to offer assistance to this population significantly narrowed the access-to-justice gap.[10]

Within this context, new lawyers remain un- and underemployed.[11] Total student debt burdens now average in excess of $140,000[12]—challenging new lawyers' ability to sustain traditional law practices that might address some of the unmet legal need—while legal education remains essentially unchanged

The effect of the access-to-justice gap on the court system is staggering. A 2015 study by the National Center for State Courts found that more than 75 percent of civil cases featured at least one self-represented party.[13] According to Oregon Judicial Department data from 2016, approximately 80 percent of family court cases involved at least one self-represented litigant. In



Oregon Judicial Department, Oregon Circuit Courts Self-Represented Parties (2016).

residential eviction proceedings, it is rare to see a lawyer anywhere—only about 15 percent of residential eviction proceedings involve lawyers. Instead, landlords are commonly represented by property managers, and tenants represent themselves.

Moreover, data shows that Oregon's access-to-justice gap disproportionately affects the most vulnerable among us. As reported at the 2016 Oregon Access to Justice Forum, people of color, homeless people, domestic violence survivors, physically disabled people, and the elderly have greater-than-average civil legal needs but are still woefully underserved. The Campaign for Equal Justice estimates the combined legal aid providers in Oregon can meet only 15 percent of the total civil legal needs of Oregon's poor. According to a survey, the biggest reason (17 percent) why low-income Oregonians did not seek legal aid was the belief that nothing could be done about their legal problems. And, given the limited resources available, that may not be wrong.

In short, three powerful forces are converging to disrupt the legal services market. First, more people than ever need legal services and are not getting them. Second, people believe that their legal needs should be capable of being served in ways different, and more cost-effective, than the traditional model. Oregonians' expectations are changing. Third, new providers are stepping in to fill that void.

Lawyers and nonlawyer entrepreneurs see the legal market as ripe for innovation. Lawyers are reaching out to solicit business through websites, blogs, and social media; increasingly relying on online advertising and referral services to connect them with prospective clients; and using web-based platforms to offer limited-scope consultations or services to clients who have been referred to them by third parties. All the while, tech businesses, awash in venture capital, have developed online service delivery models ranging from the most basic form providers to sophisticated referral networks. Online services offer to draft a pleading,[14] write a will,[15] or apply for an immigration visa,[16] all from the comfort of a consumer's living room or mobile device.

Indeed, innovation is necessary both to meet the consumer need and for lawyers to stay competitive. The ABA Commission Report decried members of the legal profession for clinging to outdated business models and resisting change. Specifically, the Commission found that

"[t]he traditional law practice business model constrains innovations that would provide greater access to, and enhance the delivery of, legal services."[17] For example, the Commission recognized the conflict of interest inherent in hourly billing, where efficiency in delivering legal services can be rightfully seen as adverse to short-term revenue.[18] In the long term, however, firms that have taken a proactive approach to alternative fee arrangements have retained their profitability.[19]

The relentless growth of technology and the effects of globalization are upending the legal services market, feeding innovation, exposing inefficiencies, and presenting opportunities for growth. While market disruption and rapid change do not spell the end of lawyering, they do demand an evolution in the manner and methods by which lawyers provide legal services, and the way in which those services are regulated.

II. Creation of Oregon State Bar Futures Task Force

The legal profession is nothing if not conservative. Lawyers are schooled in precedent, consistency, and risk avoidance. Yet, as noted in the ABA Futures Commission Report on the Future of Legal Services, "The justice system is overdue for fresh thinking about formidable challenges. The legal profession's efforts to address those challenges have been hindered by resistance to technological changes and other innovations.[20]

In April 2016, the OSB Board of Governors convened a Futures Task Force with the following charge:

> "Examine how the Oregon State Bar can best protect the public and support lawyers' professional development in the face of the rapid evolution of the manner in which legal services are obtained and delivered. Such changes have been spurred by the blurring of traditional jurisdictional borders, the introduction of new models for regulating legal services and educating legal professionals, dynamic public expectations about how to seek and obtain affordable legal services, and technological innovations that expand the ability to offer legal services in dramatically different and financially viable ways."

The Board split the Futures Task Force into two committees: a Legal Innovations Committee, focused on the tools and models required for a modern legal practice, and a Regulatory Committee, focused on how to best regulate and protect the public in light of the changing legal services market. The charges, findings, and recommendations of the two committees follows.

III. The Regulatory Committee

A. The Regulatory Committee Charge

The Regulatory Committee was charged to examine new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and make recommendations to the Board regarding the role the Bar should play, if any, in regulating such delivery models. The Board requested a report containing the following information:

- A summary of what exists at present, both in terms of existing legal service delivery models and regulatory structures for those models;
- A discussion of the consumer-protection and access-to-justice implications presented by these models and regulatory structures;
- An analysis of the stakeholders involved, including (1) the vendors that have an interest in exploring innovative ways to deliver legal services to consumers, (2) the lawyers who are interested in utilizing these innovative service delivery models, and (3) the regulatory entities that are responsible for ensuring adequate protection for consumers in this quickly evolving legal services market;
- Specific recommendations for proactive steps OSB should take to address these new models (e.g., should OSB propose amendments to the Oregon Rules of Professional Conduct, the OSB Rules of Procedure, or state law); and
- A proposed strategic response in the face of unexpected action at the legislature or elsewhere.

B. Findings of the Regulatory Committee

The Regulatory Committee recommendations are based on the following findings:

1. Oregonians need legal advice and legal services to successfully resolve problems and to access the courts.
2. Consumers are increasingly unwilling or unable to engage traditional full-service legal representation.
3. A significant number of self-represented litigants choose not to hire lawyers, even though they could afford to do so.
4. Self-help resources are crucial and must be improved, even as we take steps to make professional legal services more accessible.
5. Subsidized and free legal services, including legal aid and pro-bono representation, are a key part of solving the access-to-justice gap, but they remain inadequate to meet all of the civil legal needs of low-income Oregonians.
6. Despite the existence of numerous under- and unemployed lawyers, the supply of legal talent is not being matched with the need.
7. Oregonians' lack of access to legal advice and services leads to unfair outcomes, enlarges the access-to-justice gap, and generates public distrust in the justice system.
8. For-profit online service providers are rapidly developing new models for delivering legal services to meet consumer demand.
9. To fully serve the Bar's mission of promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice, we must allow and encourage the development of alternate models of legal service delivery to better meet the needs of Oregonians.

C. Recommendations of the Regulatory Committee

Based on its findings, the Regulatory Committee makes three broad recommendations, each with several subparts. The purpose of this summary is to identify and briefly describe each recommendation. For a more complete explanation of the recommendations, readers should refer to the accompanying workgroup reports, which have been approved by and reflect the views of the Committee as a whole.

RECOMMENDATION 1:

IMPLEMENT LEGAL PARAPROFESSIONAL LICENSURE

Oregon should establish a program for licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants in (1) family law and (2) landlord-tenant proceedings.

The accompanying report reviews and analyzes developments in other jurisdictions, particularly Arizona, California, Colorado, Nevada, New York, Utah, Washington, and Ontario, Canada. We reviewed a wide variety of materials on paralegal regulation and the problem of self-represented litigants, considered arguments for and against licensing paraprofessionals, and discussed the elements of a licensing program that would be appropriate for Oregon.

The most compelling argument for licensing paraprofessionals is that the Bar's other efforts to close the access-to-justice gap have continued to fall short. We must broaden the options available for persons seeking to obtain legal services, while continuing to strive for full funding of legal aid and championing pro bono representation by lawyers. By adopting a form of paraprofessional licensing, Oregon will not be assuming the risk of being ahead of the pack. Instead, the workgroup report shows that Oregon is well-placed to benefit from the experience, trial, and error of six distinct paraprofessional programs.

Our proposal would allow limited practice by paraprofessionals in two of the highest-need areas—family law and landlord-tenant—and only in limited types of proceedings where clients are by and large unrepresented. Clients who need other kinds of legal help, have complex cases, or desire representation in court for any reason will still need lawyers.

Contrary to the commonly held belief, we are convinced that licensing paraprofessionals in the manner proposed would not undermine the employment of lawyers. First, the need for routine, relatively straightforward family law and landlord-tenant representation is vast, and lawyers are electing not to perform this high-volume, low-pay work. Second, data from existing programs demonstrates that lawyers and licensed paraprofessionals may choose to work together because they can provide tiered and complementary services based on the complexity of a client matter. Given the significant underutilization of legal services, paraprofessionals may actually create on-ramps to lawyer representation for consumers who do not realize they need legal services. Finally, there is simply no evidence that when paraprofessionals are introduced into the legal market, lawyers are harmed. For all of these reasons, the legal profession need not fear innovative service delivery models.

Given the inherent complexity of launching a paraprofessional licensing program, we recommend the Board appoint an implementation committee to formulate a detailed implementation plan for licensing paraprofessionals consistent with the recommendations in this report.

1.1 An applicant should be at least 18 years old and of good moral character. Attorneys who are suspended, resign Form B, or are disbarred from practicing law should not be eligible for a paraprofessional license.

1.2 An applicant should have an associate's degree or higher and should graduate from an ABA-approved or institutionally accredited paralegal studies program, including approved coursework in the subject matter of the license. Highly experienced paralegals and applicants with a J.D. degree should be exempt from the requirement to graduate from a paralegal studies program.

1.3 Measures should be enacted to protect consumers who rely on newly licensed paraprofessionals. The measures should require that applicants be 18 years old and of good moral character and meet minimum education and experience requirements. The measures should also require that licensees carry malpractice insurance, meet continuing legal education requirements, and comply with professional rules of conduct like those applicable to lawyers.

1.4 Applicants should have at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney.

1.5 Licensees should be required to comply with professional rules of conduct modeled after the rules for attorneys.

1.6 Licensees should be required to meet continuing legal education requirements.

1.7 To protect the public from confusion about a licensee's limited scope of practice, licensees should be required to use written agreements with mandatory disclosures. Licensees also should be required to advise clients to seek legal advice from an attorney if a licensee knows or reasonably should know that a client requires services outside of the limited scope of practice.

1.8 Initially, licensees should be permitted to provide limited legal services to self-represented litigants in family law and landlord-tenant cases. Inherently complex proceedings in those subject areas should be excluded from the permissible scope of practice.

1.9 Licensees should be able to select, prepare, file, and serve forms and other documents in an approved proceeding; provide information and advice relating to the proceeding; communicate and negotiate with another party; and provide emotional and administrative support to the client in court. Licensees should be prohibited from representing clients in depositions, in court, and in appeals.

1.10 Given the likely modest size of a paraprofessional licensing program, the high cost of implementing a bar-like examination, and the sufficiency of the education and experience requirements to ensure minimum competence, we do not recommend requiring applicants to pass a licensing exam. If the Board of Governors thinks that an exam should be required, we recommend requiring applicants to pass a national paralegal certification exam.

1.11 To administer the program cost-effectively, we recommend integrating the licensing program into the existing structure of the Bar, rather than creating a new regulatory body.

RECOMMENDATION 2:

REVISE RULES OF PROFESSIONAL CONDUCT TO REMOVE BARRIERS TO INNOVATION

Alternative legal service delivery models, which harness technology to offer limited-scope services to consumers in lieu of the traditional model of full-service legal practice, are here to stay.

The regulatory response to this development around the country has been mixed. Some state bar associations have been very resistant to change, electing to double down on traditional regulation methods through restrictive ethics opinions and reactive lawsuits. But these efforts have not stemmed the tide of change. The lesson we draw from those experiences is that resistance from the Bar will not lead Oregonians to passively accept the status quo; the future is here. Leadership from the Bar is essential to ensure that, as the market for legal services evolves, our profession retains its commitment to protecting the consumer. We believe that there are opportunities to embrace new models of practice, leverage technological advances, and begin to close the access-to-justice gap without compromising that historical commitment.

If the Bar is to stay true to its goals of protecting the public and seeking to increase and improve access to justice, the Bar's regulatory framework must be flexible enough to allow some space for innovation and new ideas to grow. We recommend a short list of modest changes, which will loosen restrictions on lawyer advertising and facilitate innovation by allowing more economic partnership between lawyers and nonlawyers, particularly licensed paraprofessionals.

2.1 Amend current advertising rules to allow in-person or real-time electronic solicitation, with limited exceptions. By shifting to an approach that focuses on preventing harm to consumers, the Bar can encourage innovative outreach to Oregonians with legal needs, while promoting increased protection of the most vulnerable. The proposed amendments to the Oregon Rules of Professional Conduct would secure special protections for prospective clients who are incapable of making the decision to hire a lawyer or have told the lawyer they are not interested, or when the solicitation involves duress, harassment, or coercion.

2.2 Amend current fee-sharing rules to allow fee sharing between lawyers and lawyer referral services, with appropriate disclosure to clients. Currently, only Bar-sponsored or nonprofit lawyer referral services are allowed to engage in fee-sharing with lawyers. Rather than limit market participation by for-profit vendors, the Bar should amend the Oregon Rules of Professional Conduct to allow fee sharing between all referral services and lawyers, while requiring adequate price disclosure to clients and ensuring that Oregon clients are not charged a clearly excessive legal fee.

2.3 Amend current fee-sharing and partnership rules to allow participation by licensed paraprofessionals. If Oregon implements paraprofessional licensing, it should amend the Oregon Rules of Professional Conduct to allow fee sharing and law firm partnership among regulated legal professionals. Any rule should include safeguards to protect lawyers' professional judgment. The Board should also direct the Legal Ethics Committee to consider whether fee sharing or law firm partnership with other professionals who aid lawyers' provision of legal services (e.g., accountants, legal project managers, software designers) could increase access to justice and improve service delivery.

2.4 Clarify that providing access to web-based intelligent software that allows consumers to create custom legal documents is not the practice of law. Together with this effort, seek opportunities for increased consumer protections for persons utilizing online document creation software.

RECOMMENDATION 3:

IMPROVE RESOURCES FOR SELF-NAVIGATORS

Numbers do not lie. In Oregon, and nationwide, more and more people in our legal system are self-represented. Some self-represented litigants choose their path because they cannot afford a lawyer; others simply believe a lawyer is not needed or will only make their legal issues unduly complicated. While lawyers have a professional duty to continue to strive to fully fund legal aid and provide pro bono representation to the indigent, some Oregonians will always appear in court without a lawyer. Recognizing this fact, the Bar should seek to improve the experience of self-navigators and should recognize this work as another method to narrow the access-to-justice gap.

3.1 Coordinate and integrate key online resources utilized by self-navigators. Establish a committee with representatives from the three stakeholder groups—the Oregon Judicial Department (OJD), the Bar, and legal aid—to coordinate and collaborate on the information available on their respective websites, including cross-links when appropriate.

3.2 Create self-help centers in every Oregon courthouse. The Oregon State Bar and OJD should consider proposing or supporting the creation of self-help centers to assist self-navigators, including the use of dedicated and trained court staff and volunteers. The goal should be self-help centers in every court in Oregon.

3.3 Continue to make improvements to family law processes to facilitate access by self-navigators. Implement the recommendations of OJD's State Family Law Advisory Committee regarding family law improvements to assist self-navigators. Seek to improve training and ensure statewide consistency in training to family court facilitators.

3.4 Continue to make improvements to small-claims processes to facilitate access by self-navigators. Implement the recommendations from the 2016 Access to Justice Forum regarding small-claims process. Support changes to provide better courthouse signage, instruction, and education for consumers.

3.5 Promote availability of unbundled legal services for self-navigators. Educate lawyers about the advantages of providing unbundled services, including the existence of new trial court rules. Provide materials on unbundled services to Oregon lawyers (through the OSB website, the Bar Bulletin, local bars, specialty bars, and sections), including ethics opinions, sample representation and fee agreements, and reminders about blank model forms that can be printed from OJD's website.

3.6 Develop and enhance resources available to self-navigators. While OSB, OJD, and legal aid have made strides in providing information that is useful for self-navigators, we must continue to improve existing resources and develop new tools.

Oregon State Bar

IV. The Innovations Committee

A. The Innovations Committee Charge and Process

The Innovations Committee was charged with the study and evaluation of how OSB might be involved in and contribute to new or existing programs or initiatives that serve the following goals:

- Help lawyers establish, maintain, and grow sustainable practices that respond to demonstrated low- and moderate-income community legal needs;
- Encourage exploration and use of innovative service delivery models that leverage technology, unbundling, and alternative fee structures in order to provide more affordable legal services;
- Develop lawyer business management, technology, and other practice skills; and
- Consider the viability of a legal incubator program.

The committee was asked to develop recommendations for OSB to advance promising initiatives, either alone or in partnership with other entities, and to prioritize those recommendations in light of relative projected costs, benefits, ongoing projects relevant to the issues, and the capacity of OSB and other entities.

B. Findings of the Innovations Committee

The Innovations Committee agrees with the findings of the Regulatory Committee and also finds that:

1. The profession in general, and the Bar in particular, would benefit from a substantially stronger focus on the gathering, dissemination, and use of data-based evidence to support and monitor progress toward its mission, values, and initiatives.
2. The Bar is underutilizing and undermarketing the Lawyer Referral Service, which is one of its most successful programs over the past several years for connecting moderate-means Oregonians with qualified legal help.
3. Law schools, the Bar, and other legal education providers are not doing enough to prepare lawyers for the realities of modern legal practice or to encourage lawyers to learn and adopt needed skills related to technology, project and practice management, and business management.

C. Recommendations of the Innovations Committee

RECOMMENDATION 4:

EMBRACE DATA-DRIVEN DECISIONMAKING

4.1 Adopt an official policy embracing data-driven decision making (DDDM).
As the Bar looks to invest time and resources in various initiatives, including the recommendations of this Task Force, it is important that Bar leadership and the Board of

Governors emphasize the importance of using data to give context to—and measure the effectiveness of—those initiatives. Specifically, we recommend grounding each and every Bar initiative in the Bar's mission, values, and functions, and establishing what the business world refers to as SMART (Specific, Measurable, Achievable, Realistic, Time-Based) goals around them. Additionally, to the extent that it is not already consistently doing so, we recommend that the Bar establish a DDDM framework for defining all new (and, where feasible, ongoing) initiatives.

4.2 Adopt a formal set of key performance indicators (KPIs) to monitor the Bar's values. Without measurement, the Bar's values risk languishing as nice-to-express sentiments instead of concrete commitments. The Board of Governors should consider commissioning a special committee of the BOG to work with Bar leadership in establishing an initial set of KPIs and determining a timeframe for periodically evaluating them.

4.3 Adopt an open-data policy. We recommend that the Bar, and also, ideally, the judiciary, adopt a formal open-data policy. While we do not go so far as to recommend specific language for this policy, we recommend that the Board of Governors convene a working group to propose a specific policy for the Bar, with an implementation target of January 2018.

4.4 Provide a dedicated resource responsible for data collection, design, and dissemination. Many successful businesses now have a chief data officer or chief information officer in addition to, or sometimes as an expansion of, the role of chief technical officer. As the availability of data increases and its potential uses proliferate, and in order to enable the other recommendations of this subcommittee, we believe a dedicated resource will be necessary.

RECOMMENDATION 5:

EXPAND THE LAWYER REFERRAL SERVICE AND MODEST MEANS PROGRAM

5.1 Set a goal to increase the number of inquiries to the Lawyer Referral Service (LRS) and Modest Means Program (MMP); adequately fund the Referral and Information Services department (RIS) to achieve the goal. The Oregon State Bar should set a goal of increasing the number of inquiries to the LRS and MMP—and, by extension, the corresponding number of referrals to Oregon lawyers—by 11 percent per year for the next four years, and should adequately fund the RIS to achieve this goal. While we do not offer an opinion on the specific amount of money that would be necessary to reinvest in the programs in order to meet this 11 percent per annum growth target, we recommend that the BOG request a proposal from the program's managers.

5.2 Develop a blueprint for a "Non-Family Law Facilitation Office" that can become a certified OSB pro bono program housed within the circuit courts of Oregon.

RECOMMENDATION 6:

ENHANCE PRACTICE MANAGEMENT RESOURCES

6.1 Develop a comprehensive training curriculum to encourage and enable Oregon lawyers to adopt modern law practice management methods. Specifically, we recommend that the OSB CLE Seminars Department—in cooperation with the PLF, Bar Sections, Specialty Bars, or whomever else they deem appropriate—be tasked with developing a comprehensive Modern Practice Management training curriculum for Oregon lawyers comprised of no less than two hours of education in each of the following areas: automation, outsourcing, and project management.

RECOMMENDATION 7:

REDUCE BARRIERS TO ACCESSIBILITY

7.1 Promote the provision of limited-scope representation. Specifically, we recommend that the Bar set a target of increasing the number of lawyers providing unbundled legal services in Oregon by 10 percent per year over the next four years. We believe that such a goal will result in improved access to justice for Oregonians.

7.2 Promote the use of technology as a way to increase access to justice in lower income and rural communities. In addition to training lawyers in private practice on the effective use of technology to reach low-income and rural communities, the Bar should encourage and support the courts in their efforts to provide more online, user-friendly, resources for the public and opportunities to participate in court proceedings by video.

7.3 Make legal services more accessible in rural areas. In addition to leveraging technology to create better access to legal services and the courts, we recommend hosting two summits—one in eastern Oregon and one on the coast—to discuss barriers that are germane to rural communities and share what programs, initiatives, or activities have worked to improve access.

7.4 Promote efforts to improve the public perception of lawyers. The Bar should expand public outreach that highlights lawyers as problem-solvers, community volunteers, and integral to the rule of law.

RECOMMENDATION 8:

ESTABLISH A BAR-SPONSORED INCUBATOR/ACCELERATOR PROGRAM

We recommend that the OSB create a consortium-based incubator/accelerator program that will serve Oregon's low- and moderate-income populations—specifically, those individuals whose income falls between 150 and 400 percent of the federal poverty level. The program goals would be to provide legal services to those clients, to help new lawyers build sustainable practices to meet client need, and to operate as a center for innovation dedicated to identifying, developing, and testing innovative methods for the delivery of legal services into the future.

In recent years, many different law school and consortium-based incubator and/or accelerator programs have cropped up across the country, all seeking to address the persistent issue of how to bridge the justice gap for underserved lower- and moderate-income individuals who cannot afford traditional legal services but who do not quality for legal aid. These programs come in different forms—some operating as stand-alone incubators sponsored by a consortium of private stakeholders; others operating solely under the auspices of a law school or state bar association. All, however, accomplish two goals: (1) they create a space—often for newer lawyers—to provide direct legal services to low and moderate-income individuals (the "incubator"), and (2) they create a platform for using, developing, testing, and disseminating innovative methods to making those legal services more accessible and affordable to clients in that target market (the "accelerator").

As part of our inquiry into determining whether Oregon might benefit from a similar model, we catalogued and reviewed the resources currently available for low and moderate-income Oregonians and for new lawyers seeking to develop their legal practices. Both fall short; based on that review, we have concluded that Oregon does not have sufficient legal resources for low and moderate-income populations and that it remains challenging for lawyers to build practices to meet the needs of that market in a sustainable way.

The accompanying report describes our investigation and reviews examples of existing incubator/accelerator programs in more detail. It also includes a catalogue of the programs we researched and reviewed, a summary of the challenges we identified with other incubator/accelerator programs, and a detailed proposal for how Oregon might create an incubator/accelerator model that is structured to avoid those challenges.

Further to that recommendation, we request that the BOG and the OSB do the following:

8.1 Dedicate staff resources. We recommend that the BOG and the OSB commit staff equivalent to one FTE dedicated to managing the incubator/accelerator project. That one FTE might come from existing OSB staff, if available.

8.2 Form a program development committee. We recommend that the BOG and the OSB form a program development committee dedicated to implementing the incubator/accelerator program. One committee member should be a full-time OSB staff member. Other members would represent stakeholder organizations, including law schools; legal nonprofits; private law firms; LASO; and the law, business, and technology communities generally.

8.3 Formulate the incubator/accelerator program details. OSB staff, together with the planning development committee, should take the following additional steps toward developing Oregon's operating incubator/accelerator program.

Coordinate with stakeholders. The committee should convene a meeting of program stakeholders, including representatives of private law firms, law schools, members of the bar, nonprofit legal services entities, and LASO, among others.

Create a business plan. The committee should develop a plan for startup and continuing financing of the proposed program. Sources of funding might include community stakeholders (including law, business, and technology companies), vendors, grant programs, and client fees.

Create a marketing plan. The committee should develop a plan for marketing the services of the incubator program. This could include marketing through

existing channels or developing new ways for reaching moderate-income Oregonians and educating the public about the program scope and resources.

Identify program hosts. We envision that the for-profit law firms in Portland and across the state will host incubator participants and provide training, mentoring, and other office resources. The program development committee should develop a plan to market, identify, and obtain commitments from those firms.

Identify options for office space. This includes office space for both the program staff and incubator participants. This task overlaps with the identification of program hosts, as many law firm hosts should include, as part of their commitment, office space for the participant(s) they host.

Design a program application process. The committee should design an application process for the participant/fellows, which will include drafting job descriptions, creating an application and review process, and developing a plan to advertise the program and solicit applications.

Develop a mechanism for assessment program success. The committee should identify the best metric for measuring the success of both the incubator and accelerator components of the program. To do so, the Committee might consider metrics such as number of matters addressed by program participants, populations served, financial success of new lawyer participants, and extra-program use of accelerator innovations.

We request that the planning development committee finalize the program, curriculum, and stakeholders by fall of 2017, with applications ready to go out in the spring of 2018. The BOG, the OSB, and the committee should aim to start the incubator/accelerator program in the fall of 2018.

V. Conclusion

The question is not whether legal services will be provided differently than in decades past. The question is whether it will occur with the active engagement of a Bar that is willing to rethink longstanding assumptions and embrace emerging technology and new legal service delivery models, or whether, as in some other states, the Bar will try to resist the forces of change. Efforts to resist change will likely be unsuccessful. The appointment of this Task Force reflects the Bar's recognition that adhering to the status quo is not really a choice at all.

We look forward to working with the Board of Governors, the Oregon judiciary, and other stakeholders to implement these recommendations in the months to come.

Respectfully Submitted,

OSB Futures Task Force

The full report and recommendations of the Regulatory and Innovations committees and workgroups are available here:
www.osbar.org/_docs/resources/taskforces/futures/FuturesTF_Reports.pdf

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Oregon State Bar

Endnotes

1 Corporate clients continue to move work in house, turn to nontraditional legal services providers, and harness technology to reduce legal spending, according to the Altman Weil *Law Firms in Transition 2016* survey. Altman Weil, Inc., *Law Firms in Transition 2016: An Altman Weil Flash Survey* (May 2016), *available at* http://www.altmanweil.com/LFiT2016/.

2 In addition to the well-known LegalZoom, more recent entrants into the online self-help legal space include Avvo Answers (in conjunction with its better-known lawyer rating service), Rocket Lawyer, Docracy, and Shake Law, among many others.

3 Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States*, 11 (American Bar Association 2016), *available at* http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf. In June 2017, the Legal Services Corporation released a new report, finding that 86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help. Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans (2017), *available at* http://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf. The report was prepared by NORC at the University of Chicago for Legal Services Corporation in Washington, DC.

4 Commission on the Future of Legal Services, *supra* note 3, at 12, citing Number of Attorneys for People in Poverty, National Center for Access to Justice, *available at* http://justiceindex.org/, archived at (https://perma.cc/89C2-6EC5).

5 *Id.* (parentheticals omitted), quoting Rebecca L. Sandefur, What We Know and Need to Know About the Legal Needs of the Public, 67 S.C. L. Rev. 433, 466 (2016) and citing ABA House of Delegates Resolution 112A (adopted Aug. 2006), *available at* https://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/whitepapers.html, archived at (https://perma.cc/R7HC-RSAN).

6 *Id.* at 15.

7 *Id.* at 14.

8 *Id.* at 15.

9 *Id.* at 14 (quoting Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, Daedalus 5 (2014)).

10 *Id.*

11 The "Great Recession" that began in December 2007 had a particularly striking impact on private law firms. In its 2017 Report on the State of the Legal Market, the Center for the Study of the Legal Profession at the Georgetown University Law Center summarized that "[o]verall, the past decade has been a period of stagnation in demand growth for law firm services, decline in productivity for most categories of lawyers, growing pressure on rates as reflected in declining realization, and declining profit margins." Thus, private law firms sharply curtailed—and even stopped—hiring. *Above The Law* reports that 38 percent of 2016 law school graduates were unable to secure a full-time position in the legal profession, *available at* http://abovethelaw.com/law-school-rankings/top-law-schools/.

12 *See* http://abovethelaw.com/2015/08/how-are-lawyers-managing-their-law-school-debt-most-will-never-be-able-to-pay-it-off/.

13 National Center for State Courts, State Justice Initiative, *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts* (2015) at iv, *available at* https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx.

14 *See* https://www.legalpleadingtemplate.com/

15 *See* https://www.rocketlawyer.com/document/legal-will.rl#/

16 *See* https://visabot.co/

17 Commission on the Future of Legal Services, *supra* note 3, at 16.

18 *Id.*

19 Altman Weil, Inc., *supra* note 1, at i.

20 Commission on the Future of Legal Services, *supra* note 3, at 8–9. A number of states—including California, Florida, Michigan, New York, and Utah—have convened futures commissions, modeled on the ABA's effort, to examine ways to innovate and respond to emergent change in the legal services market. Our Task Force reviewed these reports and recognizes the significant contributions of the many states that preceded us in approaching these challenges.

Oregon State Bar

The question is not whether legal serivces will be provided differently than in decades past. The question is whether it will occur with the active engagement of a Bar that is willing to rethink longstanding assumptions and embrace emerging technology and new legal serivce delivery models, or whether, as in some other states, the Bar will try to resist the forces of change.

OSB Futures Task Force, 2017

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