

Oregon State Bar

FUTURES TASK FORCE

Reports and Recommendations of the

REGULATORY COMMITTEE *(See page 3)*

and

INNOVATIONS COMMITTEE *(see page 61)*

June 2017

The **Executive Summary** is available here:

www.osbar.org/_docs/resources/taskforces/futures/FuturesTF_Summary.pdf

OSB FUTURES TASK FORCE REGULATORY COMMITTEE | REPORT AND RECOMMENDATIONS

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PARAPROFESSIONAL WORKGROUP REPORT & RECOMMENDATIONS

Introduction

Twenty-five years ago, a task force of the Oregon State Bar developed a proposal for licensing nonlawyers to provide limited legal services to the public in civil cases.¹ The task force cited a report noting that a significant number of people of modest and lower incomes lacked access to legal services. For lack of consensus, however, the task force declined to make any recommendation for or against the proposal, and the OSB's Board of Governors took no further action.

At the time of that 1992 report, seven other states had considered or were considering similar proposals.² A commission of the State Bar of California undertook the most comprehensive study and recommended the adoption of a rule authorizing nonlawyers to provide limited legal services in bankruptcy, family-law, and landlord-tenant proceedings.³ As one member of the state bar's Board of Governors explained at the time, supporters of the proposed rule argued that legal technicians could fill an access-to-justice gap because "[a] lot of people need legal assistance and have no place to go."⁴ The state bar's Board of Governors voted down the recommendation. The resistance from California's lawyers was typical of responses in other states. But things began to change. By 2003, both California and Arizona were authorizing qualified nonlawyers to prepare, file, and serve legal documents without attorney supervision.

Washington joined the conversation in 2012, when that state's supreme court, citing the need to address the "wide and ever-growing gap in necessary legal and law related services for low and moderate income persons," approved by rule a new, limited form of legal practitioner known as a "limited license legal technician" (LLLT).⁵ Several states took note, appointing committees or task forces to evaluate the Washington model and to make recommendations. The Oregon State Bar (OSB) appointed such a task force, which submitted a final report in 2015 that discussed the merits of a licensing scheme like Washington's but declined to make a recommendation.⁶ No further action was taken, until the OSB's Board of Governors convened the present Task Force.

We now present the latest effort to address whether Oregon should license nonlawyers to provide a limited and defined scope of legal services. In early 2017, the Regulatory Committee of this Legal Futures Task Force formed a Paraprofessional Workgroup "to explore the licensing of paraprofessionals including LLLTs, paralegals and document preparers." The workgroup's members and advisors include people who participated in the 2015 task force as well as others new to the subject. Members met regularly from January through April to discuss this issue. The full Regulatory Committee

¹ OSB LEGAL TECH. TASK FORCE, REPORT TO THE BOARD OF GOVERNORS (1992).

² *Id.* at 3.

³ *Id.*

⁴ David Weintraub, "Calif. Dreaming: Expanded role for non-lawyer specialists considered," *ABA Journal* (June 1989) (quoting Frank Winston, a then-member of the California bar's Board of Governors).

⁵ Order No. 25700-A-1005, In the Matter of the Adoption of New APR 28—Limited Practice Rule for License Limited Legal Technicians (Wash. 2012) ("LLLT Order"), available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

⁶ OSB LEGAL TECHNICIAN TASK FORCE, FINAL REPORT TO THE BOARD OF GOVERNORS (2015).

heard presentations on paraprofessional licensing programs from officials in Utah, Washington, and Canada.

The workgroup reviewed and discussed developments in other jurisdictions, particularly Arizona, California, Colorado, Nevada, New York, Utah, Washington, and Ontario, Canada. We reviewed a wide variety of materials on the regulation of paralegals and the challenges facing self-represented litigants, and engaged in detailed discussions about the arguments for and against licensing paraprofessionals and the elements of a licensing program that would be appropriate for Oregon. We present our recommendations below, followed by an explanation of those recommendations.

GENERAL RECOMMENDATION 1: IMPLEMENT PARAPROFESSIONAL LICENSING PROGRAM

After careful consideration, the workgroup recommends that the OSB's Board of Governors:

- **Appoint a committee to develop a detailed implementation plan for licensing paraprofessionals consistent with the recommendations in this report.** The implementation plan would include draft rules of admission, practice, and professional conduct for approval by the Supreme Court and adoption by the Board of Governors.
- **Propose amendments to ORS chapter 9 to provide for licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants.** We recommend that the subject areas of such a license be limited, initially, to (1) family law and (2) landlord-tenant proceedings, where the number of self-represented litigants is high and the need for more providers of legal services is acute. We recommend further consideration of other subject areas, specifically including debt-collection. The amendments should authorize the evaluation of applicants, the regulation of licensees, and the assessment of fees.
- **Enact measures to protect consumers who rely on newly licensed paraprofessionals.** Require that applicants be 18 years old and of good moral character and meet minimum education and experience requirements. Require that licensees carry malpractice insurance, meet continuing legal education requirements, and comply with professional rules of conduct like those applicable to lawyers.

Why License Paraprofessionals?

The large number of self-represented litigants is not a new crisis but is a continuing one. Seventeen years ago, the OSB commissioned a detailed study on the state of access to justice in Oregon.⁷ The study found “a great need for civil legal services for low and moderate income people”

⁷ D. MICHAEL DALE, THE STATE OF ACCESS TO JUSTICE IN OREGON, PART I: ASSESSMENT OF LEGAL NEEDS i (2000).

that was not adequately met.⁸ Then, as now, the greatest needs were in family-law and housing advocacy.

The 2000 study on legal needs in civil proceedings found that “[p]art of that need can be met by providing advice and other limited services short of full representation.”⁹ Judges reported that there was “great unmet need for advice, review of documents, and drafting decrees without the lawyer necessarily appearing for the client in court.”¹⁰ Judges also expressed frustration with self-represented litigants’ “poorly drafted pleadings,” “situations in which a party is obviously unaware of important rights,” and challenges that arise when self-represented parties try to present evidence in court.¹¹ In eviction actions, “judges thought that tenants in most cases can represent themselves reasonably well in court, but often need advice about possible defenses to eviction, how to enter an appearance, and how to present evidence at trial.”¹²

The bench and the bar have long promoted pro bono work by attorneys, but the 2000 study found that pro bono services addressed less than five percent of the need.¹³ Around the same time, the Family Law Legal Services Commission recommended promoting unbundled legal services—also known as limited-scope representation—as an affordable option for low-income litigants.¹⁴ By 2007, however, little had changed. The State Family Law Advisory Committee acknowledged that self-representation in family-law cases would continue “because no other alternative exists.”¹⁵ That Committee concluded that, “rather than bemoaning the loss of a traditional model of justice that involved two attorneys who case-managed the litigation,” the model itself must be redesigned to meet the needs of self-represented litigants.¹⁶ The Oregon Judicial Department’s 2016 data on self-represented litigants in the Oregon Circuit Courts reinforces the fact that the number of self-represented litigants have only increased.¹⁷

Other states struggling with the same problem have agreed. In New York, more than 2.3 million self-represented litigants “must navigate the complexities of the state’s civil-justice system without the assistance of counsel in disputes over the most basic necessities of life.”¹⁸ A task force concluded that self-representation leads to higher costs of litigation, reduced likelihood of settlement, and a drain on court resources at the expense of the system as a whole.¹⁹ Dissatisfied with this state of affairs, the

⁸ *Id.*

⁹ The study was not advocating for limited licensing of paraprofessionals. Like other states, Oregon has focused on trying to increase pro bono representation and unbundled services, advocating for legal-aid funding, and developing self-help resources available online and through the courts.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 9-10.

¹² *Id.* at 10.

¹³ *Id.* at ii.

¹⁴ OJD STATE FAMILY LAW ADVISORY COMMITTEE, SELF-REPRESENTATION IN OREGON’S FAMILY LAW CASES 2 (2007).

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ See Oregon Circuit Court Data on *Pro Se* and Self-Represented Litigants (2016), at APPENDIX B.

¹⁸ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2012).

¹⁹ *Id.*

Court's Chief Judge, Jonathon Lippman, has proposed using nonlawyers to bridge "the gaping hole."²⁰ He has argued that qualified nonlawyer specialists in a limited area of practice can be at least as effective as generalist lawyers.²¹

In 2013, the New York City Bar Association reached the same conclusion.²² After studying the provision of legal services by nonlawyers in other states and countries, the Association's task force questioned the traditional view that all "legal tasks are inherently too complicated for performance by nonlawyers."²³ The following year, New York City launched three pilot programs to test the use of nonlawyer "navigators" in eviction and debt-collection proceedings. In two of the pilot programs, nonlawyer volunteers receive training and supervision to provide "for-the-day" assistance at the courthouse. The third pilot program uses trained caseworkers employed by a nonprofit organization to provide "for-the-duration" assistance in eviction proceedings. A recent study by the National Center for the State Courts shows promising results. In one of the pilot programs, tenants who received nonlawyer assistance were 87 percent more likely to have their affirmative defenses recognized by the court.²⁴ In the "for-the-duration" pilot program, no tenant who received help was evicted.²⁵

While New York is testing its volunteer program, Washington has begun licensing paraprofessionals committed to a long-term legal career. In 2012, the Washington Supreme Court authorized the limited practice of law by licensed legal technicians. The court observed that thousands of self-represented litigants struggle every day to navigate Washington's complex, overburdened, and underfunded legal system. The problem has expanded beyond the very low-income population that legal aid is designed to help, to include a growing number of moderate-income people who cannot afford or choose not to hire lawyers and search instead "for alternatives in the unregulated marketplace."²⁶ Like Oregon, Washington long ago implemented innovative programs, including self-help centers, court facilitators, and a statewide legal self-help website. But the "significant limitations" of these programs and the "large gaps" in available services result in a substantial unmet need.²⁷ The Washington court worried that the public will increasingly "fall prey to the perils" of unregulated and untrained nonlawyers.²⁸ Citing the state bar's failure to address the problem, Chief Justice Barbara Madsen said that the Washington State Supreme Court "had to take a leadership role and say the

²⁰ Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, ABA JOURNAL, Jan. 1, 2015, available at: http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap.

²¹ *Id.*

²² NEW YORK CITY BAR ASSOC., NARROWING THE JUSTICE GAP: ROLES FOR NONLAWYER PRACTITIONERS 30 (2013) ("NEW YORK REPORT").

²³ *Id.* at 4.

²⁴ REBECCA L. SANDEFUR AND THOMAS M. CLARKE, ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT 4 (2016).

²⁵ *Id.* at 5.

²⁶ LLLT Order at 5.

²⁷ *Id.*

²⁸ *Id.*

incredible unmet need is more than we can tolerate.”²⁹ Despite initial opposition, Justice Madsen noted that the Washington State Bar Association is now “wholly on board” with working to ensure the success of the program, which is now in its third year of issuing licenses.³⁰

Despite the support of the Washington Supreme Court and the Washington State Bar Association, some Washington attorneys remain skeptical about licensing paraprofessionals.³¹ Three objections seem to predominate. The first (voiced often in Washington) is that licensing paraprofessionals will take jobs away from lawyers. One obvious response is that the essence of the problem is the large number of litigants who either *cannot or will not* hire a lawyer.³² The number of such litigants has been ballooning for a quarter century; underemployed lawyers have made no dent in the demand for legal services. A second response, which we embrace, is that the licensure of paraprofessionals should be limited to specific subjects and types of proceedings. Clients who need other legal help, have complex cases, or desire representation in court will still need lawyers. In Washington, once the licensing program was implemented, lawyers stopped objecting when they realized “that clients going to an LLLT are not the ones who will come to lawyers for services.”³³

A second objection to licensing paraprofessionals is that state bars should, instead, try to increase the availability of unbundled legal services, pro bono and reduced-fee services, and self-help materials. In Oregon, one of the reasons for the resistance to paraprofessional licensure in 1992 was the hope that those other approaches could meaningfully reduce the growing number of self-represented litigants. Twenty-five years later, we must admit that that hope was misplaced. The problem is growing worse. The OSB’s 2000 study on legal needs in civil proceedings found that our continuing failure to provide access to justice is the failure of a core American value that has caused low- and moderate-income families to lose faith in Oregon’s legal system.³⁴ Survey respondents who sought but were unable to obtain legal assistance were left with “extremely negative” views of our system

²⁹ Ralph Schaefer, *Not Every Problem Needs a Lawyer According to Chief Justice*, TULSA LEGAL & BUSINESS NEWS, Sept. 8, 2015.

³⁰ *Id.*

³¹ Lawyers in Utah provided similar feedback – 60 percent of attorneys surveyed by the Utah futures commission disagreed or strongly disagreed with licensing paraprofessionals to provide limited legal services.

³² For example, in Ontario, Canada, where licensed paralegals have been licensed since 2007 and exist in large numbers (over 7,000 at last count), there has continued to be a steady rise in the number of attorneys licensed to practice law, even as the number of licensed paralegals continues to increase. *Compare* The Law Society of Upper Canada, *2008 Annual Report Performance Highlights* at 7, available at http://www.lsuc.on.ca/media/arep_full_08.pdf, and The Law Society of Upper Canada, *2016 Annual Report*, available at <http://annualreport.lsuc.on.ca/2016/en/the-professions/membership-statistics.html>. Moreover, average attorney fees have continued to increase even as large numbers of licensed paralegals entered the legal market. *Compare* Canadian Lawyer Magazine, *The Going Rate* (June 2016), available at http://www.canadianlawyermag.com/images/stories/pdfs/2016/CL_June_16-Survey.pdf, and Canadian Lawyer Magazine, *The Going Rate* (2008), available at http://www.canadianlawyermag.com/images/stories/pdfs/Surveys/2008/03CL_legal%20fees%20survey.pdf. Moreover, studies show that the thousands licensed paralegals in Ontario have had a meaningful impact on improving access to justice. *See generally* LAW SOCIETY OF UPPER CANADA, REPORT TO THE ATTORNEY GENERAL OF ONTARIO PURSUANT TO SECTION 63.1 OF THE LAW SOCIETY ACT 26 (2012).

³³ Schaefer, *supra* note 27, at 1.

³⁴ DALE, *supra* note 6, at 10.

(significantly worse than the opinions of those who received at least some help).³⁵ After more than two decades, new innovations are required. Public attention to the problem has sharpened. If the state bar does not act, the legislature might.

A third objection, or at least note of caution, is that the limited-scope license may not be attractive to enough people to justify the regulatory effort. We find reasons, however, to believe that licensed paraprofessionals will be drawn to this new market opportunity and that low- and moderate-income Oregonians will benefit from it.³⁶

First, to be successful, licensees will have to package their services at prices that low- and moderate-income litigants can afford. Current market conditions suggest that attorneys have little incentive to offer low flat fees and unbundled services when there is enough full-service work at market rates. When there is not enough high-paying work in one area, attorneys can and do change practice areas, something licensed paraprofessionals would not be able to do. Furthermore, because licensees will be able to provide only limited services, they will not be able to compete if they attempt to charge the same rates as full-service attorneys. Even an unsophisticated litigant will prefer to hire an attorney over a limited-license practitioner if the cost is the same. Unlike attorneys, licensees will be highly incentivized to provide lower cost, unbundled services.

Second, licensees should be able to provide services at a lower cost. Unbundling has long been promoted by the bench and the bar as a way for attorneys to provide affordable services to low- and moderate-income litigants. Licensed paraprofessionals, almost by definition, provide unbundled services. Unlike attorneys (who bill by the hour for the detailed research, analysis, drafting, and court preparation necessary for more complex cases), licensed paraprofessionals will be assisting in routine matters requiring less time and often involving simple, repetitive tasks. Also, a traditional paralegal who gets licensed and sets up a solo practice will not have the same earnings expectations as an attorney who sets up a solo practice. Even if the overhead were the same, the net income that each must earn to find the practice economically viable will be different.

Neither of these predictions is wishful thinking. The third and best reason to think that a limited-scope practice will be economically viable in Oregon is that the model *has* been working in other jurisdictions for many years. Licensed document preparers have been successfully operating businesses in California and Arizona for more than 14 years and in Nevada for 3 years. Ontario, Canada has been licensing paralegals to independently represent clients in a wide range of routine proceedings since 2007.

³⁵ *Id.* at 38.

³⁶ To measure sentiment for the program among future and current paralegals, we sent surveys to paralegal students at Portland Community College and to members of the Oregon Paralegal Association. Most respondents favored licensing paraprofessionals, and a majority of students said they were likely or somewhat likely to apply for a license. By contrast, three-quarters of the paralegals said they were not likely to apply, many saying they were not interested in family law or landlord-tenant law or do not work at a firm that does either. The vast majority of respondents agreed that licensees should meet minimum education and experience requirements and be required to carry malpractice insurance, comply with rules of professional conduct, and take continuing legal education.

Models for Licensing Paraprofessionals

Four states and Ontario, Canada currently allow licensed or registered paraprofessionals to offer limited legal services without attorney supervision. A fifth state, Utah, is expected to begin licensing paraprofessionals as early as 2017. Although each jurisdiction is somewhat unique from the others, generalizations can be made.

In each jurisdiction, the scope of practice is limited, and licensees are subject to regulatory requirements like those for attorneys. All but one program require an applicant to meet minimum education and experience requirements. Most programs require graduation from an accredited paralegal studies program, substantive law-related work experience, or both. Most programs require applicants to carry a bond or malpractice insurance, to comply with rules of professional conduct, and to meet continuing education requirements.

In all jurisdictions but Ontario, there is an emphasis on preparing documents. At a minimum, in each jurisdiction a licensed paraprofessional can complete, file, and serve forms and provide general legal information. While some programs allow licensed paraprofessionals to give limited legal advice or to assist with negotiation, only one jurisdiction authorizes a paraprofessional to represent a client in court.

What follows is a more detailed description of the program in each jurisdiction. For convenience, a side-by-side comparison of the general features is attached as Appendix A.

Arizona

Arizona has been licensing paraprofessionals, called “legal document preparers,” since 2003, when the Arizona Supreme Court exempted certified legal-document preparers from the prohibition on the unauthorized practice of law. Individuals and entities that provide document-preparation services may be certified.³⁷ The Board of Legal Document Preparers issues certificates and performs essential regulatory functions.³⁸ Fees and assessments are paid into a special fund.³⁹

Legal-document preparers can prepare, file, record, and serve legal documents for any self-represented person in any legal matter and may provide general information about legal rights, procedures, or legal options.⁴⁰ Legal-document preparers may not provide any “specific advice, opinion, or recommendation” about legal rights, remedies, defenses, options, or strategies, and they are not authorized to negotiate on behalf of clients or to appear in court proceedings.⁴¹ To become a legal-document preparer, applicants must meet minimum education and experience requirements. Generally, applicants must have a high school diploma or a GED plus two years of law-related work experience, a bachelor’s degree plus one year of experience, or a paralegal certificate from an accredited program.⁴²

³⁷ ARIZ. CODE OF JUD. ADMIN. § 7-208(B).

³⁸ ARIZ. CODE OF JUD. ADMIN. §§ 7-208(D)(4), § 7-201(D)(5)(c).

³⁹ ARIZ. CODE OF JUD. ADMIN. § 7-208(D)(2).

⁴⁰ ARIZ. CODE OF JUD. ADMIN. § 7-208(F)(1).

⁴¹ ARIZ. CODE OF JUD. ADMIN. § 7-208(F)(1).

⁴² ARIZ. CODE OF JUD. ADMIN. § 7-208(E)(3)(b)(6).

They also must pass an examination and a background check.⁴³ Once certified, legal-document preparers are subject to a code of conduct and must complete 10 hours of continuing education each year.⁴⁴

California

In 2000, California enacted a law creating two categories of licensed paraprofessionals: (1) legal document assistants (LDAs) and (2) unlawful detainer assistants (UDAs). LDAs are authorized to prepare a wide variety of legal documents. UDAs provide “advice and assistance” to landlords and tenants in eviction proceedings.⁴⁵

Both LDAs and UDAs must meet education and experience requirements like those in Arizona, but no examination or background check is required.⁴⁶ An LDA or UDA simply registers in the county where the principal place of business is located,⁴⁷ files a \$25,000 bond,⁴⁸ and thereafter completes 15 hours of continuing education every two years.⁴⁹ LDAs are authorized to complete in a ministerial manner, file, and serve any legal document selected by a client.⁵⁰ They also may provide “general published factual information” about “legal procedures, rights, or obligations” if the information is written or approved by an attorney.⁵¹ LDAs and UDAs may not provide any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, or strategies.⁵² Both must use an approved written agreement that includes mandatory disclosures about the limited scope of practice.⁵³ If a client requires assistance beyond that scope of practice, the LDA or UDA must inform the client that the client requires the services of an attorney.⁵⁴

In 2015, a California task force on civil-justice strategies recommended that the state bar consider adopting a more expansive program, like Washington’s.⁵⁵ To date, the state bar has not acted on that recommendation.

Nevada

⁴³ ARIZ. CODE OF JUD. ADMIN. § 7-208(E)(3).

⁴⁴ ARIZ. CODE OF JUD. ADMIN. §§ 7-208(F)(2), (G)(2).

⁴⁵ CAL. BUS. & PROF. CODE § 6400(a); *see also* CAL. CODE REGS. tit. 16, § 3850, *et seq.*

⁴⁶ CAL. BUS. & PROF. CODE § 6402.1.

⁴⁷ CAL. BUS. & PROF. CODE § 6402.

⁴⁸ CAL. BUS. & PROF. CODE § 6405.

⁴⁹ CAL. BUS. & PROF. CODE § 6402.2.

⁵⁰ CAL. BUS. & PROF. CODE § 6400(d)(1).

⁵¹ CAL. BUS. & PROF. CODE § 6400(d)(2).

⁵² CAL. BUS. & PROF. CODE § 6400(g).

⁵³ CAL. CODE REGS. tit. 16, § 3950.

⁵⁴ CAL. BUS. & PROF. CODE § 6401.6.

⁵⁵ CAL. STATE BAR, CIVIL JUSTICE STRATEGIES TASK FORCE: REPORT AND RECOMMENDATIONS (2015).

A 2013 Nevada law authorized individuals to register as a document-preparation service and to provide limited legal help to self-represented persons. Unlike other states, this limited practice of law is regulated by the Secretary of State, rather than by the courts or the state bar.⁵⁶

The requirements for registration and renewal are modest compared to other jurisdictions. Applicants must pass a background check, but they are not required to satisfy any educational or experience requirements or to pass an examination. Although registrants must file a \$50,000 bond with the Secretary of State⁵⁷ and are prohibited from engaging in deceptive practices,⁵⁸ there are no detailed rules of professional conduct and no continuing education requirements.

Registrants are authorized to prepare and submit pleadings, applications, and other documents in an immigration or citizenship proceeding or in any proceeding “affecting the legal rights, duties, obligations or liabilities of a person.”⁵⁹ Registrants also may prepare wills and trusts⁶⁰ and provide published factual information about legal rights, obligations, and procedures, if that information was written or approved by an attorney.⁶¹ The statute also mandates the use of written agreements with mandatory disclosures about the limited scope of practice.⁶²

Although registrants are authorized to prepare a wide range of legal documents, they may not offer other legal services. Registrants are expressly prohibited from communicating a client’s position to another person; negotiating a client’s rights or responsibilities; appearing on behalf of a client in court; or providing any advice, explanation, opinion, or recommendation about a client’s legal rights, remedies, defenses, options, or the selection of documents or strategies.⁶³

Washington

In 2014, Washington’s first prospective LLLTs enrolled in approved courses at law schools, and the first graduates were licensed in 2015.⁶⁴ Applicants must have an associate’s degree or better, and must complete 45 hours of paralegal studies and 15 hours of family-law-specific course work from a law school or a paralegal program approved by either the ABA or the LLLT Board.⁶⁵ Washington’s work-experience requirement is substantial: eligible applicants must have 3,000 hours of law-related work

⁵⁶ NEV. REV. STAT. § 240A.250, *et seq.*

⁵⁷ NEV. REV. STAT. §§ 240A.110(3), 240A.120.

⁵⁸ NEV. REV. STAT. § 240A.240.

⁵⁹ NEV. REV. STAT. §§ 240A.030(1)(a), 240A.040(2)–(3).

⁶⁰ NEV. REV. STAT. § 240A.040(1).

⁶¹ NEV. REV. STAT. § 240A.240(6).

⁶² NEV. REV. STAT. §§ 240A.180, 240A.190.

⁶³ NEV. REV. STAT. § 240A.240.

⁶⁴ REPORT OF THE LIMITED LICENSE LEGAL TECHNICIAN BOARD TO THE WASHINGTON SUPREME COURT: THE FIRST THREE YEARS 4 (2016).

⁶⁵ ADMIS. TO PRAC. RULE 28(D)(3).

experience under the supervision of an attorney.⁶⁶ Applicants also must pass three separate examinations and a background check.⁶⁷

Once licensed, LLLTs must comply with requirements like those in other states, including obtaining malpractice insurance, complying with rules of professional conduct, and completing 10 hours of continuing education each year.⁶⁸ Currently, LLLTs may provide limited legal services in only one practice area: family law.⁶⁹ Even within the approved practice area, LLLTs may not assist clients with more complex issues, including de facto parentage or nonparental-custody actions or cases involving the Indian Child Welfare Act, property division, bankruptcy, anti-stalking orders, certain major parenting-plan modifications, UCCJEA jurisdiction issues, and disputed relocation actions.⁷⁰

Like licensed paraprofessionals in other states, LLLTs may select, complete, file, and serve approved family-law pattern forms.⁷¹ LLLTs also may explain the relevance of facts, inform clients about court procedures, review and explain documents received from the opposing party's attorney, and perform legal research.⁷² However, an LLLT may not draft other legal documents or letters to third parties setting forth legal opinions, unless the document or letter is first reviewed and approved by a Washington-licensed attorney.⁷³

Other legal services traditionally provided by attorneys remain off-limits to LLLTs. The rules do not authorize LLLTs to provide legal advice beyond explaining forms, documents, and procedures. LLLTs are expressly prohibited from negotiating the client's rights, attending depositions, appearing in court, and initiating or responding to appeals.⁷⁴ Washington is considering expanding the scope of services to better meet the needs of clients and to increase judicial efficiency, but, at present, the services that an LLLT may perform are relatively limited.⁷⁵

⁶⁶ ADMIS. TO PRAC. RULE 28(E)(2).

⁶⁷ ADMIS. TO PRAC. RULE 28(E)(1); APP. REG. 5(D).

⁶⁸ ADMIS. TO PRAC. RULE 28(I).

⁶⁹ ADMIS. TO PRAC. RULE 28, APP. REG. 2(B)(3). Washington may soon authorize a second area of limited practice in "Estate and Healthcare Law," to address unmet need for services to seniors and "people of all ages who are disabled, planning ahead for major life changes, or dealing with the death of a relative." Washington Limited License Legal Technician Board, Memorandum to the Board of Governors, January 9, 2017.

⁷⁰ ADMIS. TO PRAC. RULE 28, APP. REG. 2(B)(3).

⁷¹ ADMIS. TO PRAC. RULE 28(F)(6).

⁷² ADMIS. TO PRAC. RULE 28(F)(1)-(3), (5), (7).

⁷³ ADMIS. TO PRAC. RULE 28(F)(8).

⁷⁴ ADMIS. TO PRAC. RULE 28(H); APP. REG. 2(B)(3).

⁷⁵ See WASHINGTON LLLT BOARD, MEETING MINUTES (November 17, 2016) (reporting the recommendation of the Family Law Advisory Committee to expand the scope of permitted services); see also UTAH PARALEGAL PRACTITIONER STEERING COMMITTEE, MINUTES 7 (July 21, 2016) (reporting that Washington may permit LLLTs to talk to opposing counsel when appropriate and to appear in court solely to assist clients in answering questions of fact).

By early 2017, only 20 LLLTs had been licensed, about half of whom remained employed by law firms.⁷⁶ Reportedly, a large number of students are enrolled in courses required for licensing, but no firm numbers were available.

Utah

Inspired by Washington, the Utah Supreme Court convened a task force in May 2015 to study whether Utah should develop a similar program.⁷⁷ The Chair, Justice Himonas, described the task as the examination of “a market-based, supply-side solution to the unmet needs of litigants.”⁷⁸ While expressly acknowledging the value of lawyers, the task force recognized that self-represented litigants in areas “where the law intersects everyday life” need information, advice, and assistance that they are not getting despite years of promoting pro bono and low-cost services.⁷⁹

Ultimately, the task force recommended licensing paraprofessionals to provide limited legal services in three specific areas. Describing its report as a “planning blueprint,” the task force recommended that the Utah Supreme Court appoint a steering committee to develop a detailed implementation plan.⁸⁰ The Utah Supreme Court accepted the recommendations, and the steering committee is expected to complete its work in 2017. The first “paralegal practitioners” could be licensed as early as the end of the year.⁸¹

Although the final rules are still being drafted, the task force’s report, meeting minutes of the steering committee, and rule drafts disclose many details of the new program. Applicants must be of good moral character and pass an examination.⁸² They must have at least an associate’s degree and would be required to complete a paralegal studies program from an accredited institution, including approved practice-area course work.⁸³ For substantive law-related work experience, the task force concluded that Washington’s bar was too high.⁸⁴ Utah will require 1,500 hours of law-related work experience that would include both paralegal work and law school internships, clinical programs, and clerkships.⁸⁵ Once licensed, paralegal practitioners would be required to comply with rules of professional conduct modeled on those for lawyers and to meet continuing legal education requirements.⁸⁶

⁷⁶ See WASH. STATE BAR ASSOC., LLLT DIRECTORY, at <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Directory>.

⁷⁷ UTAH SUPREME COURT TASK FORCE TO EXAMINE LIMITED LEGAL LICENSING, REPORT AND RECOMMENDATIONS 7 (2015) (“UTAH REPORT”).

⁷⁸ Justice Deno Himonas and Timothy Shea, *Licensed Paralegal Practitioners*, 29 UTAH BAR JOURNAL 16 (2016).

⁷⁹ UTAH REPORT, *supra* note 73, at 7.

⁸⁰ *Id.* at 7.

⁸¹ Himonas and Shea, *supra* note 74, at 19.

⁸² UTAH REPORT, *supra* note 73, at 36.

⁸³ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (July 21, 2016).

⁸⁴ UTAH REPORT, *supra* note 73, at 29 (describing Washington’s requirements as “so arduous that it remains to be seen whether LLLTs can provide services at rates significantly less than those provided by lawyers”).

⁸⁵ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (August 18, 2016).

⁸⁶ UTAH REPORT, *supra* note 73, at 36.

Utah will license paraprofessionals to provide limited legal services for three types of proceedings: family law, eviction, and debt collection. Family-law cases will be limited to those for temporary separation, divorce, paternity, cohabitant abuse, civil stalking, custody and support, and name changes.⁸⁷ For those types of proceedings, licensees will be able to select, prepare, file, and serve only court-approved forms and, when no pattern form exists, provide only “general information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies.”⁸⁸

Although the scope of services will be “centered on completing forms,”⁸⁹ Utah will nevertheless “take a bolder step” than other states.⁹⁰ Within an approved area, if a pattern form exists, then a licensee may have “extensive authority” to give advice about how to complete the form, to explain supporting documents, and to “advise about the anticipated course of the proceedings.”⁹¹ A licensee may be authorized to explain the other party’s documents and “to counsel and advise a client about how a court order affects the client’s rights and obligations.”⁹² Licensees will be able to represent clients in both mediated and nonmediated negotiations⁹³ and, if required, may be authorized to prepare a written settlement agreement.⁹⁴

The boldness ends at the courthouse steps. The task force concluded that eliciting testimony and advocacy in hearings “is at the heart of what lawyers do” and should be “reserved for a licensed lawyer.”⁹⁵ Therefore, licensees will not be allowed to present arguments, question witnesses, or otherwise represent a client in court.

Ontario

While the Washington and Utah programs are innovative in the United States, Ontario (Canada) began licensing paraprofessionals in 2007 to provide full legal services for several discrete types of proceedings. Ontario’s program is a useful comparator, because it is structurally similar to the Washington and Utah programs but has been operating much longer. The most notable difference is that, for approved types of proceedings, licensed paralegals perform all tasks that lawyers traditionally perform, including representing clients in court.

⁸⁷ *Id.* at 8.

⁸⁸ *Id.* at 32.

⁸⁹ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES 2 (July 21, 2016).

⁹⁰ UTAH REPORT, *supra* note 73, at 30.

⁹¹ *Id.* at 32.

⁹² *Id.* at 33.

⁹³ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (August 18, 2016).

⁹⁴ UTAH REPORT, *supra* note 73, at 33.

⁹⁵ *Id.* at 21.

Licensees may represent clients in four general types of proceedings: small-claims proceedings, provincial offenses before the Ontario Court of Justice,⁹⁶ summary-conviction proceedings,⁹⁷ and proceedings before administrative tribunals (including landlord-tenant and immigration matters).⁹⁸ A licensed paralegal may select, draft, complete, or revise any legal document for use in the proceeding; provide advice about any legal rights or responsibilities related to the proceeding; and negotiate legal rights and responsibilities on the client's behalf.⁹⁹ Licensees also may go to court and advocate for their clients.

Applicants must graduate from an accredited paralegal program, which must include general studies, paralegal studies, and a 120-hour field-work requirement. In addition to a background check, applicants must pass an examination that tests their knowledge of substantive and procedural law, professional responsibility, ethics, and practice management. Once licensed, paralegals must maintain malpractice insurance, comply with professional rules of conduct, and meet continuing education requirements.¹⁰⁰

In 2012, Ontario completed a five-year review of the program, finding that the program had been successful and “provided consumer protection while maintaining access to justice.”¹⁰¹ The review also found a high degree of client satisfaction—74 percent of clients surveyed were satisfied or very satisfied with the paralegal services they received, and 68 percent thought the services were a good value.¹⁰² In late 2016, the Attorney General issued a lengthy report recommending that the scope of the paralegal license be expanded to include certain family-law matters.¹⁰³ The proposal remains under review.

Other States

At least two other jurisdictions have recently considered licensing paraprofessionals. Both jurisdictions decided instead to develop a court “navigator” program, using nonlawyer volunteers to provide limited legal services in eviction and debt-collection proceedings.

As noted, in 2013 the New York City Bar Association studied the potential role of nonlawyers in addressing the access-to-justice gap, surveying jurisdictions inside and outside of the United States and reviewing paid and volunteer nonlawyer participation in the legal-services market. Among other

⁹⁶ Provincial offenses are minor noncriminal offenses, including traffic violations and violations of municipal ordinances, like excessive noise complaints.

⁹⁷ Summary-conviction proceedings are limited to those in which the maximum penalty is no greater than six months in prison and/or a \$5,000 fine.

⁹⁸ LAW SOC'Y ACT, BY-LAW 4, § 6(2).

⁹⁹ *Id.*

¹⁰⁰ The requirements are contained in By-Law 4 to the Law Society Act, but a useful summary of the requirements is available at: <http://www.lsuc.on.ca/licensingprocessparalegal.aspx?id=2147495377>.

¹⁰¹ LAW SOCIETY OF UPPER CANADA, REPORT TO THE ATTORNEY GENERAL OF ONTARIO PURSUANT TO SECTION 63.1 OF THE LAW SOCIETY ACT 26 (2012).

¹⁰² *Id.* at 25.

¹⁰³ JUSTICE ANNEMARIE E. BONKALO, FAMILY LEGAL SERVICES REVIEW (2016) (reviewing at great length the need and appropriate role for nonlawyers' assistance in family-law matters).

proposals, the Association recommended that New York adopt “some form of Washington State’s legal technician model.”¹⁰⁴ Despite the recommendation, New York is instead running three simultaneous pilot programs to test the use of volunteer court navigators in eviction and debt-collection proceedings.¹⁰⁵

In 2015, an advisory committee of the Colorado Supreme Court formed a Limited License Legal Technician Subcommittee to study whether Colorado should implement some form of the Washington program. The subcommittee met at least four times through early 2016, with members expressing interest in developing a nonlawyer assistance program of some kind but preferring the New York navigator model.¹⁰⁶ After determining that the greatest area of need is help negotiating settlements and preparing for trial in eviction and debt-collection cases, the subcommittee was renamed and is now developing a pilot program that, if adopted, will use nonlawyer volunteers to advocate for unrepresented litigants in settlement negotiations and to assist them in preparing for court.¹⁰⁷

Essential Elements of an Oregon Model

We do not recommend that Oregon adopt wholesale any of the other models discussed above. Instead, for every element of the program design, we separately weighed the advantages, disadvantages, costs, and benefits of various alternatives, including alternatives not considered by other states. We also considered critiques of existing programs and proposals to improve them.

In making recommendations, we aimed to balance three competing interests: (1) increasing access to justice by creating a viable, effective model for providing limited legal services; (2) protecting consumers from unqualified, negligent, or unethical practitioners; and (3) cost-effectiveness.

Any model for limited-scope licensure must address at least these questions: What minimum qualifications should a licensee have? How do we protect clients and the public? What is the proper scope of the license? All three questions are related. If the scope of the license is very limited, then the risk to clients is commensurately lower, and the minimum qualifications and regulatory scheme should reflect that lower risk. Some jurisdictions have, in our view, missed the mark on that calculus, imposing substantial barriers to entry and expensive regulatory burdens while authorizing licensees to do little more than complete, file, and serve standard forms. We believe a well-tailored Oregon paraprofessional licensing program has the potential to attract many qualified applicants. In addressing these questions, we considered the types of proceedings in which a high number of self-represented litigants participate; the complexity of those proceedings; the types of services that self-represented litigants say they want, need, and are willing to pay for; and whether a well-educated and experienced paraprofessional could provide those services competently.

We also concluded that the most we could realistically achieve, given the time constraints of this task force, would be to propose the essential elements of a paraprofessional licensing program, creating a “planning blueprint” for implementation by a future committee. In Utah, it has taken more than a year

¹⁰⁴ NEW YORK REPORT, *supra* note 20, at 30.

¹⁰⁵ SANDEFUR AND CLARKE, *supra* note 22.

¹⁰⁶ LTD. LICENSE LEGAL TECH. SUBCOMM., COLORADO SUP. CT. ADV. COMM., MEETING MINUTES (January 22, 2016).

¹⁰⁷ PROVIDERS OF ALT. LEGAL SERV. SUBCOMM., COLORADO SUP. CT. ATTY REG. ADV. COMM., MEMORANDUM (February 7, 2017).

for a committee four times the size of our workgroup to draft detailed rules and a plan to implement the essential recommendations of the task force. We endorse Utah’s careful approach. Therefore, we recommend that the Board of Governors appoint a committee to draft, for approval by the Oregon Supreme Court, detailed rules of admission, practice, and professional conduct consistent with the following specific recommendations.

Minimum Qualifications

RECOMMENDATION NO. 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.

Because licensed paraprofessionals will be authorized to engage in the limited practice of law, they should be required to meet the same minimum age and character requirements as attorneys, as set forth in ORS 9.220. Specifically, an applicant should be at least 18 years old and of good moral character. Attorneys who are suspended for disciplinary reasons, resign Form B while discipline is pending, or disbarred from the practice of law should also be prohibited from engaging in the *limited* practice of law. Suspended, resigned Form B, or disbarred lawyers therefore should not be eligible to apply for a paraprofessional license.

RECOMMENDATION NO. 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.

To ensure that licensees will have the general knowledge and skills required to provide limited legal services, we recommend imposing minimum education requirements. Although an education requirement seems appropriate, not everyone agrees. For example, the 1992 Oregon task force emphasized the need for license affordability.¹⁰⁸ Similarly, Nevada’s program does not require a degree of any kind. Even the amount of general education required is subject to debate. Arizona and California require only a high school diploma or a GED for applicants with at least two years of law-related experience. In contrast, Washington and Utah require applicants to have an associate’s degree or better.

Although affordability is clearly important, we concluded that it is equally (or more) important to ensure that licensees will have the general knowledge and skills necessary to competently provide services without attorney supervision. We also believe that a high school diploma, although perhaps sufficient for mere document preparation, may not be enough when the approved scope of services is broader. In short, we agree with Washington and Utah that an associate’s degree is the appropriate minimum degree.

Applicants with only the minimum amount of required experience will be better prepared for practice if they also have some formal legal education. Paralegal studies programs prepare a person for a professional career in the law. The core curriculum includes both practical skills and legal theory and

¹⁰⁸ OSB LEGAL TECH. TASK FORCE, *supra* note 1, at 8.

covers essential subjects like civil procedure, legal ethics, and legal research. Programs also offer courses in family law, real-property law, and other practice areas in which paralegals are commonly employed. Most programs terminate with an associate's degree, a bachelor's degree, or a paralegal certificate. For comparison's sake, although attorneys today study the law at a postgraduate level, until the 1960s, the standard was only an undergraduate bachelor of law degree.¹⁰⁹ We concluded that, like other jurisdictions, Oregon should require applicants to have a degree or a certificate from an ABA-approved or institutionally accredited paralegal studies program.

To ensure that licensees will have adequate knowledge of each area in which the licensee will practice, applicants should be required to complete subject-matter-specific course work. Washington, for example, requires applicants to have instruction in a licensee's approved practice area.¹¹⁰ The state's LLLT Board determines the key concepts or topics that practice-area instruction must include and the number of credit hours required.¹¹¹ Washington also designed an entirely new curriculum. Initially, only Washington law schools could offer the approved courses, which increased the cost substantially, limited the ability of students to get financial aid, and required students to move near one of the law schools for the length of the program. Washington has since amended its rules to allow community colleges to offer the approved curriculum.¹¹²

We agree with requiring course work, but we do not recommend the Washington approach. Licensees will offer limited services to a finite market, which will create a practical limit on the likely number of applicants. Designing an entirely new paralegal studies program for future licensees is not cost-effective or practical for Oregon. Two ABA-approved paralegal programs are currently in Oregon, including one at Portland Community College. Those institutions already have expertise in designing and implementing high-quality educational programs for paralegals, and they can offer subject-matter courses as part of their existing programs. We recommend that an implementation committee reach out to these institutions early to explore their interest in developing an approved subject-matter course that would adequately prepare potential licensees for limited practice.¹¹³

Finally, we recommend exempting two categories of applicants from the requirement of graduation from a qualified paralegal studies program. First, applicants with a J.D. degree already have more formal legal education than a paralegal studies program offers, making the requirement redundant. Second, paralegals with a high level of experience should be exempt. Washington and Ontario, for example, adopted waivers for certain paralegals with many years of experience working under the supervision of an attorney. We recommend a lower experience threshold than the 10 years that Washington requires. For comparison, to apply for the industry-recognized Professional Paralegal certification from the National Association for Legal Professionals, an applicant must have five years of

¹⁰⁹ David Perry, *How Did Lawyers Become 'Doctors'? From the L.L.B. to the J.D.*, 4 PRECEDENT 26 (2013).

¹¹⁰ ADMIS. TO PRAC. RULE 28(D)(3)(c).

¹¹¹ *Id.*

¹¹² THOMAS M. CLARKE AND REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN (2017).

¹¹³ One of the institutions reached out to the workgroup when they learned about our work, but there was not enough time to engage in any meaningful discussion about developing appropriate practice-area courses.

paralegal experience.¹¹⁴ Although the exact scope of the exemption should be left to an implementation committee to decide, we believe that five years of full-time paralegal experience under the supervision of an attorney should be an adequate substitute for obtaining a certificate from a qualified paralegal studies program.¹¹⁵

RECOMMENDATION NO. 1.3: Applicants should have at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney.

Most attorneys learn to practice law on the job and not before. Ideally, attorneys would learn under the supervision or mentorship of a more experienced attorney, but often that is not the case. There is no reason to follow the “learn on the job” model when licensing paraprofessionals. We therefore recommend that applicants should have at least one full year (1,500 hours) of substantive law-related experience working under the supervision of an attorney.¹¹⁶ The experience should be acquired in the two years preceding the date of application for the license.¹¹⁷

Washington requires two years’ worth of experience. Given the proposed requirement that applicants have a college degree and formal legal education, including approved subject-matter coursework, we believe that one year’s equivalent of substantive law-related experience under attorney supervision is adequate.

Regulatory Requirements for Licensees

Attorneys are subject to an array of regulatory requirements meant to protect consumers from incompetent or unethical practitioners. Attorneys must comply with detailed rules of professional conduct, carry malpractice insurance, and meet continuing legal education requirements. Other than Nevada, all jurisdictions that license paraprofessionals subject them to the same or similar requirements that are imposed on attorneys. We recommend that Oregon do the same.

RECOMMENDATION NO. 1.4: Licensees should be required to carry liability insurance in an amount to be determined.

Arizona is the only jurisdiction that does not require licensed paraprofessionals to carry professional liability insurance or to obtain a bond. Even Washington, which does not require attorneys to carry insurance, requires LLLTs to be insured. To protect those who may be harmed by the negligent

¹¹⁴ NALS CERTIFICATION RESOURCE MANUAL 5 (2016).

¹¹⁵ If at least one year (1,500 hours) of the attorney-supervised, substantive law-related experience was completed in the prior two years, the applicant would also satisfy the minimum experience requirement.

¹¹⁶ Most applicants will meet the requirement by working as a paralegal under attorney supervision, but the rule should be drafted to recognize other appropriate, attorney-supervised work experience like, for example, a clerkship by a law school graduate.

¹¹⁷ At a presentation on the workgroup’s progress on April 14, 2017, a member of the OSB Board of Governors suggested requiring the applicant to obtain a written certification from the supervising attorney. Washington has a similar requirement, and the workgroup unanimously agreed that the Oregon rules should include a similar provision.

provision of legal services, we recommend that licensees be required to carry malpractice insurance in an amount to be determined, preferably through the Professional Liability Fund.

RECOMMENDATION NO. 1.5: Licensees should be required to comply with professional rules of conduct modeled after the rules for attorneys.

Every jurisdiction other than California requires licensed paraprofessionals to comply with a code of conduct, although Nevada requires only that licensees refrain from certain deceptive practices. In Washington, Utah, and Ontario, the rules of conduct for paraprofessional licensees are substantially identical to the rules of conduct for attorneys. To protect the public from unethical practitioners, and to promote the integrity and reputation of licensed paraprofessionals, we recommend that licensees be required to comply with rules of conduct substantially the same as the Rules of Professional Conduct that apply to Oregon lawyers.

RECOMMENDATION NO. 1.6: Licensees should be required to meet continuing legal education requirements.

Requiring continuing legal education will assist licensees “in maintaining and improving their competence and skills and in meeting their obligations to the profession,” just like attorneys.¹¹⁸ Therefore, we recommend that licensees be required to complete a minimum number of hours of continuing legal education in each reporting period.¹¹⁹ In determining the number of hours and required topics, the implementation committee should take into account the cost and availability of affordable CLE programs that will be relevant to the licensees’ limited scope of practice.

RECOMMENDATION NO. 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.

Licensing paraprofessionals will introduce a new type of legal-services provider into the market. The public cannot be presumed to know the difference between an attorney and a limited-license paraprofessional. To avoid confusion, we recommend that licensees be required, as they are in other jurisdictions, to use written fee agreements with mandatory disclosures explaining that licensees are not attorneys and describing the limited scope of services that a licensee may provide.

Furthermore, it is inevitable that, in some cases, a client will require legal services that are beyond the licensee’s limited scope of practice. Licensees should not be allowed to remain silent, but should be required to affirmatively recommend that a client seek legal advice from an attorney when the licensee knows or reasonably should know that a client requires legal services outside of the licensee’s scope of practice.

¹¹⁸ OSB MINIMUM CONTINUING LEGAL EDUCATION RULES AND REGULATIONS (2016).

¹¹⁹ The details of the rule, including the reporting period and required subjects, should be left to the implementation committee to decide, but the workgroup believes that a requirement equating to 10 hours per year should be sufficient given the limited areas of practice.

Scope of the License

People will employ licensed paraprofessionals only if the licensees can provide legal services that consumers need and want. Oregon consumers are already able to access an extensive online library of pattern forms in the area of family law. To be useful to self-represented litigants, licensees must be able to do more than simply complete and file pattern forms. The question is, how much more should licensees be permitted to do?

Licensees will, of necessity, be specialists. Their practices will be narrowly limited to certain types of routine matters for which they will have education, training, and experience before they are fully licensed to provide paraprofessional services. Just like attorneys, they will learn more and become more skilled with each month and year of practice, preparing the same forms, answering the same questions, and assisting in the same types of matters day after day. Licensees will carry liability insurance, comply with professional rules of conduct, and participate in continuing education. Such licensees will not be casual volunteers or shady, unlicensed document preparers advertising in corners of the internet. Licensed paraprofessionals will be skilled professionals, providing limited but much-needed assistance to the large number of individuals who have been unhappily navigating the court system alone, without attorneys, for decades.

For these reasons, the scope of the license should be commensurate with the needs of self-represented litigants and requirements should be imposed on applicants and licensees to ensure their competence and integrity in practice. Licensees should be able to provide fairly robust out-of-court legal services, but should be narrowly confined to certain routine proceedings in which overwhelming numbers of litigants are self-represented.

RECOMMENDATION NO. 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.

Many observers have called for the licensing a legal paraprofessional, who would serve as the legal equivalent of a nurse practitioner, and meet all of a person's "basic" legal needs. That may be the future of the law—a world in which all attorneys are specialists and all "routine" legal work is performed by well-qualified but less expensive nonlawyers. For present purposes, however, we focused on the acute, demonstrable need in two areas: family law and housing law.

The numbers of self-represented litigants in these areas are staggering. In 86 percent of Oregon family-law cases, one or both litigants are unrepresented.¹²⁰ In landlord-tenant cases, the numbers are even higher. Despite more than two decades of efforts to encourage pro bono and unbundled legal services, the problem has grown. As a joint family-law task force concluded in 2011, the high number of self-represented litigants has become a permanent feature of Oregon's legal system.¹²¹ Our immediate goal is to better meet the legal needs of these litigants.

¹²⁰ OSB, *supra* note 5, AT 4.

¹²¹ OSB/OJD JOINT TASK FORCE ON FAMILY LAW FORMS AND SERVICES, REPORT 4 (2011).

Oregon has been a leader in this area. Since 2000, Oregon courts have used family-law facilitators—court-supervised nonattorney staff, who help self-represented litigants select, complete, file, and serve pattern forms and provide general information, including information about court procedures. Unstable funding, limited availability, and the fear of engaging in the unauthorized practice of law get in the way of such efforts. But the proven success of family-law facilitators in Oregon and other states suggests that knowledgeable and experienced paralegals can make a meaningful difference.

In landlord-tenant matters, nonlawyers already participate, but only on behalf of landlords. These nonlawyer representatives are repeat players who know the laws and understand the procedures, giving landlords a significant advantage over most tenants. Tenants have no choice but to represent themselves or to hire an attorney. Most self-represent. Early results from the New York Navigator pilot program show that even inexperienced volunteers with a little training can have a significant positive impact. Tenants who received nonlawyer assistance were 87 percent more likely to have their affirmative defenses recognized by the court.¹²²

In light of the clear access-to-justice gap in family law and housing law, we recommend that the OSB move toward the licensure of paraprofessionals for limited practice in those areas. A third subject area worthy of consideration is debt collection. Utah is moving in that direction, and the 1992 and 2015 Oregon task forces thought debt-collection cases might be appropriate for limited assistance. In New York City, debt collection is one of the two areas of focus for the navigator pilot programs. Although, for reasons of time, we were unable to give debt collection the same attention that we gave family law and housing law, we recommend this for further study.

With respect to family law, we recommend that certain proceedings be excluded from the scope of the limited license due to their inherent complexity, such as de facto parentage or nonparental-custody actions, disposition of debt and assets if one party is in a bankruptcy, and custody issues involving the Indian Child Welfare Act. In Utah, the scope of practice for family law will be limited to proceedings for divorce, paternity, temporary separation, cohabitant abuse, civil stalking, custody and support, and name change.¹²³ Washington has a more extensive list of specific exclusions within otherwise-approved family-law matters.¹²⁴ In drafting the rules, an implementation committee should include any exclusions that are reasonable and necessary to protect self-represented litigants, but should keep in mind that for most self-represented litigants, the alternative to receiving assistance from a licensee will be receiving no assistance at all. Washington has already begun to rethink some of its exclusions.

RECOMMENDATION NO. 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.

¹²² SANDEFUR AND CLARKE, *supra* note 22, at 4.

¹²³ UTAH REPORT, *supra* note 73, at 30.

¹²⁴ ADMIS. TO PRAC. RULE 28, REG. 2(B)(3).

Many task forces, committees, and observers have embraced the idea of licensing paraprofessionals, but even proponents wrestle with the proper scope of the license. As attorneys, we are trained to see nuance and complexity in even the simplest disputes. We take a custom approach to every matter, preferring to control all aspects of the case from intake to appeal. Studies show that self-represented litigants in routine matters often cannot afford, or do not want, the level of service that attorneys provide.¹²⁵ In matters that self-represented litigants perceive as simple or low risk, like an uncontested divorce, they often make a reasonable cost-benefit assessment and decide not to hire an attorney. At the same time, they report a willingness to pay for lower-cost, limited assistance to help them navigate the process.

In deciding what licensees should be permitted to do, we considered what their education, training, and experience will prepare them to do and what self-represented litigants need and want the licensees to do in the approved types of proceedings.

At a bare minimum, licensees should be permitted to select, prepare, file, and serve model forms and other documents in an approved type of proceeding. Even mere document preparers in other states can do that much. But if that is all a licensee can do, there may be little reason to hire one. Oregon already has extensive family-law model forms, and many forms may now be completed and filed through an automated online interview process. If no model form is available, there are an endless array of websites with free or low-cost forms and documents.

What self-represented litigants need is not ministerial form-filling assistance, but help selecting the forms and understanding what the forms require and how that information will be used. They need help understanding what information to gather and where to find it. They need help understanding the process, from filing to entry of the judgment. They need to know what to expect at a hearing, what to bring, how to dress and act, and how to organize their paperwork to present to the court. Without an attorney to ask, self-represented litigants are left to rely on advice from friends and family; to scour the internet for information, which is often irrelevant or wrong; and, worst of all, to hire unlicensed and unregulated nonlawyers who advertise low-cost legal help. Therefore, we recommend that licensees be authorized to provide legal information and advice in connection with approved proceedings.

Self-represented litigants also need help communicating and negotiating with other parties. For example, at the first appearance in eviction proceedings, the parties are encouraged to negotiate stipulated agreements, if appropriate. The tenant, never having seen one before, may have no idea whether the offered terms are reasonable or whether she should (or even may) ask for something better. Some self-represented litigants are poorly educated; some have limited English proficiency; and many may be too overwhelmed, afraid, or angry to communicate or negotiate effectively. In Utah, anyone can represent a person in a mediated negotiation, so licensees will also be able to do so. But Utah's implementation committee has decided that licensees also should be able to communicate with and represent clients in nonmediated negotiations. In Washington, licensees are prohibited from representing clients in mediations, but Washington is already working on eliminating that restriction.

¹²⁵ See, e.g., IAALS, CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT (2016).

We recommend that Oregon, like Utah, allow licensees to communicate and negotiate with another party in an approved proceeding.

Finally, licensed paraprofessionals should be allowed to provide emotional and administrative support to their clients in court. When individuals represent themselves, they are already at a great disadvantage. They often have no idea what to expect at a hearing. For most litigants and even many attorneys, appearing in court is intimidating and stressful. It can be difficult for self-represented litigants to stay focused on the proceeding while also trying to take notes, sort through pages of documents, or just figure out where in a document to find the information the judge requested. Licensees should be empowered to help self-represented litigants be better prepared and more effective in court.¹²⁶

Ontario, Canada is the only jurisdiction studied by the workgroup that allows licensed paraprofessionals to appear and argue on behalf of clients in court. Licensees in Ontario represent clients in summary-conviction proceedings and in the Ontario Court of Justice, where licensees defend clients charged with municipal offenses. Other states that license paraprofessionals, including both Washington and Utah, prohibit licensees from representing clients in depositions, in court, and in appeals. We agree that those functions should continue to be provided only by licensed attorneys.

Other Recommendations

RECOMMENDATION NO. 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 a national paralegal certification exam.

The most difficult decision we wrestled with is whether to require applicants to pass a test similar to the bar exam for lawyers. Other jurisdictions require one. Testing, however, is of debatable utility in weeding out good practitioners from bad ones, in part because exams do not test all relevant skills, such as the ability to communicate and negotiate effectively.¹²⁷ It is precisely those skills that will be important for licensed paraprofessionals practicing in housing law and family law. As discussed above, we recommend that applicants be required to complete approved subject-matter coursework and have at least one year of substantive law-related work experience under the supervision of an attorney. Those requirements are stricter than what exist for a new attorney who intends to practice

¹²⁶ The recommendation is similar to a New York task force proposal to allow licensed and regulated nonlawyers to provide emotional and administrative support in court, which the task force called “a humane and modest step forward.” NEW YORK REPORT, *supra* note 20, at 3. New York’s proposal was inspired by so-called “McKenzie Friends” in the United Kingdom. McKenzie Friends are support individuals—including friends, family, and trained volunteers—who appear in court with self-represented litigants to take notes, provide moral support, and provide “quiet advice.” *Id.* at 22.

¹²⁷ For a brief, accessible summary of the debate over the bar exam, see Elizabeth Olson, *Bar Exam, the Standard to Become a Lawyer, Comes Under Fire*, NEW YORK TIMES, March 19, 2015, available at: <https://www.nytimes.com/2015/03/20/business/dealbook/bar-exam-the-standard-to-become-a-lawyer-comes-under-fire.html>.

family law and, in our view, are a better guarantor of minimum competence for paraprofessionals, who have a very limited scope of practice.

Then there is the cost of testing. We learned that developing and administering a well-designed test for paraprofessional applicants would be the single greatest expense that the bar would incur in implementing this program.¹²⁸ Realistically, the number of applicants each year is likely to be too small, at least initially, to enable the bar to recover those costs.

For those reasons, after extensive discussion, we do not recommend requiring a paraprofessional licensing exam.

We recognize, however, that, for some people, a core belief in testing may outweigh these concerns. If the Board of Governors or the implementation committee determines that some form of testing should be required, we recommend exploring the use of a national paralegal certification exam as an alternative to designing and administering a new, Oregon-specific exam. There are three recognized national paralegal organizations¹²⁹ that have developed such certification exams.¹³⁰

RECOMMENDATION NO. 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.

When Ontario decided to license and regulate paralegals who engage in the limited practice of law, a heated debate erupted. Paralegals wanted to form their own body and self-regulate, as attorneys do. The Law Society of Upper Canada, the equivalent of a state bar, argued that no other organization was better suited to regulate the practice of law. The Law Society prevailed, and five years after the Law Society Act was passed, licensed paralegals were reporting a high degree of satisfaction.¹³¹ Ontario made the right choice.

The Oregon State Bar is the organization that is most qualified by knowledge and experience to design and administer a licensing program for the limited practice of law by paraprofessionals. Creating an entirely new body to regulate a small number of licensees is neither cost effective nor necessary. Because implementing a licensing program will require collaboration among the Board of Governors, the

¹²⁸ To create an effective high-stakes examination for paraprofessionals, the bar would need to hire test designers and psychometricians to develop and test the examination. The bar also would incur costs in administering a proctored, high-stakes exam semi-annually or annually.

¹²⁹ The three organizations are NALS, the National Association of Legal Assistants (NALA), and the National Federation of Paralegal Associations (NFPA).

¹³⁰ Membership is not required to sit for any of the exams, though applicants must meet minimum eligibility requirements and pay fees of approximately \$300 for nonmembers. In Washington, one of the examinations that LLLT applicants must pass is NFPA's Paralegal Core Competency Exam, a multiple-choice examination that tests, among other things, a paralegal's knowledge of legal terminology, civil procedure, legal ethics, and areas of substantive law.¹³⁰ NALA and NALS exams cover the same types of topics but include both multiple-choice questions and a writing component. The workgroup did not reach any conclusion about which national exam is best.

¹³¹ LAW SOCIETY OF UPPER CANADA, *supra* note 98, at 26.

Board of Bar Examiners, the Oregon Supreme Court, and the Oregon Legislature, further input from those stakeholders is required.

Conclusion

After 25 years of watching the access-to-justice gap grow, it is time to begin filling it. Licensing paraprofessionals will not solve the problem, but it can greatly ameliorate it. We urge the Board of Governors to adopt these recommendations.

APPENDIX A: Licensed Paraprofessional Programs Comparison Chart

Licensed Paraprofessional Programs						
Title	Arizona	California	Nevada	Utah ¹	Washington	Ontario, CA
	Legal Document Preparer	Legal Document Assistant and Unlawful Detainer Assistant	Document Preparation Service	Licensed Paralegal Practitioner	Limited License Legal Technician	Licensed Paralegal
Practice Area(s)	Any	Any (LDA); eviction (UDA)	Any	Family law, eviction, debt collection	Family law	Small claims, ADR, provincial offenses, summary convictions
Education and Experience	Minimum education Required course work	Varies by work experience n/a	n/a n/a	Associates degree Paralegal studies, practice area course	Associates degree Paralegal studies, practice area course	Accredited paralegal program graduate General and practice area courses
	Law-related work experience	0-2 years, varies by educational degree	n/a	1,500 hours	3,000 hours	120 hours field work
Licensing Exam	Yes	No	No	Yes	Yes	Yes
Insurance/Bond	No	Bond	Bond	TBD	Insurance	Insurance
Rules of Conduct	Yes	No	No, but deceptive practices prohibited	Yes	Yes	Yes
Scope of services	Select forms	No	Yes	Yes	Yes	Yes
	Complete pre-approved forms	Yes	Yes	Yes	Yes	Yes
	Draft other legal forms	No	Yes	No	Yes, if approved by attorney	Yes
	File and serve forms	Yes	Yes	Yes	Yes	Yes
	Provide legal information	Yes	Yes, only approved published materials	Yes	Yes	Yes
	Provide legal advice	No	No	Yes, limited in scope	Yes, limited in scope	Yes
	Negotiate on client's behalf	No	No	Yes, in mediation	No	Yes
Other	Appear in court	No	No	No	No	Yes
	Trust accounts	No	No	Yes	Yes	Yes
	Continuing education	Yes	Yes	Yes	Yes	Yes
Stature/Rule	Overnight	LDP Board	Dept. of Consumer Affairs, Counties	Secretary of State	Board (TBD)	LLT Board
	ACIA 7-208	CA Bus. & Prof. Code §6400 et seq	NRS 240A	Draft Rule 14-802	APR 28	Paralegal Standing Committee Law Society Act

¹ Utah's program has not yet launched, but a special committee appointed by the Supreme Court completed extensive pre-implementation work in 2016 and early 2017.

APPENDIX B: Oregon Circuit Court Cases with Representation, OJD (2016)

	w/ Representation	% w/ Representa- tion	w/o Representation	Identified as ProSe	% UnRep & ProSe	Total Cases
Domestic Relations						
Dissolution	6,219	20%	12,044	12,783.00	80%	31,046
Annulment	33	38%	25	30.00	63%	88
Filitation	720	32%	1,390	155.00	68%	2,265
Domestic Relations Other	3	21%	0	11.00	79%	14
Petition Custody/Support/Visitation	1,752	22%	3,195	3,008.00	78%	7,955
Separation	8	32%	6	11.00	68%	25
Civil						
Property - General	1,864	55%	1,432	91.00	45%	3,387
Civil Appeal from Lower Court	4	44%	5	0.00	56%	9
Contract	38,795	58%	27,822	624.00	42%	67,241
Tort - General	288	83%	56	1.00	17%	345
Property - Foreclosure	6,102	33%	12,395	120.00	67%	18,617
Injunctive Relief	798	74%	248	27.00	26%	1,073
Tort - Malpractice Legal	154	91%	13	3.00	9%	170
Tort - Malpractice Medical	847	87%	124	8.00	13%	979
Tort - Products Liability	259	77%	78	1.00	23%	338
Tort - Wrongful Death	363	89%	42	3.00	11%	408
Protective Orders						
Protective Order - FAPA	1,782	9%	15,336	2,635.00	91%	19,753
Protective Order - Elder Abuse	351	6%	4,448	895.00	94%	5,694
Protective Order - Foreign Restraining Order	4	9%	42	0.00	91%	46
Protective Order - Sexual Abuse	24	11%	166	23.00	89%	213
Protective Order - Stalking	416	8%	4,516	492.00	92%	5,424

Landlord/Tenant						
Landlord/Tenant - General	436	37%	744	13.00	63%	1,193
Landlord/Tenant - Residential	7,843	15%	45,307	456.00	85%	53,606
Landlord/Tenant - Appeal	6	55%	4	1.00	45%	11
Small Claims						
Small Claims - Appeal	2	17%	9	1.00	83%	12
Small Claims - General	798	1%	119,575	3,511.00	99%	123,884
Total Number of Parties	69,871	20%	249,022	24,903.00	80%	343,796

Data Explanation:

This chart displays whether any party had representation, or not, within the cases from the case categories requested. Therefore, the data is presented not on a case basis, but on a party basis. For instance, if both the plaintiff and respondent were represented it would count as "2" in the w/representation count. If only one party was represented then it would count as "1" in the represented column and "1" in the w/o representation column.

Alternative Legal Services Delivery Workgroup Report & Recommendations

It has become axiomatic that the legal-services market is evolving and will continue to evolve. Although market changes are being felt industry wide, the pace of change is particularly acute with respect to an historically underserved market segment—individuals and small businesses.

These changes are being driven by several factors. First, technological advances have allowed consumers in this market segment to bypass the traditional attorney-client relationship. Driven by the desire to resolve their legal issues efficiently and at the least possible cost, these consumers are increasingly likely to search the internet, rely on online lawyer reviews to locate a match, and seek out unbundled legal services.¹³² Alternatively, they avoid lawyers altogether and rely on web-based software to create customized forms and documents to meet their legal needs. Online commoditization of services now sets their expectations; they demand instant access to qualified lawyers and legal resources as well as transparent, competitive pricing.

Second, both lawyers and nonlawyer businesses see the potential in this market segment, and are stepping into the void. 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. Nonlawyer businesses have developed online service-delivery models ranging from the most basic form providers to sophisticated referral networks.

The Oregon State Bar Board of Governors directed the Legal Futures Task Force to consider how it may “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.” The Regulatory Committee directed this workgroup to consider whether and to what extent our current regulatory framework should be refined in light of the changing market.

I. Summary of Recommendations

We make the following four recommendations to the Committee as a whole:

RECOMMENDATION 2:

REVISE RULES OF PROFESSIONAL CONDUCT TO REMOVE BARRIERS TO INNOVATION

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.

¹³² As noted in the accompanying Self-Navigation Workgroup Report & Recommendations, *infra*, not all self-represented litigants are aware of the option to seek out unbundled services, even though this is a growing segment of the legal market.

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.

A discussion of our process and recommendations follows.

Workgroup Process and Guiding Principles

We began our work by gathering information about the new entrants in the market, reviewing the existing regulatory structure. We also were mindful of the mission of the Oregon State Bar and the Regulatory Objectives proposed by the American Bar Association, which include protection of the public; delivery of affordable and accessible legal services; and the efficient, competent, and ethical delivery of such services.

We then focused on the following points of tension between the existing regulatory framework and various alternative legal-services delivery models currently in the market (with a brief nod to what we could reasonably see on the horizon):

- Whether the lawyer advertising rules' prohibition on in-person and real-time electronic solicitation unduly hinders access to legal services.
- Whether the prohibition on fee sharing with nonlawyers unduly restricts legal-referral services, thereby frustrating consumers' ability to find legal help.
- Whether paraprofessionals, if licensed by the Oregon State Bar, should be allowed to share fees and engage in partnerships with lawyers.
- Whether lawyers should be allowed to take part in alternative business structures.
- Whether the provision of online legal-form creation using "intelligent" interactive software constitutes the unlawful practice of law, and if so, whether that is desirable.

As we worked through these issues, we were mindful of two things.

First, any recommendations should be consistent with the mission of the Oregon State Bar, “to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.”

Second, because the Board of Governors’ Policy & Governance and Public Affairs Committees have found the ABA Model Regulatory Objectives for the Provision of Legal Services to be “consistent with the mission and objectives” of the Oregon State Bar, we also believe that those ABA objectives—which were specifically designed to provide a framework to jurisdictions considering how to approach the regulation of “nontraditional” legal services¹³³—are appropriate guiding principles for our work.

The ABA Model Regulatory Objectives for the Provision of Legal Services are:

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law
- C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
- D. Transparency regarding the nature and scope of legal services to be provided, credentials of those who provide them, and the availability of regulatory protections
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of privileged and confidential information
- H. Independence of professional judgment
- I. Accessible civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct
- J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system

We believe that the recommendations in this report, as amplified below, are consistent with both the ABA’s stated objectives and the mission of our state bar.

The Future is Here

For more than a decade, citing technological innovation, the access-to-justice gap, and consumer dissatisfaction with the status quo, legal futurists have advocated for the creation of new models for delivering legal services. In 2017, it is time for even the least tech-oriented among us to sit up and take note.

As observed by the 2016 ABA Commission on the Future of the Legal Profession,

“The legal landscape is changing at an unprecedented rate. In 2012, investors put \$66 million dollars into legal service technology companies. By 2013, that figure was \$458

¹³³ The ABA adopted the Model Regulatory Objectives in February 2016, and suggested that courts “be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court’s existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.” ABA RESOLUTION 105 (February 2016).

million.¹³⁴ One source indicates that there are well over a thousand legal tech startup companies currently in existence.”¹³⁵

ABA Resolution 105 (February 2016). Growth in this market segment is exponential. A January 2017 report concluded that, “despite not being recognized widely as a cohesive segment of the legal services market,” alternative legal-services providers account for “\$8.4 billion in legal spending.”¹³⁶

Much of this change is driven by consumers who are demanding access to legal services in the same manner and with the same convenience as they purchase other services and products—a phenomenon that one well-respected commentator calls the “Uberization of Legal Services.”¹³⁷ A 2015 report from the Georgetown Law Center similarly noted:

“In the six and a half years since the onset of the Great Recession, the market for legal services has changed in fundamental – and probably irreversible – ways. Perhaps of greatest significance has been the rapid shift from a sellers’ to a buyers’ market, one in which clients have assumed control of all of the fundamental decisions about how much legal services are delivered and have insisted on increased efficiency, predictability, and cost effectiveness in the delivery of the services they purchase.”¹³⁸

All indicators suggest that these changes are here to stay.

By “alternative legal-services providers,” we mean those that “present an alternative to the traditional idea of hiring an attorney at a law firm to assist in every aspect of a legal matter.”¹³⁹ These services are “alternative” because they “are delivered via a model that departs from the traditional law firm delivery model”—“for example, by using contract lawyers, process mapping, or web-based technology.”¹⁴⁰

The catalog of such providers is vast, and growing. Many have a stated objective to serve the needs of both legal consumers and law firms. New services include the following: rating and reviewing of lawyers (e.g., Avvo, LawyerReviews, Lawyerratingz, Yelp); referring consumers to lawyers and providing price quotes (e.g., Avvo, RocketLawyer, LawGives, LawKick, LawNearMe, LegalMatch, PrioriLegal); offering unbundled, fixed-fee legal services (e.g., Avvo, DirectLaw, LawDingo, LawGo, LegalHero, LawZam, LegalZoom, RocketLawyer); providing customized legal forms (e.g., LegalZoom, RocketLawyer); locating contract lawyers (e.g., Axiom, Hire an Esquire,

¹³⁴ Joshua Kubick, *2013 was a Big Year for Legal Startups; 2014 Could Be Bigger*, TECHCo (Feb. 14, 2015), available at <http://tech.co/2013-big-year-legal-startups-2014-bigger-2014-02>.

¹³⁵ See AngellList, *Legal Services*, available at <https://angel.co/legal>.

¹³⁶ Thomson Reuters Legal Executive Institute, The Center for the Study for the Legal Professional at Georgetown University Law Center and Saïd Business School at the University of Oxford, *Alternative Legal Service Providers: Understanding the Growth and Benefits of These New Legal Providers* (January 2017), at i.

¹³⁷ Richard Granat, *The Uberization of Legal Services* (June 19, 2015) available at <http://www.elawyeringredux.com/2015/06/articles/law-startups/the-uberization-of-legal-services/>.

¹³⁸ Georgetown Law, *Center for the Study of the Legal Profession’s 2015 Report on the State of the Legal Market*, available at <http://www.law.georgetown.edu/academics/centers-institutes/legal-profession/upload/FINAL-Report-1-7-15.pdf>.

¹³⁹ This definition of Alternative Legal Service Providers is taken from the January 2017 study, *supra* at note 136.

¹⁴⁰ *Id.*

CounselOnCall); providing e-discovery and legal process support (e.g, clio, QuisLex, Veritas); and providing targeted legal information and advice in specific areas, such as immigration (e.g, Bridge US), traffic court (e.g, Fixed), and business formation and intellectual property (e.g, SmartUpLegal).

As we learned more about this market, we were fortunate to hear presentations from representatives of Avvo and LegalZoom. They provided valuable information about the market segment that they are attempting to serve, the controls that they have in place, and their regulatory concerns. Although we take a different perspective on some issues, it was extremely valuable to learn how they work and what gaps they seek to fill in the market.

We also learned that Oregon lawyers and consumers are actively engaged in these new markets. The Bar's General Counsel has received numerous inquiries from Oregon lawyers regarding whether various models of alternative legal-services providers are consistent with the Oregon Rules of Professional Conduct. Providers' websites show that Oregon lawyers and law firms are participating in meaningful numbers. Although it is not possible to quantify the volume of such services being provided to Oregon consumers, both LegalZoom and Avvo count hundreds of Oregon attorneys as participants in their programs.

How We Regulate Today

Any proposal for revising our regulatory framework must account for the respective roles played by the Oregon Supreme Court, the Oregon State Bar, the Department of Justice, the Secretary of State, and the Department of Consumer and Business Services.

A. Regulation of Lawyers

Legal services offered by Oregon lawyers are regulated by both the Oregon Supreme Court (which has inherent, constitutional, and statutory authority to regulate the practice of law) and the Oregon State Bar (which is a statutory instrumentality of the judicial branch).

i. Oregon Supreme Court

"No area of judicial power is more clearly marked off and identified than the courts' power to regulate the conduct of the attorneys who serve under it. This power is derived not only from the necessity for the courts' control over an essential part of the judicial machinery with which it is entrusted by the constitution, but also because at the time state constitutions, including our own, were adopted the control over members of the bar was by long and jealously guarded tradition vested in the judiciary."

Ramstead v. Morgan, 219 Or 383, 399, 347 P2d 594 (1959).

The Oregon Supreme Court's regulatory authority with respect to the practice of law is grounded in both separation-of-powers considerations under Article III, section 1, of the Oregon Constitution, *see, e.g., State ex rel. Acocella v. Allen*, 288 Or 175, 180, 604 P2d 391 (1979), and the doctrine of inherent power, *see, e.g., Sadler v. Oregon State Bar*, 275 Or 279, 286, 550 P2d 1218 (1976). *See also, e.g.,* ORS 9.529 ("The grounds for denying any applicant admission or reinstatement or for the discipline of attorneys set forth in ORS 9.005 to 9.757 are not intended to limit or alter the inherent power of the Supreme Court to deny any applicant admission or reinstatement to the bar or to discipline a member of the bar.").

The Oregon Supreme Court is empowered to admit, regulate, and discipline lawyers. The court promulgates the Oregon Rules of Professional Conduct and Rules for Admission, and the court is the ultimate arbiter of what constitutes the practice of law in Oregon.

ii. The Oregon State Bar

The Oregon State Bar is an instrumentality of the judicial branch. ORS 9.010(2). Among other things, the Bar administers the lawyer admissions and disciplinary systems. ORS 9.210 (admissions); ORS 9.534 (discipline).

The Bar brings enforcement actions against Oregon lawyers for violation of the Oregon Rules of Professional Conduct, which are promulgated by the Oregon Supreme Court. These rules apply to any Oregon lawyer who is a member of the Oregon State Bar, including those who offer legal services online or through alternative delivery models. Of particular relevance to this report are the rules that regulate lawyer advertising (*see* RPC 7.1–7.5) and, with limited exception, prohibit lawyers from engaging in fee sharing or forming partnerships with nonlawyers (*see* RPC 5.4).

B. Regulation of Nonlawyers Providing Legal Services

The current framework for the regulation of persons and businesses other than lawyers and law firms engaged in legal-services delivery includes the Oregon State Bar, but primarily relies on other players. The primary purpose of this framework is to prevent individuals without law licenses from harming consumers.

i. Oregon State Bar

The Bar has authority to investigate the unlawful practice of law and to seek civil injunctions to prevent harm by nonlawyers engaged in the practice of law. ORS 9.160. Apart from this limited authority, however, the Bar does not have authority to regulate nonlawyers.

The Oregon State Bar’s Referral & Information Service helps connect Oregon’s legal consumers with lawyers and disseminates information about available legal resources.¹⁴¹

ii. Oregon Department of Justice

The Department of Justice has authority over consumer fraud and unfair trade practices, including allegations pertaining to the unauthorized practice of law, mortgage-foreclosure fraud, and other unconscionable quasi-legal practices. The Department has the authority to seek civil relief for unfair trade practices, including negotiating an assurance of voluntary compliance.¹⁴²

¹⁴¹ More information about the Bar’s Lawyer Referral Service is available at https://www.osbar.org/public/legalinfo/1171_LRS.htm.

¹⁴² Further information on the Oregon Department of Justice’s Consumer Protection efforts is available at <http://www.doj.state.or.us/consumer/pages/index.aspx>.

iii. Oregon Secretary of State

The Secretary of State regulates individuals with notary commissions. The Secretary of State accepts complaints regarding notaries who misrepresent their scope of authority by claiming the ability to practice law or holding themselves out as *notarios publicos*.¹⁴³

iv. Oregon Department of Consumer and Business Services

The Department of Consumer and Business Services (DCBS) regulates persons and entities that offer legal insurance, perform debt collection, and offer debt-management services.¹⁴⁴ The DCBS does not, however, directly regulate lawyers or legal-referral services. The DCBS does not require Oregon lawyers who engage in debt collection or debt management to obtain a license to do so if their activity is incidental to the practice of law. *See, e.g.*, ORS 697.612(3)(b) (“An attorney licensed or authorized to practice law in this state, if the attorney provides a debt management service only incidentally in the practice of law.”).

RECOMMENDATION 2.1: Advertising Rules

2.1 The Bar should amend current advertising rules to allow in-person or real-time electronic solicitation, with limited exceptions for prospective clients who are incapable of making the decision to hire a lawyer or who have told the lawyer that they are not interested, or when the solicitation involves duress, harassment, or coercion.

We turned our attention first to the advertising rules for lawyers, because they have a profound impact on how lawyers engage with prospective clients online. *See* RPC 7.1–7.5.

For some time, the Bar has been engaged in an effort to modernize these rules, based in part on concerns regarding constitutionality. A 2009 Advertising Task Force made recommendations that ultimately resulted in the 2013 adoption by the Oregon Supreme Court of amendments to Rule 7.1, principally on the ground that the existing rules were overbroad and under-inclusive. The amended rule removed certain restrictions on the manner of lawyer advertising and placed the regulatory focus on false and misleading content.

Within the last year, the Oregon Supreme Court has also adopted changes in advertising rules that replaced the requirement that lawyers include their complete office address in all advertising with a simple requirement for “contact information,” RPC 7.3, and removed the requirement that lawyers who engage in targeted advertising must label their advertising as “Advertising Material,” RPC 7.2(c).

Even with these significant changes in place, we believe that the advertising rules require further revision.

The 2009 Advertising Task Force concluded that “Article I, Section 8 of the Oregon Constitution prevents the blanket prohibition against in-person or real-time electronic solicitation of clients by lawyers or their agents or employees that is presently contained in RPC 7.3.” The changes discussed above left that part of the rule intact. In its current form, Rule 7.3 permits lawyers to engage in in-person or real-time electronic

¹⁴³ Further information on the Oregon Secretary of State’s regulation of notary publics and efforts to prevent abuse by notarios publicos is available at <http://sos.oregon.gov/business/Pages/notary-public-notario-publico.aspx>.

¹⁴⁴ More information about the Division of Financial Regulation is available at <http://dfr.oregon.gov/Pages/index.aspx>.

solicitation *only* if the prospective client is a lawyer, a close personal friend, or an individual with whom the lawyer has a past professional relationship.

Historically, the rule against in-person and real-time electronic solicitation was thought necessary to avoid overreaching by lawyers, particularly when such solicitation was directed at unsophisticated or vulnerable prospective clients. We conclude, however, that such legitimate consumer-protection concerns can be protected by a more narrowly tailored rule that reflects the reality of the current market and that does not implicate free-speech protections under Article I, section 8. This is particularly the case with real-time solicitation, where the contact is not face to face. We are not convinced that online solicitation poses the same risks as those created (at least arguably) by some in-person solicitation, and it indisputably hinders consumers' ability to find appropriate legal assistance.

Consequently, we endorse the Legal Ethics Committee's proposed amendment to Rule 7.3 (which has been adopted by the Board of Governors), which would amend Rule 7.3 as follows:

RULE 7.3 SOLICITATION OF CLIENTS

~~(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment by any means if when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(1) is a lawyer; or~~

~~(2) has a family, close personal, or prior professional relationship with the lawyer.~~

~~(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:~~

~~"(a) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person who is the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;~~

~~"(b) the [person who is the] target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~"(c) the solicitation involves coercion, duress or harassment."~~

~~(c) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

Although we recommend adopting these changes that have already been approved by the Board of Governors, we do observe that the language of Rule 7.3 might be more clear if it referred to the "subject" of the solicitation, rather than the "target."

We also observe that amending Rule 7.3 would have no effect on the current *statutory* restrictions on in-person solicitation in personal-injury cases.¹⁴⁵ We recommend that stakeholders continue to evaluate the constitutional status of that restriction.

RECOMMENDATION 2.2: Amend Lawyer-Referral Services Fee-Sharing Rules

2.2 The Bar should amend current fee-sharing rules to allow fee-sharing agreements between lawyers and lawyer-referral services, with appropriate disclosure to clients.

Oregon lawyers are generally prohibited from “giv[ing] anything of value to a person for recommending the lawyer’s services,” RPC 7.2(b), subject to exceptions for advertising and the usual charges of a lawyer-referral service, RPC 7.2(b)(1)–(2).¹⁴⁶ Similarly, Rule 5.4 prohibits lawyers from sharing a legal fee with a nonlawyer, including an advertiser or referral service, unless the referral service is a bar-sponsored or not-for-profit service. RPC 5.4(b)(5).

The historical justification for such prohibitions has been a concern that allowing lawyers to split fees with nonlawyers and to pay for referrals would potentially compromise the lawyer’s professional judgment. For example, if a lawyer agreed to take only a small portion of a broader fee paid to one who recommends the lawyer’s services, that modest compensation arguably could affect the quality of the legal services. Similarly, a percentage-fee arrangement could reduce the lawyer’s interest in pursuing more modest claims.

We acknowledge that important concern, and we do not propose discarding regulation of lawyers’ fee arrangements. We do believe, however, that the current rule is ill-suited to a changing market in which online, for-profit referral services may be the means through which many consumers are best able to find legal services. Innovative referral-service models that could assist in shrinking Oregon’s access-to-justice gap should not be stifled by a rule that was written for a very different time.

Rather, borrowing from the approach taken for attorney fee splits in Rule 1.5(d), we suggest a revision that balances the legitimate historical concerns with relaxed regulation by requiring written disclosure of the fact of the fee split and the manner of its calculation. Because the rules should also continue to ensure that any fee is reasonable, we further recommend new wording that essentially prohibits the overall fee shared by a lawyer and a referral service from being clearly excessive as defined in RPC 1.5.

Finally, we note that, despite the existence of Rule 5.4, Oregon lawyers are currently participating in an online attorney-client “matchmaking” service that has been found by other bars to be referral services that engage in the improper sharing of fees.¹⁴⁷ Although the Oregon State Bar has not squarely addressed this issue, and no bar complaints have yet been filed arising from such activity, it is entirely possible that

¹⁴⁵ ORS 9.500 provides, “No person shall solicit within the state any business on account of a claim for personal injuries to any person, or solicit any litigation on account of personal injuries to any person within the state, and any contract wherein any person not an attorney agrees to recover, either through litigation or otherwise, any damages for personal injuries to any person shall be void.”

¹⁴⁶ Rule 7.2(b)(2) was amended on January 1, 2017, to remove the requirement that the lawyer-referral service be “not for profit.”

¹⁴⁷ See Pa. Bar Ass’n Comm. on Legal Ethics & Prof’l Responsibility, Formal Op. 2016-200, 9/16; Ohio Supreme Court Board of Professional Conduct Op. 2016-3; South Carolina Ethics Op. 16-06 (2016).

the Bar will soon be required to decide whether lawyers who participate in popular online attorney-client matchmaking services are engaged in unethical conduct. This is yet another reason to carefully examine the continuing utility of Rule 5.4 in its current form.

Accordingly, we recommend that Rule 5.4 be amended to provide:

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(5) a lawyer may pay the usual charges of a lawyer-referral service, including sharing legal fees with the service ~~pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service, only if:~~

(i) the lawyer communicates to the client in writing at the outset of the representation the amount of the charge and the manner of its calculation, and

(ii) the total fee for legal services rendered to the client combined with the amount of the charge would not be a clearly excessive fee pursuant to Rule 1.5 if it were solely a fee for legal services, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

In addition, we recommend that Rule 7.2 be amended to provide:

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the usual charges of a legal service plan or a lawyer-referral service in accordance with Rule 5.4;

This proposed change to Rule 5.4 would equal the playing field between for-profit, nonprofit, and bar-sponsored lawyer-referral services. It would allow for-profit referral services to take advantage of the same fee-sharing exception currently offered to bar-sponsored and nonprofit lawyer-referral services, but would ensure consumer protection through fee-sharing disclosures and a requirement that the overall fee not be clearly excessive.

We discussed at length whether, in addition to written disclosure as discussed above, lawyers should be required to obtain a client's informed consent to share a legal fee with a lawyer-referral service. This approach would be consistent with other approaches taken when there is some concern that a lawyer's fiduciary duty of loyalty to the client could be implicated by self-interest or a relationship with a third party. *See, e.g.*, RPC 1.5(d) (fee splitting among lawyers not at the same firm); RPC 1.7(a)(2) (material limitation conflict); RPC 1.8(a) (business transactions with clients). Although we have stopped short of

making that recommendation, we note that our proposal could be easily amended to require informed consent, should the Board wish to do so.

Taken together, these proposed changes to RPC 5.4 and RPC 7.2 would allow lawyers to use a broader range of referral services, while increasing price transparency for consumers and continuing to ensure an overall reasonable fee.

RECOMMENDATION 2.3: Allow Alternative Business Structures with Licensed Paraprofessionals

2.3 If and when the Board pursues a licensed paraprofessional program, the Bar should amend current fee-sharing and partnership rules to allow participation by licensed paraprofessionals. We recommend further consideration of allowing similar participation by other types of professionals who aid lawyers' provision of legal services.

With limited exception, the Oregon Rules of Professional Conduct prohibit nonlawyer ownership of law firms, RPC 5.4(b), (d); nonlawyer direction of a lawyer's professional judgment, RPC 5.4(c); and sharing legal fees with nonlawyers, RPC 5.4(a). These restrictions are intended to guard against the practice of law by nonlawyers, the sharing of client confidences with people not bound by the Oregon Rules of Professional Conduct, and the risk that a nonlawyer could interfere with a lawyer's independent professional judgment. Hazard, G., Hodes, W., & Jarvis, P., *The Law of Lawyering*, §48.02 (4th ed. 2015).

We now join numerous other jurisdictions in questioning whether these prohibitions are the most appropriate means for protecting the interests of consumers, and whether the rules should be liberalized to account for new, alternative business structures.

The ABA Commission on the Future of Legal Services, in its April 8, 2016, Issues Paper Regarding Alternative Business Structures (ABS), defined the term *alternative business structures* to include "business models through which legal services are delivered in ways that are currently prohibited by Model Rule 5.4."¹⁴⁸

The Commission observed that "[a] variety of ABS structures exist in other jurisdictions, and they have three principal features that differentiate them from traditional law firms":

- "First, ABS structures allow nonlawyers to hold ownership interests in law firms. The percentage of the nonlawyer ownership interest may be restricted (as in Italy, which permits only 33% ownership by nonlawyers) or unlimited (as in Australia).
- Second, ABS structures permit investment by nonlawyers. Some jurisdictions permit passive investment, while other jurisdictions permit nonlawyer owners only to the extent that they are actively involved in the business.
- Third, in some jurisdictions, an ABS can operate as a multidisciplinary practice (MDP), which means that it can provide non-legal services in addition to legal services."¹⁴⁹

¹⁴⁸ The ABA Futures Commission's Alternative Business Structures Issues Paper (April 8, 2016) is available in full at http://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf.

¹⁴⁹ *Id.*

The Commission further reported that, as of April 2016, two jurisdictions in the United States (Washington State and the District of Columbia), and many foreign jurisdictions (Australia, England, Wales, Scotland, Italy, Spain, Denmark, Germany, Netherlands, Poland, Spain, Belgium, Quebec, British Columbia, Ontario, and Singapore) permitted some form of ABS.¹⁵⁰

A powerful reason to consider loosening the restrictions of Rule 5.4 is that some of its purposes are already served by other rules. The Bar's former General Counsel has pointedly asked whether the provisions of Rule 5.4 are "arguably redundant and unnecessary":

"[L]awyers are already prohibited by RPC 5.5(a) from assisting someone in the unlawful practice of law. In addition, RPC 1.6(c) provides a more general requirement that lawyers 'make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.' In other words, lawyers who work with nonlawyers have a duty to ensure that those nonlawyers maintain the confidentiality of client information. Moreover, RPC 5.3 requires that lawyers who have supervisory authority over nonlawyers to 'make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.'" ¹⁵¹

A. Paraprofessional Ownership

If the Board adopts our Committee's recommendation to implement a paraprofessional licensing program, then we recommend that such licensees be allowed to share legal fees with and participate in ownership of law firms, with appropriate safeguards to protect lawyers' independence of professional judgment.

This recommendation accords with what Washington has done. In 2015, Washington adopted Rule of Professional Conduct 5.9, which allows "Limited Licensed Legal Technicians" to share fees with lawyers and to form partnerships with lawyers under certain circumstances. That rule provides:

"RPC 5.9 BUSINESS STRUCTURES INVOLVING LLLT AND LAWYER OWNERSHIP

(a) Notwithstanding the provisions of Rule 5.4, a lawyer may:

- (1) share fees with an LLLT who is in the same firm as the lawyer;
- (2) form a partnership with an LLLT where the activities of the partnership consist of the practice of law; or
- (3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which an LLLT owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.

(b) A lawyer and an LLLT may practice in a jointly owned firm or other business structure authorized by paragraph (a) of this rule only if:

- (1) LLLTs do not direct or regulate any lawyer's professional judgment in rendering legal services;

¹⁵⁰ *Id.*

¹⁵¹ Helen Hirschbiel, *The Wave of the Future? Alternative Law Practice Business Structures*, THE OREGON STATE BAR BULLETIN (November 2015) available at <http://www.osbar.org/publications/bulletin/15nov/barcounsel.html>.

- (2) LLLTs have no direct supervisory authority over any lawyer;
- (3) LLLTs do not possess a majority ownership interest or exercise controlling managerial authority in the firm; and
- (4) lawyers with managerial authority in the firm expressly undertake responsibility for the conduct of LLLT partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Rule 5.1.”

In our view, this rule change strikes an appropriate balance between respecting the primary role and responsibility of lawyers, while removing overly strict barriers to new service models that may lead to the delivery of legal services at a lower cost to more consumers. If Oregon goes in the direction of licensing paraprofessionals, we recommend adoption of a similar new rule that essentially exempts such licensees from the prohibitions under Rule 5.4.

B. Ownership by Other Supporting Professionals

In addition to licensed paraprofessionals, it is worth considering whether other types of professionals who aid lawyers should be able to participate in sharing fees and owning businesses with lawyers. Such professionals may include legal-project managers, business executives, accountants, and people with technological expertise. *See, e.g.*, D.C. Rule of Professional Conduct 5.4(b).

Although the information we received relating to this issue was by and large anecdotal, it is undoubtedly the case that some people with high-level skills may be unwilling to partner with lawyers on innovative alternative legal-services delivery models because they are ineligible to own an equity stake in a law firm.¹⁵² This barrier may have a negative impact on innovation within the legal market, inhibiting the creation of models that could better serve the needs of legal consumers. The issue merits further study and should be referred to the Legal Ethics Committee.

C. ABS Pilot Program

One alternative legal-services provider suggested to our Committee that the Oregon Supreme Court explore creating a “pilot program,” temporarily suspending the operation of Rule 5.4 to allow the development of pilot-ABS entities. Although the idea is interesting, we are unaware of a clear path for creating such a pilot program. There is no established process for the creation of temporary or interim Oregon Rules of Professional Conduct.

D. Summary

We believe that allowing economic partnerships between lawyers and licensed paraprofessionals (if such a program is established) is an important but relatively modest step toward liberalizing the rules to promote innovation of new models for delivering legal services. Although we do not specifically recommend further changes to allow alternative business structures at this time, we believe that this is the wave of the

¹⁵² Not all evidence of the impact and utility of ABSs is anecdotal. For instance, the Solicitors Regulation Authority of the United Kingdom has been licensing Alternative Business Structures since 2007, and has published data on how ABS licensees are providing increased access to lower-income-client groups and how the licensees are engaged in the legal market. *See e.g.* Solicitors Regulation Authority, *Research on alternative business structures (ABSs)* (May 2014), available at <http://www.sra.org.uk/documents/sra/research/abs-quantitative-research-may-2014.pdf>.

future and that the Bar should continue to actively consider which provisions in Rule 5.4 are necessary for consumer protection and which provisions otherwise may be worthy of amendment in some fashion.

RECOMMENDATION 2.4: Address Online Form Creation

2.4 The Bar should seek clarification whether providing access to web-based intelligent software that allows consumers to create custom legal documents is not the practice of law, and should seek opportunities to incorporate increased consumer protections.

The legal-services market is seeing significant growth in the availability of online form providers. Unlike “standard” forms, these services may involve the creation of a customized document through “intelligent” software that engages the customer in an interactive question-and-answer process.

The obvious question is whether such providers are engaged in the practice of law in Oregon. The Oregon Supreme Court has generally drawn a distinction between *selling* standardized legal forms—which is not considered the practice of law—and *selecting* particular forms for a customer—which is considered the practice of law. In *Oregon State Bar v. Gilchrist*, 272 Or 552, 538 P2d 913 (1975), the state bar alleged that several individuals had engaged in the practice of law through the advertising and sale of do-it-yourself divorce kits. The Court held:

“We conclude that in the advertising and selling of their divorce kits the defendants are not engaged in the practice of law and may not be enjoined from engaging in that practice of their business. We conclude, however, that all personal contact between defendants and their customers in the nature of consultation, explanation, recommendation or advice or other assistance in selecting particular forms, and filling out any part of the forms, or suggesting or advising how the forms should be used in resolving the particular customer's marital problems does constitute the practice of law and must be and is strictly enjoined.”

Gilchrist, 272 Or at 563–564, 538 P2d at 919. Although *Gilchrist* was decided several decades before the advent of “intelligent” form-creation software, these new providers, to the extent that they are engaging consumers in an interactive information-gathering process, may implicate the court’s emphasis on “recommendation” and “assistance in...filling out any part of the forms.” The question is unsettled.

Even so, we must recognize the utility of empowering self-navigators to craft forms themselves when they lack the means or ability to hire legal counsel (or simply wish not to). Harnessing technology to enable self-navigators to create forms that meet their specific needs undoubtedly supports the Bar’s goal of increasing access to justice. The Oregon Judicial Department itself has recognized this, and is presently developing a catalog of intelligent forms, called iForms, for self-represented litigants.¹⁵³

On the other hand, we believe that such forms may not be appropriate for all consumers, particularly when complex legal issues are involved. We believe, in short, that the Bar should embrace the trend toward intelligent form-creation software, balanced by appropriate consumer protections.

¹⁵³ The Workgroup is of the opinion that the Oregon Judicial Department has the inherent authority to offer forms to litigants appearing before Oregon courts and that, as a separate branch of government, the courts should not be subject to any regulation of their ability to provide such forms.

Accordingly, we recommend that the Bar take the position that the sale of customized legal forms by providers of “intelligent” software is generally not the practice of law, and that the Bar also pursue several specific consumer protections so that:

- (1) The consumer is provided with a means to see the blank template or the final, completed document before finalizing a purchase of that document.
- (2) An Oregon licensed attorney has approved each aspect of any legal document offered to Oregon consumers, including each and every potential part thereof that may appear in the completed document, and the logical progression of the questions presented to the Oregon consumer.
- (3) The consumer has the ability to confirm that an Oregon attorney completed the review.
- (4) The provider has confirmed that the consumer understands that the forms or templates are not a substitute for the advice or services of an attorney before the consumer may complete the form and prior to the purchase of the form.
- (5) The provider discloses its legal name and physical location and address to the consumer.
- (6) The provider does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the consumer.
- (7) The provider does not require the consumer to agree to jurisdiction or venue in any state other than Oregon for the resolution of disputes between the provider and the consumer.
- (8) The provider has a consumer-satisfaction process.
- (9) The provider does not require the consumer to engage in binding arbitration.
- (10) The provider provides adequate protections for the consumer’s personally identifiable data.
- (11) Any terms and conditions required by the provider are fully, clearly, and conspicuously displayed to the consumer in simple and readily understood language.

Such protections could, presumably, be appropriately enforced through existing mechanisms, such as the Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*

SELF-NAVIGATORS WORKGROUP REPORT & RECOMMENDATIONS

INTRODUCTION: DEFINING THE PROBLEM AND POTENTIAL SOLUTIONS

As addressed elsewhere in this Task Force report, the number of self-navigators (i.e., self-represented litigants) in Oregon's courts has grown and continues to grow.¹⁵⁴ Our Task Force proposes ways to reduce that number. However, it is important to recognize that, even if we succeed in increasing access to affordable legal services, some litigants will continue to be self-represented out of necessity or by choice. Regardless of whether self-representation is desirable in and of itself, it is desirable that self-navigators have access to resources that can make their journey through the court system as efficient and painless (for themselves and others) as possible. Thus, the purposes of this workgroup were to gather information about existing Oregon resources for self-navigators, how those resources could be accessed, and to identify areas for improvement.

We reviewed current data and literature regarding self-navigation and gathered information about how other states have addressed this issue. We also heard presentations by the Oregon Judicial Department (OJD), the OSB Lawyer Referral Service (LRS), Legal Aid, the Washington County law library, and two Oregon Circuit Court judges.

A framework for analysis began with several core questions: What resources are available for self-navigators in Oregon? What gaps or barriers exist in the availability or accessibility of information? How can we do better?

We tested the availability and accessibility of on-line resources from the standpoint of consumers in the following areas: landlord tenant, family law, small claims, and collections. We studied past efforts in Oregon and elsewhere that have discussed options for addressing needs, including the development of courthouse Self-Help Centers. Some of the groups in Oregon and elsewhere studying or highlighting the problems for self-navigators include the State Family Law Advisory Committee (SFLAC), the Conference of Chief Justices' Civil Justice Improvements Committee¹⁵⁵ and ideas from the September 2016 Oregon Access to Justice Forum.¹⁵⁶ In some cases, the recommendations of other groups may be incorporated here, and efforts have been made to acknowledge these ongoing efforts.

¹⁵⁴ Data on current statistics on self-representation in Oregon courts is included in the chart entitled Oregon Circuit Court Cases with Representation (2016), *supra* at Paraprofessional Regulation Report & Recommendations, Appendix B.

¹⁵⁵ In 2016, the Conference of Chief Justices' Civil Justice Improvements Committee released a Civil Justice Initiative (CJI) report with 13 recommendations intended to reduce cost and delay in civil litigation and improve customer service to litigants, including self-navigators. Among other things, the CJI report details national trends about the increasing number of cases with one or more self-represented litigants, and persistent issues that arise for those litigants and the courts. Oregon is in the initial stages of a statewide effort to evaluate the CJI report. We note that recommendations made in this report may similarly address concerns raised in the CJI report, and ongoing statewide CJI efforts also may continue to address self-navigator issues in the Oregon courts.

¹⁵⁶ Materials for the Summit include information on family law, self-help centers, small claims and other information on self-help and can be found on the Campaign for Equal Justice website: <http://www.cej-oregon.org/pdfFiles/ATJ%20Forum/2016-09-08%20ATJ%20Forum%20-%20ALL%20MATERIALS.pdf>.

RECOMMENDATION 3: IMPROVE RESOURCES FOR SELF-NAVIGATORS

We made six recommendations aimed at improving access to justice for self-navigators in Oregon.

3.1 Coordinate and integrate key online resources utilized by self-navigators.

Establish a committee with representatives from the three stakeholder groups -- 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 the OJD's State Family Law Advisory Committee regarding family-law improvements to assist self-navigator. 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 (OSB website, Bar Bulletin and through local, specialty bars and section), 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.

During our work, we attempted to identify existing entities that are well-positioned to implement these recommendations. In some cases, it may be prudent to assign an on-going group—whether within the Bar, the OJD, or elsewhere—that can meet periodically to review the implementation of recommendations, if adopted.

RECOMMENDATION 3.1: Coordinate and integrate key online resources utilized by self-navigators.

Oregon has three robust websites that provide legal information to self-navigators. They are the Oregon Judicial Department's website and corresponding court websites,¹⁵⁷ the Oregon State Bar's public website,¹⁵⁸ and Oregon legal aid organizations' informational website, Oregon Law Help¹⁵⁹.

These existing resources are heavily used by Oregonians. Oregon Law Help has almost 750,000 page views a year; and the OJD homepage also has about 750,000 views each year, excluding access from the courthouses. The Bar's public site has more than one million page views a year. While these three websites link to each other, in some cases, the information is outdated, and in others, the link creates a dead end, without linking back to court forms or other key resources such as the Oregon Lawyer Referral Service.

In recent years, OJD has launched interactive forms ("iForms") on its website; this effort is ongoing. In addition, OJD's "Self-Help" page, its Family Law Website, and individual court websites provide information about court proceedings, contact information, and links to other external resources. Beginning in June 2017, OJD is rolling out a staged overhaul of its own website and the individual court websites, to make them more cohesive, user-friendly, and mobile-device friendly.

OJD also currently provides courthouse terminals to permit access to public case information, and most courts also have an eFiling terminal for attorneys. New courthouse construction projects are looking ahead to expanding the use of court terminals or kiosks for both lawyers and self-represented litigants, but final planning is not yet confirmed. The availability of additional kiosks, in any court or statewide, depends in large part on funding.

The Oregon State Bar's website provides legal information on a variety of topics, as does Oregon Law Help. The bar's website (information available to the public tab) provides a wealth of information on legal topics, but only lists three subject areas under the "Do It Yourself" Heading: restraining order hearings, small claims court, and summary dissolution. The Bar is in the process of updating its website as a part of a management system software upgrade.

The quantity and quality of online information is impressive, but more needs to be done to make this information more accessible. Some states have created a single website that serves as a central repository for legal self-help website information. We considered whether Oregon should similarly consolidate its self-help resources onto one website. The idea of a primary website for self-navigators has advantages, but we ultimately rejected this approach for the following reasons: 1) because it is unlikely that any of the three current stakeholders would give up their sites, the creation of a fourth self-help website might only duplicate effort and create confusion; 2) each stakeholder's website has a slightly different emphasis and has certain strengths directed at different audiences; and 3) moving to one central website would likely be costly and these resources could be better spent elsewhere. (It should be noted that both OJD and the OSB quickly made some changes to their websites in response to this group's work.) Rather than create a new website, we recommend the following specific steps for improving and coordinating the online resources now available:

¹⁵⁷ The Oregon Judicial Department's primary website is available at <http://www.courts.oregon.gov/ojd/pages/index.aspx>.

¹⁵⁸ The Oregon State Bar's public website is available at <https://www.osbar.org/public/>.

¹⁵⁹ Oregon legal aid's website is available at <http://oregonlawhelp.org/>.

- Establish a committee with representatives from the three stakeholder groups (OJD, OSB, and Legal Aid), to coordinate and collaborate on the information available on their respective websites, including cross-links when appropriate.¹⁶⁰ Their work should include:
 - Providing updated information about new content or formatting on each group's website, particularly where new cross-links can be created or stale cross-links should be removed;
 - Seeking the assistance of lawyers and public members who can assist with testing access to self-navigation tools on various legal subject areas and make recommendations to the stakeholders for improvement;
 - Considering the expertise of each stakeholder (for example, Legal Aid is likely to have the most thorough information available to tenants in landlord tenant disputes);
 - Creating higher visibility for these three primary websites;
 - Providing opportunities on the websites for public input and feedback¹⁶¹; and
 - Encouraging the three primary websites to include clear links for finding legal services.

RECOMMENDATION 3.2: Create self-help centers in every Oregon courthouse.

Self-help forms and access to the internet are a step in the right direction in increasing access to justice, but more individualized help is needed. As explained in a California report,

“Although technology can increase the efficiency and reach of legal assistance and provide innovative methods of providing legal information, it cannot substitute for the in-person assistance of attorneys and other self-help center staff. Self-represented litigants need much more than just written information or Web sites or computer kiosks.”¹⁶²

The need for individualized attention puts a strain on existing court staff. Oregon judges have described the administrative challenges and ethical dilemmas that they face, including balancing neutrality with ensuring that a litigant has a meaningful opportunity to be heard.

In response to the drain on court staff and barriers faced by self-represented litigants in the area of family law, many states adopted family law facilitation programs. The Oregon Legislature created the family-law facilitation program in 1997. Family-law facilitator program staff may provide “educational materials, court forms, assistance in completing forms, information about court procedures,” and referrals to other agencies and resources. ORS 3.428. Employees or others who provide services to litigants through the program are not engaged in the practice of law. ORS 3.428(4). The program operates under the supervision of the family-court department or the presiding judge.

160 At the least, the Work Group recommends that each of the stakeholder groups appoint a designated staff person who can work with designated staff from the other groups to discuss and coordinate content and link updates.

161 Because providing a comment section seems to signal that people should post the details of their legal problem, the best approach may be to ask, “Is this page helpful?”

162 Judicial Council of California/Administrative Office of the Courts, *Equal Access Fund—A Report to the California Legislature* (March 2005), available at <http://www.courts.ca.gov/documents/Equal-Access-Fund-March-2005.pdf>.

The facilitators—who are not lawyers—provide in-person assistance to litigants in family-law cases, such as reviewing forms, providing information about court processes, providing post-hearing support, and providing community-resource reference information. They do not provide legal advice.

The programs differ, from minimal hours in some judicial districts to full support in others. All programs provide assistance with routine family-law cases, and some also provide assistance with FAPA and other restraining orders, as well as with probate and minor guardianships. By statute, the court-facilitator programs are limited to family-law cases, ORS 3.428. There is currently a draft proposal to expand the facilitator program beyond its current family-law scope.

It is helpful to understand why individuals self-represent and what their experiences are. A recent study, entitled *Cases without Counsel: Research on Experiences of Self-Representation in U.S. Family Court*, by the Institute of the Advancement of the American Legal System, studied why individuals self-represent and their experiences in doing so.¹⁶³ About three-fourths of the participants in the study, which included participants in Multnomah County family-law cases, represented themselves because they simply could not afford legal representation or because they had other financial priorities. Another one-fourth, however, expressed a preference for self-representation, even if they had financial resources for pay for a lawyer. “The underlying sentiments driving litigants’ preference to self-represent included the relationship between the parties, agreement between the parties, a desire to retain control, and a do-it-yourself mentality,” at 18. The *Cases without Counsel* study went on to address how disadvantages play out when individuals choose to represent themselves in family-law cases, including a negative impact in the case and an already stressful process becoming even more stressful. And, of the cases studied, about one half of the litigants had some assistance from a lawyer, but most of those litigants were dissatisfied with the help they received.

In a companion publication, *Cases Without Counsel: Our Recommendations after Listening to the Litigants*, the project made several additional recommendations to courts, bar associations, and legal-services providers about how to improve the experiences of self-navigators.¹⁶⁴ Many of these recommendations are incorporated in this Workgroup Report.

To improve the experiences of self-navigators in other areas of law, many states and foreign countries have developed self-help centers, providing assistance beyond family-law facilitation programs. The California courts started their Self-Help Centers more than 10 years ago, and they now exist in every California judicial district. California’s Self-Help Centers should serve as a model in Oregon.¹⁶⁵

The California model essentially expanded that state’s family-law facilitator program to also address landlord-tenant issues, debt-collection issues, conservatorships, restraining orders, guardianships, small claims, simple probate issues, and traffic citations. Not all grantees cover these areas. Courts are

163 Natalie Ann Knowlton et al., Institute of the Advancement of the American Legal System, *Cases without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), available at http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

164 Natalie Anne Knowlton, Institute of the Advancement of the American Legal System, *Cases without Counsel: Our Recommendations after Listening to the Litigants* (May 2016), available at http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_recommendations_report.pdf.

165 For an educational video about the creation and operation of California Self-Help Centers, see a video created by the Judicial Council of California and the Public Welfare Foundation entitled “Learning about Legal Self-Help,” available at <http://www.publicwelfare.org/civil-legal-aid/>.

provided with basic technology and space to operate, including computer terminals and video playback equipment and appropriate signage.

When individuals arrive at the Self-Help Center, a triage clerk assesses the appropriateness of the problem and typically refers the case to an attorney or paralegal, called an “expeditor.” That person provides more substantive help. Self-Help Centers do not provide legal advice, but instead provide information and education. They do not screen for conflicts, income eligibility, or legal status.

Assistance from Self-Help Center staff is provided in-person; by telephone; in workshops; in classes; and via telephone hotlines, videoconferencing, e-mail, or other methods of communication. Staff must be able to provide assistance and referrals.

We make recommendations below based on what we believe will be best practices, recognizing that limitations on resources and scarcity of funding will undoubtedly affect what type of Self-Help Centers ultimately may be created. We feel strongly that funding for Self-Help Centers should not compete with, or nor interfere with funding for Oregon’s Legal Aid programs, which are grossly underfunded and are currently under threat of losing federal funding (about 30% of funding).

Recommendations:

- The Oregon State Bar should consider proposing or supporting legislation that, to the extent needed, would permit 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 to have Self-Help Centers in every court in Oregon.¹⁶⁶
- Key areas for providing service should include family law, landlord-tenant, consumer issues (specifically, debt collection), and small claims, with possible future expansion into other areas, such as guardianships, conservatorships, and probate. Additionally, any practical barriers to providing assistance on traffic-court matters should be removed.
- Self-Help Centers should be available to help self-navigators regardless of income eligibility.
- When possible, a lawyer should supervise Self-Help Center staff and volunteers.¹⁶⁷
- All staff or volunteers providing assistance should complete training (a certification process) in each subject area in which he or she will provide assistance to customers in Self-Help Centers, and training should be standardized and made available via webinar.
- Law students should be encouraged to volunteer or be employed as staff in Self-Help Centers, but academic credit is not recommended for these programs, and law students should be required to undergo the same training and certification as any other staff or volunteer.¹⁶⁸
- Self-Help Center staff and volunteers (including lawyers) would not provide legal advice. Nonetheless, clear signage should reiterate that no attorney-client relationship is being formed and that confidentiality and privilege do not apply. The current court-facilitator

¹⁶⁶ Janice Morgan, Executive Director of Legal Aid Services of Oregon, and an advisor to the group abstained from discussing or supporting any legislative proposals, as is required by her position and federal funding.

¹⁶⁷ The workgroup recognized that this rule may need to provide for local flexibility, as lawyers may not be available to supervise court-facilitators in rural areas.

¹⁶⁸ The Workgroup acknowledged that law school accrediting authorities require close supervision by faculty and that the mission of providing appropriate supervision for academic credit would be an expenditure of additional resources.

statute, ORS 3.428(4), states that “an employee or other person providing services to litigants through a family-law facilitation program as provided in this section is not engaged in the practice of law in this state for purposes of ORS 9.160.” It is anticipated that any Oregon Self-Help Center legislation would contain similar wording.

- Self-Help Center staff and volunteers would not appear in court on behalf of a party.
- Self-Help Center staff and volunteers would make appropriate referrals to lawyers or other legal professionals when the types of services that the Self-Help Center can provide are not sufficient.
- Self-Help Centers should be housed in convenient locations for the courts and customers, and should be open during hours that are convenient for customers.
- Self-Help Centers should be equipped with appropriate resources and technology—including computer stations, video play-back equipment, access to conference rooms for training, and written materials.
- The courts and Self-Help Center staff and volunteers should work closely with the local bar, legal aid programs, and other stakeholders who strive to provide access to justice to Oregonians.
- To the extent that lawyers act as volunteers in Self-Help Centers, special efforts should be made to ensure that pro bono lawyers will not participate in the representation of either party outside of the Self-Help Center. Avoiding the appearance of impropriety is important to maintaining the integrity of the justice system. Oregon RPC 6.5, the rule of professional conduct related to lawyer service for nonprofit and court-annexed limited legal services programs, should be reviewed to determine its potential application to lawyers who volunteer in Self-Help Centers, and whether amendments are appropriate.
- Implement and/or review the 2007 recommendations by the SFLAC after further input and evaluation by the SFLAC.
- To the extent that full-service Self-Help Centers are not feasible at this time in Oregon, the workgroup nonetheless recommends:
 - Expanding the scope of ORS 3.428 to include areas other than family law.
 - Launching a pilot program for further implementation and modification as additional resources become available.

RECOMMENDATION 3.3:

Continue to make improvements to family law processes to facilitate access by self-navigators.

According to 2016 OJD data, approximately 80 percent of litigants in dissolution and custody cases are self-represented. As previously noted in this report, the Oregon courts have long recognized that self-represented litigants in family-law cases face barriers and create a drain on court resources. The

family-law facilitator program under ORS 3.428, was established to help address this problem.¹⁶⁹ All but one of the Oregon judicial districts (i.e., Columbia County) currently have family law facilitation programs in place, in conjunction with both the local court and the OJD's family law Program. In addition, the Oregon Judicial Department's State Family Law Advisory Committee (SFLAC) makes recommendations to improve the family-law process for self-represented litigants.

In Oregon, two recent changes are aimed at improving the experiences of self-represented family-law litigants: (1) changes to UTC 8.110 regarding unbundled legal services and (2) the development of informal domestic-relations trials.

A new Uniform Trial Court Rule, UTCR 8.110, which became effective in August 2016, sets out certain notice and service requirements that apply if unbundled legal services are used in family-law cases. These requirements will also soon apply to all civil cases.¹⁷⁰

More informal proceedings will soon become available to litigants in certain family-law cases. Self-navigators with trials in domestic-relations cases will soon be able to choose whether to proceed with a formal trial or to proceed with an "Informal Domestic Relations Trial" (IDRT) under a new Uniform Trial Court rule that is scheduled to become effective on August 1, 2017 (UTCR 8.120). IDRTs permit parties—whether represented by counsel or not—to present their sides of the case in a more informal way. Cross-examination is not permitted, witnesses generally are not allowed to appear (except for approved experts), the rules of evidence (but not the right to appeal) are waived, and only the judge is permitted to ask questions. If both parties opt for an IDRT, then one will be held; otherwise, if one or both parties opt for a traditional trial, then a traditional trial will be held. Deschutes County Circuit Court has been piloting IDRTs successfully for several years, and the OJD anticipates that IDRTs will be a useful option for parties in uncomplicated cases involving marital assets, as well as in certain other cases.

The OJD's SFLAC is another group that makes recommendations to assist self-navigators. The SFLAC is a statutory, legislatively created committee whose members are appointed by the Chief Justice. The SFLAC's charge is to inform the OJD, the Chief Justice, and the State Court Administrator about reforms that would benefit the management of family conflict in the judicial system. The SFLAC has a standing Self-Represented Litigants Subcommittee that meets each month.

In 2007, the SFLAC issued a comprehensive report and made seven recommendations for improvements.¹⁷¹ Many of these recommendations have been implemented or partially implemented, but others—such as the creation of a Self-Represented Litigants Task Force—have stalled due to lack of funding. Some of the workgroup's recommendations in this report are similar to earlier outstanding recommendations from the SFLAC's 2007 report, and the 2007 report otherwise shows that issues for self-navigators have persisted for many years in the courts.

169 See discussion of family-law facilitator programs *supra* in Recommendation 3.2.

170 The UTCR Committee has recommended, and the Chief Justice has approved, applying those same requirements to all civil cases, effective August 2017 (to be enacted as a new UTCR 5.170).

171 See State Family Law Advisory Committee (SFLAC) of the Oregon Judicial Department, *Self-representation in Oregon's Family Law Cases: Next Steps* (September 2007), available at https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/downloads/final_report_on_self_representation_090607.authcheckdam.pdf.

At the request of one member of the Regulatory Committee, who also serves on the SFLAC, the Workgroup reviewed materials describing Australian "Family Relationships Centres" (FRCs), which are designed to attempt to serve families in crisis by offering an array of services at reasonable cost in a consumer-friendly location. The model is "an early intervention strategy to help parents manage the transition from parenting together to parenting apart in the aftermath of separation, and are intended to lead to significant cultural change in the resolution of post-separation parenting disputes." Patrick Parkinson, *The Idea of Family Relationship Centres In Australia*, 51 Family Court Review 2 (April 2013), 195-213. The Australian model also includes an online mediation program. FRCs in Australia are publicly funded but privately run facilities that offer mediation, legal services, financial services, counseling, parent education, and the like in a single location. The SFLAC continues to review the Australian model and the feasibility of implementing portions of that model in Oregon. The workgroup concluded that this approach would likely require fundamental changes to family law in Oregon and was beyond the scope and expertise of this Workgroup. The OJD's SFLAC has voted to study this model and may be making a related recommendation to the Chief Justice.

Many of the recommendations in this workgroup report apply to family law—increasing interactive court forms, increasing information on websites, and increasing the number of lawyers to help with unbundled legal services:

- Support the recommendations of the SFLAC regarding family-law improvements to assist self-navigators.
- Improve training and ensure statewide consistency in training to family-court facilitators, especially regarding the parameters of their work.¹⁷²

RECOMMENDATION 3.4:

Continue to make improvements to small claims processes to facilitate access by self-navigators.

More than 54,000 small-claims cases were filed in 2016 statewide, almost double the number of family-law cases filed, and three times the number of landlord-tenant cases. Many of our recommendations are based on the observation of one lawyer who sat in on small claims proceedings in 14 Oregon counties,¹⁷³ as well as on recommendations by a panel presented at the September 2016 Oregon Access to Justice Forum on Self-Represented Parties in Small Claims and Consumer Law.¹⁷⁴ They are the following:

- Information about fee waivers and deferrals should be more prominently displayed on all websites, and judges and clerks should be trained on fee deferrals and waivers in small-

¹⁷² The workgroup noted that training in the existing family-law facilitator program could be improved. The biggest concern discussed by the workgroup, and also supported by a review of court-facilitator programs, is that facilitators are so concerned about the practice-of-law prohibition that they do not feel comfortable providing assistance. *See also, Cases without Counsel Study*, page 27–28, *supra* at note 163 which found a similar problem expressed by both litigants and court staff.

¹⁷³ Janay Haas, *It Can be a Jungle Out There: A Litigants View of Small Claims Court*, OREGON STATE BAR BULLETIN (June 2014), available at <http://www.osbar.org/publications/bulletin/14augsep/smallclaims.html>.

¹⁷⁴ Hon. Steven A. Todd, Judge Pro Tem, Richard Slottee, and Bret Knewtson, "Self-Represented Parties in Small Claims and Consumer Law," Access to Justice Forum (2016), available at <http://www.cej-oregon.org/pdfFiles/ATJ%20Forum/2016-09-08%20ATJ%20Forum%20-%20ALL%20MATERIALS.pdf>.

claims cases and other cases. (Discussion is underway at the OJD about various statewide issues relating to fee waivers and deferrals).

- Improve courthouse signage about the location of small claims hearings and the location of the clerk's office.
- Provide instructions so that small-claims litigants understand that their case is not the only one scheduled for a certain time, so they should plan to arrive on time and then wait their turn and plan their day accordingly.¹⁷⁵
- Information available to self-navigators should make clear that, in limited cases, lawyers may appear in small-claims court.
- Explore whether the limits on small claims should be increased.
- Consider whether claimants should be able to be represented by trained and certified nonlawyers or lawyers in cases in which the opposing party, typically a corporation, is represented by either a lawyer or a trained representative.
- Update county-court websites to link to interactive forms.¹⁷⁶
- Consider recommendations proposed by a panel at the September 2016 Oregon Access to Justice Forum that deal with small-claims and consumer cases.¹⁷⁷ In particular, the workgroup recommends supporting the following recommendations:
 - Require that an affidavit or declaration be attached to the complaint showing proof of assignment, debits and credits, date and form of last communication with defendant in an attempt to resolve the claim, and statement about exemptions from judgment.
 - Extend the 14-calendar-day period to respond to the complaint to a longer time.
 - Include in service documents a clear and conspicuous notice that the defendant can request additional time to respond by sending a letter to the court.
 - Set up mediation before the time that the defendant must respond to the complaint.
 - Establish a small-claims court monthly explanation program, like that of the Oregon State Bar's Debtor Creditor Section Pro Bono Bankruptcy Clinic. Utilize the services of pro bono volunteer attorneys and law students to provide explanation and advice.

RECOMMENDATION 3.5: Promote availability of unbundled legal services for self-navigators.

Low-income Oregonians may qualify to receive free legal assistance from Legal Aid. In fact, about 84% of the time, Legal Aid lawyers are able to help clients resolve their issues with just brief advice and

¹⁷⁵ OJD is currently working on a change to its instructions, as a response to this preliminary recommendation.

¹⁷⁶ OJD is the process of updating all county-court webpages and will be using a standard page template to link to forms and other information.

¹⁷⁷ In particular, the workgroup recommends reviewing the recommendations contained in the presentation on *Self-Represented Parties in Small Claims and Consumer Law*, which are available in the materials at 344–361, available at <http://www.cej-oregon.org/pdfFiles/ATJ%20Forum/2016-09-08%20ATJ%20Forum%20-%20ALL%20MATERIALS.pdf>.

service—most of the time helping clients resolve their issues without having resort to the courtroom or litigation. As explained by Janice Morgan, Executive Director of Legal Aid Services of Oregon, such an outcome is not necessarily by design, but, in many cases, is simply a result of the lack of resources to provide all services that may be needed. In fact, Oregon’s Legal Aid programs can meet only about 15% of the legal needs of the poor in civil matters, and therefore must limit its work to the highest priority areas (typically food, shelter, income maintenance, and safety from domestic violence), and also must often limit the level of service that it provides. Legal Aid does try to supplement its services through pro bono assistance and self-help materials, including self-help classes. In addition to legal aid, there are other Oregon organizations that provide representation to low- or middle-income individuals in discrete areas of representation (immigration law, family law, and employment law) for free or for a reduced fee, but the needs of this population are not being met.

The OSB’s Lawyer Referral Service (LRS) has panels of lawyers available to provide assistance to self-navigators, although those services may not be clearly identified as such from a consumer standpoint, are not prominent on the LRS’s website that is visible to consumers, and are not prominent in the enrollment application for lawyers. Consumers may be frustrated by the lack of information about lawyer assistance, including a lack of transparency about the fees.

The LRS’s Modest Means Program is very popular with Oregonians (it receives approximately 30,000 calls per year), but, due to limitations on the number of lawyers willing to take reduced-fee cases and the strict eligibility requirements for the program, only 3,000 clients are placed each year. There appear to be some barriers, both financial and otherwise, to significantly expanding the Modest Means Program. Third-party vendors (like AVVO and Legal Zoom) may be working to fill some of these needs; although they advertise legal services to self-navigators, those referrals are made only to lawyers who have joined those networks.

Unbundled legal services—that is, the provision of agreed-on, discrete legal services to a client by a lawyer—is another resource available to self-navigators who otherwise would proceed without counsel. In the past, the provision of unbundled legal services was viewed unfavorably; although it is unlikely that that perception continues today, it does not appear that lawyers market these types of services. For individuals who do not qualify by either income or priority area, little information is available about the numbers of lawyers in the private bar who currently provide unbundled services to self-navigators, and there are few lawyers who advertise services in this way. Oregon has taken steps within the last year to clarify that unbundled legal services are permitted. A new Uniform Trial Court Rule, UTCR 8.110, which became effective in August 2016, sets out certain notice and service requirements that apply if unbundled legal services are used in family-law cases, and the UTCR Committee has recommended, and the Chief Justice has approved, applying those same requirements to all civil cases, effective August 2017 (new UTCR 5.170). The new UTCRs may prompt an increased use of unbundled legal services and in advertising that type of representation to potential clients.

The following recommendations are intended to encourage Oregon lawyers in private practice to assist 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 (on the OSB’s website; in the Bar Bulletin; and through local, specialty bars and sections), including ethics opinions,

sample representation and fee agreements, and reminders about blank model forms that can be printed from the OJD's website.

- Develop sample business plans for new lawyers, including information about how to incorporate unbundled services. Disseminate this information with other messages and materials to new lawyers.
- Offer a CLE program to private lawyers about how to market unbundled legal services to self-navigators. Such a CLE program also might be of interest to the New Lawyers Division.
- Support the efforts of the OSB Public Service Advisory Committee (PSAC) to expand the Modest Means Program and subject areas for unbundled services through the LRS, and make these services more prominent and visible to both consumers and lawyers.
- Encourage the PSAC to explore methods to increase the visibility of limited-scope representation to self-navigators on the LRS, the OSB's website, and through other bar outreach efforts.
- Continue efforts to recruit more lawyers to help self-navigators through the LRS, especially in areas that are underserved. This includes recruiting lawyers for the Modest Means Program, particularly in those geographic areas that are underserved.
- Consider expansion of the Modest Means Program.

The availability of limited legal assistance from licensed paralegals also would benefit self-navigators. The Paraprofessional Regulation Workgroup of the OSB's Futures Task Force's Regulatory Committee has made a separate recommendation on that topic.

RECOMMENDATION 3.6: Continue to develop and enhance resources available to self-navigators.

While OSB, OJD and legal aid have made huge strides in publishing information that is useful to self-navigators, we must continue to develop and enhance available resources.

- Continue developing interactive forms and materials on the OJD's website.¹⁷⁸
- Seek feedback from self-navigators on whether online materials are helpful.¹⁷⁹
- Continue the efforts of OSB staff to expand the information on the OSB's public website to include more topics under "Do It Yourself," even if this is just a cross-reference to Oregon Law Help or other resources.
- Continue the efforts of OSB staff to expand and update the OSB's web pages to include links to other sources (e.g., small-claims information is outdated and does not mention or link to the OJD's interactive forms).

¹⁷⁸ To date, the OJD offers interactive form packets for small claims, residential Forcible Entry and Detainer (FED) evictions, satisfaction of money awards, applying for or renewing a Family Abuse Prevention Act (FAPA) restraining order, dissolution, separation, unmarried parents, and parenting plans. The OJD's next iForms release will include an updated FAPA packet, followed by family-law modifications and temporary orders. Other forms are in the process of being evaluated for interactive form development, including some nonfamily-law forms.

¹⁷⁹ Because providing a comment section may encourage consumers to share the details of their legal problem, the best approach may be to include a one-question survey, merely asking "Is this page helpful?" as many websites do.

- Continue ongoing efforts to redesign local courts' web pages.
- Educate lawyers about the resources that are available for self-navigators. This could include regularly targeting bulleted and website information to new lawyers through the OSB's swearing-in packets or the OSB's New Lawyer Mentoring Program materials.
- Train lawyers on how to interact with self-represented individuals (the Multnomah County Bar Association recently presented a CLE program on this topic).
- Expand the visibility of help to self-navigators through the OSB's Lawyer Referral Service.
- Support the efforts of legal aid in making printed materials available in libraries, as well as through community partners and social-service agencies.
- Consider placing kiosks that can link to courthouses in rural areas where travel to the county courthouse poses a barrier to the access of justice.¹⁸⁰
- Expand the number of self-help classes available on various legal topics, either through court programs, legal aid, or other stakeholders.
- Provide a gap analysis to see what forms and resources should be developed.
- Catalog existing short do-it-yourself videos for self-navigators. Some are available through the various stakeholders' websites. Ask the OSB to evaluate whether members could volunteer to create additional videos where gaps exist.
- Consider developing visual materials and new technologies, such as online interactive tools about how to prepare for a court proceeding.¹⁸¹
- Review materials to confirm that they are easy to understand and aimed at an appropriate grade level in terms of reading ability (ideally at no higher than an 8th grade reading level).

180 Kiosks are used by some states as a way to connect individuals in rural areas to the court where travel distance to the courthouse is difficult. Arizona is one such example. See Alicia Davis, *et al.*, 2014-2018 Mohave County Courts, *Arizona Strategic Plan*, available at <http://www.mohavecourts.com/whatsnew/StrategicPlan.pdf>.

181 Examples of effective visual materials can be found in *Cases without Counsel*, *supra*, at note 163.

OSB FUTURES TASK FORCE

INNOVATIONS COMMITTEE | REPORT AND RECOMMENDATIONS

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Futures Task Force Innovations Committee Report and Recommendations

Introduction

The Innovations Committee took an innovative approach to its work, leading by embracing the discomfort of trying something new. As directed in its charge, the committee began by identifying and cataloguing the resources that currently exist for new lawyers and underserved low- and moderate-income Oregonians. Those resources have been summarized in Appendix A to this report.

Next the committee brainstormed a number of areas to address and voted on which areas to devote time and resources. Subcommittees emerged through self-forming teams, and those teams dove into the research and findings evident in each subsection of this report.

Throughout the process, the team operated using project management tools that, at least so far, are more common to the business world than to the legal world. First, from an accessibility standpoint, the team adopted teachings from Federal agency 18F regarding engaging remote teams. Although the majority of the team members were in the greater Portland area, we use a “remote-first” approach to discussions so that those from more diverse geographic regions did not have their experience diminished (relative to the rest of the team) due to their geography. This meant that nearly all meetings were conducted exclusively telephonically, with screen sharing over the internet as needed for demonstrations and communication.

The report itself was built in Sprints, a tool that comes from the Agile project management methodology known as Scrum. This method placed an early emphasis on “minimum viable product” for each report section, with subsections developing iteratively over the course of subsequent sprint periods. We also conducted periodic retrospectives (another Scrum technique) to ensure that team members were feeling comfortable with the methodology. To manage the sprints, we used the technology tool Trello, and the cards for each report subsection (including items considered but not acted upon) can be found at <https://trello.com/b/X7N86Kki>.

RECOMMENDATION NO. 4: Embrace Data-Driven Decision Making

In modern business—both in public and private enterprise, and in fields from healthcare to law enforcement to education—data-driven analysis is being used to drive substantial and measurable improvements in the delivery of products and services. According to a recent *Forbes* magazine article,¹ “the McKinsey Global Institute indicate that data driven organizations are 23 times more likely to acquire customers, six times as likely to retain those customers, and 19 times as likely to be profitable as a result.”²

¹ <http://www.forbes.com/sites/adigaskell/2016/10/28/becoming-a-data-driven-organization>

² <https://www.mckinseyonmarketingandsales.com/sites/default/files/pdf/Datamatics.pdf>. Note that the reported numbers show *exponential* improvement from organizations with a data-driven focus; those businesses aren’t a mere 23% more likely to acquire customers, they are 2300% better at it than their non-data-oriented counterparts.

While customer acquisition and retention isn't necessarily the primary focus of the Oregon State Bar (OSB), the improvement in results from data-driven approaches can be imputed more broadly.

And the sales analogy may actually be better than it first appears. To some extent, the Access to Justice and Access to Legal Services gaps can be thought of as a failure to attract "customers" (clients) to the products and services being offered by the members of the Bar (lawyers). This could be because those customers don't see our products and services as adequate to their needs, because they don't perceive those services as offering good value for the price point, because the cost of available offerings is out of their fiscal reach, or any number of other reasons. Without data to guide us, however, we are only guessing at answers.

In order to identify new initiatives that may assist lawyers and Oregonians with unmet legal needs, the working group examined the state of available data, select prior analysis and analysis from other jurisdictions, and tools and methodologies used by businesses and other professions. As a result of this analysis, we offer the following recommendations:

RECOMMENDATION 4.1: The OSB should adopt an official policy embracing Data-Driven Decision Making. 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 (BOG) 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,³ and establishing what the business world refers to as SMART goals⁴ around them.

Additionally, to the extent that it is not already consistently doing so, we recommend that the Bar establish a Data-Driven Decision Making (DDDM) framework for defining all new (and, where feasible, ongoing) initiatives with the following elements:

- A concise statement of how the initiative furthers the Mission of the Bar, under which Function(s) of the Bar is the initiative being enacted, and which Values of the Bar the initiative is meant to support.
- For each supported Value identified, a statement describing the specific ways in which the initiative will help the Bar further that value.
- For each goal of the initiative, a statement of the current-state situation with respect to that goal, including data sources and other evidence that support the need for the initiative. Where specific data sources are unavailable or unworkable,⁵ the statement should acknowledge the extent to which supporting evidence is anecdotal or circumstantial in nature.
- For each goal of the initiative, a further statement indicating the things that will be measured (whether by existing or new data sets)—and the cadence for measurement—to gauge whether that goal is being achieved.

³ Available at https://www.osbar.org/_docs/resources/OSBMissionStatement.pdf

⁴ Originally articulated by Doran, G. T. "There's a S.M.A.R.T. way to write management's goals and objectives." *Management Review*. AMA FORUM. 70 (11): 35–36 (1981). The elements of the SMART acronym can vary by organization, but we take them to mean Specific, Measurable, Actionable, Realistic, and Time-bound.

⁵ If, for example, accessing or analyzing the data would be prohibitively expensive.

- A plan for conducting periodic check-ins on progress towards the initiative’s goals, including but not limited to a formal after-action review⁶ to capture lessons learned and opportunities for improvement.

Finally, we recommend that the Board of Governors review the charters of each of the Bar’s committees and task forces to ensure that each group is responsible for and accountable to a measurable standard in pursuing its objectives. Each set of standards, respective to each committee, should be articulated in the context of the Bar’s Mission, Values, and Functions, and should provide for an existing or proposed data source for measuring progress towards the committees’ goals. Further, each committee should report on its progress towards its specific goals as part of its annual report to the Board of Governors.⁷

RECOMMENDATION 4.2: The OSB should adopt a formal set of Key Performance Indicators to monitor the state of its Values. Without measurement, the Bar’s values risk languishing as nice-to-express sentiments instead of concrete commitments. In determining the effectiveness of delivery of legal services to and meeting the legal needs of Oregonians, there are many resources currently available but they are often disaggregated and/or difficult to assess. The courts and legal aid collect information, as do the Bar’s lawyer referral services and the Professional Liability Fund (PLF).

By adopting a set of Key Performance Indicators (KPIs) that reflect the health of each of its Values over time, the Bar will be more responsive to the needs of Oregonians, and more agile in responding to those needs. Wherever feasible, the Bar should take care to identify and monitor leading (or predictive) as well as lagging indicators with respect to each of its Values. 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.

RECOMMENDATION 4.3: The OSB and the Oregon Judiciary should adopt an Open-Data Policy. Data acquisition is not a project but a principle. When considering the effectiveness of programs—whether existing or newly adopted—measurement depends upon the availability of adequate data. In addition to directed data collection or data analysis, ongoing data creation and acquisition should be a principle, done according to existing standards for data collection, and used as a tool empowering data-driven decisions.

At the same time, some of the most promising examples the working group identified of leverage-multipliers involved “civic hacking” events. These events are made possible through “open government” initiatives where data created or collected by civic entities is easily accessible, freely available, and formatted using a common and open paradigm.

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 note that models

⁶ Sometimes also referred to as a lessons learned session, a debrief, a postmortem, a postpartum, or a retrospective (among other terms).

⁷ https://www.osbar.org/_docs/leadership/committees/CommitteeAnnualReport.pdf

are available through the State of Oregon,⁸ the City of Portland,⁹ the U.S. Federal Government,¹⁰ and civic organizations like the Civic Commons project¹¹ and the Sunlight Foundation.¹² We recommend that the BOG convene a working group to propose a specific policy for the Bar, with an implementation target of January 2018.

RECOMMENDATION 4.4: The OSB should have 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. Though we offer no opinion whether such a role would rise to a “c-level” manager, we do believe that any such resource will need to have sufficient power to influence and enforce data-related mandates and general data principles as adopted by the Board of Governors.

RECOMMENDATION NO. 5: Expand the Lawyer Referral Service and Modest Means Programs

One of the OSB’s five strategic goals is to foster public understanding of and access to legal information, legal services, and the justice system. In service of this goal, the OSB has a Referral and Information Services Department (RIS), which offers several programs that help both the public and Oregon lawyers.

Primary among these programs is the Lawyer Referral Service (LRS), which has quietly become one of the Bar’s great successes of the past several years. Since the LRS changed to a percentage-based fee model in 2012, Oregon lawyers who utilize the program have earned over \$22M in fees and, in 2016, returned \$815,000 in revenues to the OSB. The program is now one of the top five largest referral services in the U.S., each year handling roughly 80,000 contacts from Oregonians in need of legal help and making nearly 50,000 referrals to the program’s independent lawyers.

The Modest Means Program (MMP) is a reduced-fee program assisting low- to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense. Problem Solvers is a pro bono program offering legal advice to youth ages 13-17. Lawyer-to-Lawyer connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The Military Assistance Panel (MAP) connects military personnel and their families in Oregon with pro bono legal assistance.

The RIS already has significant infrastructure in place. The programs utilize a robust technology system for handling and routing incoming requests (calls and emails), have a skilled team of 10 individuals who provide legal information and lawyer referrals to Oregonians in need of legal services, and a large repository of legal information and resources on the Bar’s public website¹³ that performs well from a

⁸ <https://data.oregon.gov/tps://data.oregon.gov/https://data.oregon.gov>

⁹ <http://www.portlandonline.com/shared/cfm/image.cfm?id=275696>; <https://www.portlandoregon.gov/28130>

¹⁰ <https://project-open-data.cio.gov>

¹¹ <http://wiki.civiccommons.org>

¹² <https://sunlightfoundation.com/opendataguidelines>

¹³ <http://www.osbar.org/public/legalinfo.html>

Search Engine Optimization (SEO) standpoint.¹⁴ Even with these successes, however, we believe that the RIS programs, especially the LRS, are substantially underutilized.

For one, although the information set on the website is vast, its design and usability is not consistent with modern standards and expectations. Although the program has plans to improve many areas of the site, information technology resources at the OSB are limited and currently stretched thin because of the bar's focus on implementing new (and much-needed) association management software.

What's more, although the program generates significant positive cash flow for the Bar, the majority of its revenues—nearly \$315,000 per year—are redirected to subsidize other Bar programs. While we recognize the importance of this income source in holding down license fees and supporting various Bar initiatives, we believe that the needs of Oregonians would be better served by reinvesting a larger percentage of LRS revenues back into RIS programs designed to further close the Access to Justice gap.

To that end, and in furtherance of the committee's charge, the committee makes the following recommendations:

RECOMMENDATION 5.1: The OSB should set a goal of increasing the number of inquiries to the LRS and MMS—and, by extension, the corresponding number of referrals to Oregon lawyers—by 11% per year for the next 4 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% per annum growth target, we recommend that the BOG request a proposal from the program's managers taking into account:

- a. An appropriate amount with which to increase the marketing and brand awareness of the LRS and MMS to Oregonians in need of legal help through appropriate and cost-effective channels;
- b. An appropriate amount for improving the usability and design of program materials, including its websites. This amount should include, if necessary, the hiring of outside resources to expedite such efforts in order to meet the growth target;
- c. An appropriate amount for human resources, including staff compensation, expansion, training, benefits, and other expenditures necessary to ensure that the teams can adequately support the increased target volume;
- d. An appropriate amount for marketing-to and recruiting-of additional lawyers to provide services through the LRS and MMS; and
- e. Any other amounts deemed necessary to meet the growth target.

If successful, this 11% per annum increase¹⁵ would result in the program handling at least 120,000 inquiries by 2021 (a 50% improvement over current figures). Corresponding revenues generated by the program should grow to over \$1.2M in the same time frame. Of course specific return on investment for these efforts will depend on the costs of expanding the system; however, given the revenue-positive nature of the LRS program and the demonstrated need exemplified by

¹⁴ The OSB has a multi-purpose site and had 2.67 million unique visitors last year, and the public-pages of the site were viewed 1.4 million times.

¹⁵ N.B. The LRS had an 11% increase in referrals volume from 2014 to 2015 on a 3.5% increase in call volume. Referrals increased just 2.8% on a call volume increase of 1.7% from 2015–16.

Access to Justice gap data, we anticipate that these efforts will have a net positive impact on the Bar's finances.

RECOMMENDATION 5.2: Explore and develop a blueprint for a "Nonfamily Law Facilitation Office," which can become a certified OSB pro bono program housed within the circuit courts of Oregon.

- a. Provide live web streaming instructional clinics by and through participating lawyers in different areas of the law that can be viewed in the Facilitation office and by others in remote rural areas over the internet.

RECOMMENDATION NO. 6: Enhance Practice Management Resources

Oregon State Bar membership records show that approximately ____ of lawyers in Oregon are solo practitioners. Those who do so without legal support or assistance face significant challenges.

The OSB Professional Liability Fund has a robust on-line library of publications, forms, checklists, sample letters and other practice aids, all available at no additional cost to Oregon lawyers. In addition, the PLF employs four practice management advisors who are available to conduct group trainings, as well as provide one-on-one confidential assistance with office systems and management. In addition, the OSB Solo and Small Firm Section conducts an annual two-day continuing legal education program that focuses primarily on law practice management improvement.

These resources are invaluable to Oregon's solo practitioners. In order to help lawyers adapt to the changes in the practice of law, it is our recommendation that these resources be enhanced as follows:

RECOMMENDATION 6.1: The OSB should develop a comprehensive training curriculum to encourage and enable Oregon lawyers to adopt modern law-practice management methods, including (but not limited to) automation, outsourcing, and project management.

Lawyers who practice without legal-support staff have to wear multiple hats. They are their own office manager, project manager, bookkeeper, administrative assistant, receptionist, and paralegal. These lawyers end up performing many tasks that are mundane, repetitive and time-consuming. Automation, outsourcing, and project management can help attorneys successfully practice law, particularly with the aid of technology.

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:

a) Automation

Automation is using technology to reduce the amount of time and effort it manually takes to perform a task. Many tasks that lawyers perform can be done more quickly and accurately with the use of software, add-ons or existing computer programs. Even the use of checklists, procedures, and rules can streamline time-consuming projects.

Automation helps lawyers:

- *Increase efficiency.* Attorneys perform many tasks that are not billable. These tasks involve performing the same steps or processes repeatedly. By automating certain tasks and processes, attorneys will free up their time to do billable work.
- *Stay competitive.* The high costs of traditional legal services are prohibitive to many clients. Online legal service providers like LegalZoom appeal to clients because they offer an affordable fee structure and an alternative way to deliver legal services. To be competitive, lawyers need to reduce their rates while increasing the value of the services they provide. Automation allows the lawyer to reduce overheads and expenses, which will make reduced prices more attainable. Costs will logically go down when lawyers don't need to spend a lot of time doing work that can be automated.
- *Provide better client services.* When lawyers streamline their tasks and processes through automation, they can focus their time and efforts on what they do best: providing personalized legal advice to clients. Spending time to connect with clients and understand their legal issues will result in better client services.

Automation assists lawyers with those tasks they perform repeatedly. For example, of all the tasks that lawyers have to do, writing is a task that lawyers perform the most. Writing can be automated in many ways, including by the use of:

- Document automation software like TheFormTool, Pathagoras or HotDocs to create new documents based on information that lawyers entered only once.
- Text automation to create abbreviations for commonly used words, phrases or boilerplate languages to simplify the writing process. Examples of text automation software include Breevy, PhraseExpress or TextExpander (for Mac).
- Speech recognition software like Dragon NaturallySpeaking to automatically transcribe recorded speech into text to create memos, emails, letters, and take notes. Microsoft and Apple have built-in speech recognition software in their computers, tablets, and smartphones. This allows lawyers to compose text messages or emails with their voice instead of typing.

Further, larger tasks that involve multiple steps like client intake, tracking time and billing, can be streamlined using a practice management software.

b) Legal Outsourcing

Legal outsourcing is the use of legal support services from a third party outside of the law firm. The rise of new technologies, combined with the client's expectations for lawyers to provide quality services faster and cost efficiently, has forced lawyers to consider outsourcing legal work to other lawyers and nonlawyers. Outsourcing of legal work can come in a variety of ways: 1) Hiring companies to perform managerial tasks, such as bookkeeping and billing; 2) Hiring companies to do small project such as printing, copying, scanning records; 3) Hiring contract attorneys outside of the firm; 4) Hiring Legal Process Outsourcing (LPO) companies, including some that are offshore.

Legal outsourcing helps lawyers:

- *Level the Playing Field.* Helps level the playing field by putting together a team of lawyers and nonlawyers with different skill sets on a per-project basis without incurring the overhead. Once the project ends, the small firm disbands the team and incurs no additional labor costs.

- *Promote Growth.* Allows the attorneys to gain time to grow the practice and manage higher case load. Often, small firms and especially solo practitioners are constantly overwhelmed by the demands of handling substantive, administrative and business aspects of their practices. By outsourcing, the attorney may make time to engage in activities that will help the practice grow and make it sustainable.
- *Improve Profitability* - Can improve return on investment, eliminate worries about absenteeism and productivity, reduce training and administrative burdens, and shift responsibility for employment taxes, insurance premiums and the like to outside providers.
- *Improve Efficiency.* Helps meet client's expectation for faster, cheaper and more effective representation. Outsourcing work that another person or company can do more efficiently and effectively than the firm's personnel offers a way to reduce costs and increase value to the clients. The firm may not necessarily charge the out-of-pocket cost but could charge the rate agreed upon with the client in the retainer agreement. This arrangement potentially creates a win-win situation since the attorney may profit from the outsourced work while the client may be benefiting from better services at a lower cost. The attorney will be paying less than the cost of employing an associate.
- *Provide Mentoring Opportunities* - Helps solo practitioners or new attorneys do work for experienced attorneys, who will oversee the new attorneys' work.

Some of the work that law firms and lawyers do that can benefit from outsourcing include:

- Mailroom and copy
- Reception and hospitality
- Document processing
- Records management
- Collection process
- IT
- Marketing including web development
- Business intelligence and research
- Billing process
- Human Resources
- Data security
- Secretarial Services
- Finance, accounting and data entry
- Legal research
- Draft of pleadings
- Document review

There is a growing trend in the legal market to outsource legal work, and this trend is expected to continue to grow at a fast pace. Encouraging and educating lawyers on legal outsourcing will help lawyers remain competitive in the evolving legal market.

c) Project Management

Along with automation and outsourcing, project management can help lawyers provide legal

services in a productive and cost-effective manner. Project management is a way to plan, organize, and manage multiple tasks to achieve a specific outcome. Whether lawyers are solos or partners or associates in a firm, they all contend with competing demands and deadlines. Knowing how to manage small tasks or big projects is essential to delivering services within the timing and budgetary constraints imposed by clients and others. Project management provides a structure in which to perform legal work.

The work that lawyers perform is considered a “project” that has a finite beginning and end. Project management involves planning, executing, monitoring and controlling the various components of the project. It allows lawyers to break a project down into tasks and subtasks that can be assigned and tracked. Technology is critical to project management. Instead of emailing status reports and documents back and forth, a project management software can serve as a platform for all communication and collaboration. Applications like Asana, Basecamp, Mavenlink, Trello, SmartSheet, and Podio, can be used to share information and to create checklists, flowcharts, timelines, or dashboards that show the individual steps to be done, who is doing them, and their status.

When lawyers streamline their practice by properly managing projects with an effective system, they do not waste time deciding on the next step or otherwise reinventing the wheel. The result is greater efficiency and predictability in handling projects from start to finish. Lawyers also benefit from improved workflow that will help them deliver legal services in a consistent manner. Using project management software to collaborate with others and to track the progress of a project increases efficiency by keeping everyone on the same page. The improved teamwork and communication lead to enhanced relationship and trust on all sides. Another benefit of project management is the reduced costs for clients when projects are effectively planned out and implemented.

Areas that can benefit from project management include:

- *Litigation.* Matters in litigation typically go through multiple phases that are ripe for project management intervention. Project management tools can be used to manage the lifecycle of a case so lawyers can better control each phase of the litigation, adhere to budgets, and meet deadlines.
- *Transactional practice.* Like litigation, transactional work goes through a common lifecycle. While each transactional matter may be unique, the process of handling different matters may not be. This process can be standardized using project management to increase efficiency and reduce costs.
- *In-house practice.* Practice management tools can provide general counsels a framework to structure work within their legal department and with outside counsels to achieve the right outcome for their clients while still holding everyone accountable to timelines and budget constraints.

In addition, non-legal volunteer work that lawyers perform, such as work on bar associations or committees, may be planned, organized, implemented, and monitored with project management tools.

We recommend that the above training curriculum be developed during the remainder of 2017 with a target of first presenting the materials in the first quarter of 2018. Special care should be taken to ensure that the training be affordable to all Oregon lawyers, and that it be easily accessible to lawyers throughout the state.

RECOMMENDATION NO. 7: Reduce Barriers to Accessibility

The accessibility subcommittee focused on innovations that have the potential to reduce barriers to access legal services. Initially a separate subcommittee was formed to study access to legal services in rural communities. Because of the overlap of the work of that subcommittee and the accessibility subcommittee, the two subcommittees were combined.

The subcommittee makes recommendations in the following areas: (1) unbundling legal services, (2) use of technology, (3) rural access, and (4) perception of lawyers.

RECOMMENDATION 7.1: The OSB should promote the provision of limited-scope representation, also known as unbundled legal services.¹⁶

We recommend that the Bar set a target of increasing the number of lawyers providing limited-scope representation (also known as unbundled legal services) in Oregon by 10% per year over the next four years.¹⁷ We believe that such a goal will result in improved access to justice for Oregonians. Specifically, the Bar should encourage more Oregon lawyers to provide unbundled legal services, by:

- Educating lawyers about the advantages of providing unbundled services.
- Providing materials on unbundled services to Oregon lawyers (OSB website, Bar Bulletin, and through local, 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.
- Developing and disseminating sample business plans for new lawyers, including information about how to incorporate and publicize unbundled services.
- Offering a CLE about how to develop and market unbundled legal services.
- Expanding the subject areas for unbundled services through the Lawyer Referral Service and making these services more prominent and visible to both consumers and lawyers. Increase the visibility of unbundled legal services on the LRS, the OSB website, and through other bar outreach.
- Recruiting more lawyers to provide unbundled legal services through the LRS, especially in areas that are underserved. This includes recruitment of lawyers for the Modest Means Program, particularly in those geographic areas that are underserved.
- Considering expansion of the Modest Means Program.
- Continuing to support the development of standardized electronic court forms, which help attorneys to provide cost-effective unbundled services.

Bar associations, courts, academicians, and others have conducted dozens of studies in recent

¹⁶ These recommendation echo the recommendations of the Self-Navigators' Subcommittee of the Futures Task Forces' Regulatory Committee and the Practice Management Resources committee above.

¹⁷ We are unaware of solid figures concerning the current number of Oregon Lawyers offering unbundled legal services, and, consistent with the Data Driven Decision Making recommendation above, we recommend that the Bar commission a survey to establish a data set to measure progress against.

years examining the reasons why individuals with legal problems go unrepresented. Those studies have found that cost is one of the most significant barriers, particularly for low- and moderate-income consumers. Other commonly cited factors include a desire to have a voice in the process (i.e., to tell their story to the court in their own words) and concern about how representation by an attorney will affect the ongoing relationship of the parties. Many litigants who cited the last two reasons also indicated, however, that they would have welcomed some competent legal advice or assistance to enable them to better represent themselves. Limited-scope legal assistance can increase access to justice for all of these litigants, by reducing the costs of legal assistance and by improving the quality of self-representation.

Oregon already permits lawyers to provide limited-scope representation, or unbundled legal services, and has taken steps to clarify that unbundled legal services are permitted. Oregon Rule of Professional Conduct 1.2(b) provides that a lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A Uniform Trial Court Rule, UTCR 8.110, which became effective in August 2016, sets out certain notice and service requirements that apply if unbundled legal services are used in family law cases. The UTCR Committee recently approved applying those same requirements to all civil cases, tentatively effective August 2017 (new UTCR 5.170, currently pending final adoption by the Chief Justice).

The Bar could also enhance two programs that it currently operates that are consistent with unbundled practices. The OSB Lawyer Referral Service (LRS) is a nonprofit program that provides referrals statewide in every major area of the law. Panelists agree to provide LRS referred clients with an initial half-hour consultation for no more than \$35. Panelists and clients may also agree to additional consultation or representation at agreed-upon rates. The LRS Modest Means Program is a referral panel for moderate-income Oregonians in which participants provide a \$35 half-hour consultation and also agree to provide any ongoing representation for a reduced fee. The Modest Means Program is only available for family law, criminal defense, foreclosure, and landlord-tenant matters at the trial court level (appeals are not covered by the program) and does not have participants in all geographic areas in Oregon. It is popular with consumers but only 3,000 clients are placed each year due to limitations on the number of lawyers willing to take reduced fee cases and the strict eligibility requirements for the program.

RECOMMENDATION 7.2: The OSB should more actively promote the use of technology as a way to increase access to justice in lower income and rural communities.

The Bar should more actively promote the use of technology as a way to increase access to justice in lower income and rural communities. Specifically, it should consider the following initiatives:

- Providing opportunities for attorneys in private practice to learn about existing and new technology to reduce costs, such as delivering legal services by streamlining their law practice through automation, document assembly, virtual office, video conferencing, client portals, and other technological innovations.
- Encouraging the courts to continue providing online interactive resources, including interactive forms and document-assembly tools to assist clients in compiling and completing forms.
- Providing an instant chat program built into the Bar's and courts' websites to assist visitors find what they need. Visitors to the websites can click a "LiveChat" or "LiveHelp" to open a chat

application to ask a trained specialist questions about where to find resources. The staff person would provide relevant links or instructions during business hours. If clients ask a legal question, the staff person would refer them to the OSB Lawyer Referral Service and provide other resources.

- Encouraging the courts to provide opportunities to conduct court proceedings through video conferencing in civil procedural cases or hearings that involve few witnesses and documents. The use of videoconferencing can reduce the costs and burdens for parties and witnesses who have difficulties personally appearing in court due to geographic distance, lack of transportation, employment needs, childcare issues, and other challenges. Videoconference allows the parties to have full view of the courtroom and feel they are still a part of the process.

Technology has done a lot for the legal profession. It has simplified word processing, legal research, and other time-consuming tasks. It has provided lawyers with software to automate their law practice such as client intake, document assembly, and time and billing. Now lawyers have cloud computing and data analytics. But technology can do more than make the practice of law easier and more profitable for lawyers. It can help increase access to justice to low- and moderate-income communities. Technological innovation in other industries has reduced the cost of products and services and made them more accessible to a broader range of customers and clients.

Evolving technologies in the legal profession include electronic filing of court documents; expanded use of electronic forms, including TurboTax-like form-preparation software; use of Skype and videoconferencing; secure online platforms for the exchange of documents; document- and knowledge-management software; project-management software; and practice-specific software for litigation, bankruptcy, family law and other practices. These and other technological innovations have the potential to reduce the costs of legal services and expand access to legal services for Oregonians of limited means. The Bar has already undertaken initiatives to promote technological innovation, through its involvement in eCourt, electronic forms development, CLEs on technology, and other efforts. The Bar's efforts should be expanded to encourage the use of technology to make online resources more useful and easier for clients to locate, give clients alternative ways to participate in the legal process, and help lawyers reduce the costs of delivering legal services.

RECOMMENDATION 7.3: Make legal services more accessible in rural areas.

The Bar should more actively adopt and promote efforts to make legal services more accessible in rural areas, by:

- Cutting down on geographic barriers. The Bar should take a closer look at utilizing technology to reduce the barriers of travel costs and missed work for litigants.
- Pooling urban resources and leveraging technology to bring urban attorneys to remote areas by video conference.
- Working with local libraries in rural areas to create hubs for hosting videoconferencing, printing court documents, or filing court documents.
- Hosting a summit or roundtable with local bar associations and leaders in rural communities to discuss barriers that are germane to rural communities, as well as to hear what is working and what is not. The Bar should consider hosting two summits/roundtables—one somewhere east of the Cascades and one on the coast.

- Consider developing a Rural Lawyer Section of the Bar or a rural-lawyer listserv for the exchange of ideas.
- Taking a closer look at how pro bono programs are currently utilizing technology to access rural areas (e.g., the Miller Nash pro bono program).

The American Bar Association noted that of the 500 poorest counties in the country, 459 are rural.¹⁸ Access to legal services is not the only problem facing rural communities, but it certainly is one of them. Because of the differences between rural and urban communities, when addressing access-to-justice-issues, the Bar should specifically include a separate focus on rural needs and implement programs specific to the problems facing rural communities.

Rural access issues include geography, a shortage of lawyers in rural areas, conflict issues for lawyers practicing in sparsely populated areas, economic means to hire a lawyer, and failure of individuals to identify that they have a legal issue.

In 2001 the Oregon Law Center acknowledged that rural communities of Oregon could benefit from pro bono legal-services delivery models that are region specific.¹⁹ Many rural communities are independently addressing access-to-justice issues either proactively or reactively (for the former, see for example, Deschutes County, which recently formed an Access to Justice Committee that is focused on increasing the public's access to attorneys, documents, and information through the use of local libraries). The time is ripe to revisit these issues with a larger summit or roundtable for local bar associations and local leaders in rural communities to share ideas.

Likewise, we are coming into a time when use of technology is starting to bring down some of the geographic barriers that constrain access to justice. Technology can assist in both reducing the need to physically come to the court as well as put individuals in rural communities in touch with attorneys outside their current geographic area. Pooling urban resources and leveraging technology to bring urban attorneys to remote areas by videoconference should be explored further.

RECOMMENDATION 7.4: 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. The Bar should promote efforts to improve the public perception of lawyers, by specifically considering the following:

- Increasing public outreach. For example, a public outreach program could be put together in conjunction with expanding marketing efforts tailored to reach individuals utilizing the lawyer referral service and modest means.
- A campaign for attorneys to “support access to justice for all Oregonians” can be statewide and have positive ramifications on attorney perception, well beyond assisting individuals who are facing issues with access.
- Considering a CLE on reframing the ways in which attorneys present their message to the public. Encourage a movement from “pit-bull litigators” to “problem solvers.”

¹⁸ ABA Standing Committee on Pro Bono and Public Service and the Center for Pro Bono, *Rural Pro Bono Delivery: A Guide to Pro Bono Legal Services in Rural Areas*, 11 (Am Bar Ass'n 2003), available at http://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/aba_rural_book.pdf

¹⁹ *Id.* at 54.

- Increase media coverage of pro bono accomplishments and good work that is done by lawyers.
- Consider ways in which the Bar can have greater opportunities to interact with the public outside the attorney-client relationship.
- Consider new ways to honor and recognize attorneys who—through their actions and work—help shape a changing perception of attorneys in their community

Regardless of the reason, public perception is negative towards attorneys (and has been for quite some time). The Institute for the Advancement of the American Legal System recently found that one of the themes among public perception is that attorneys increase conflict and animosity between parties.²⁰ As such, some litigants specifically chose not to seek help from an attorney because they feel it is the best way to maintain or achieve an amicable relationship with the other party.²¹

Efforts should be made across the Bar to refocus the perception of the attorney's role in the community. Robust access-to-justice efforts by the Bar as a whole has secondary gains that have not been thoroughly explored, including changing the general public perception (not just those who are helped).

²⁰ Honoring Families Initiative, Cases Without Counsel: Our Recommendations After Listening to the Litigants, 30 (Institute for the Advancement of the American Legal System 2016).
http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_recommendations_report.pdf.

²¹ Ironically, attorneys who previously practiced out of state and subsequently move their practice to Oregon, often attest that the level of collegiality in Oregon far exceeds what they previously experienced. Indeed, as compared to other states, the Oregon bar is downright collegial and professional

RECOMMENDATION NO. 8:
Establish a Bar-sponsored Incubator/Accelerator Program

Over the past six months, the Incubator/Accelerator Program Subcommittee (“the subcommittee”) has been investigating the potential for the Oregon State Bar (OSB) to develop an incubator/accelerator program aimed at creating additional resources for underserved low- and moderate-income Oregonians and helping new lawyers to develop the skills they need to practice law for these clients. We began by cataloging the existing legal resources available in Oregon for low- and moderate-income Oregonians, including law school clinics and programs, various OSB resources, nonprofits, and other legal aid programs. We also researched existing incubator programs nationwide, taking note of different models, foundational needs, and lessons learned.

Based on our research, and our evaluation of the OSB’s existing resources for underserved lower- and moderate-income Oregonians and new lawyers, we recommend that the OSB establish a consortium-based incubator/accelerator program. To further that goal, we request that the Board of Governors dedicate staff and form a Program Development Committee to implement that program.

A summary of our investigation, and a detailed summary of potential next steps, follows.

I. Legal Needs of Modest Means Oregonians

Certain programs currently existing in Oregon give us a general understanding of the legal needs of low- and moderate-income Oregonians, and national programs likewise provide data from which we can infer the needs of modest means individuals in our region. Using data from the OSB’s Lawyer Referral Service, for example, we know that the number of Oregonians in need of assistance is significant—in 2016 alone, the Lawyer Referral Service and Modest Means programs received 74,393 phone calls and 4,676 emailed requests for assistance. Broken down by subject area, those calls most frequently sought legal assistance for issues of family law, landlord/tenant law, debtor/creditor law and general torts.

Both the American Bar Association (“ABA”) and the National Center for State Courts (“NCSC”) recently have published reports confirming the Oregon’s experience with its Lawyer Referral Service and Modest Means programs is not unique. In 2016, for instance, the ABA published its Report on the Future of Legal Services in the United States,¹ which concluded that unmet legal needs persist across the country, and often are more to satisfy for the moderate-income population (who not only face similar needs, but also do not qualify for legal aid services). Those needs often fall within what the ABA has termed “basic human needs” categories, including shelter (e.g., eviction proceedings), sustenance (denials of government payments/benefits), health (private insurance, Medicaid, or Medicare claims), and family/child custody. The ABA study further reports that “conservative estimates . . . suggest as many as half of American households are experiencing at least one significant civil justice situation at any given time,” and that over “four-fifths of the legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”

¹ American Bar Association, *Report on the Future of Legal Services in the United States* (2016), available at https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

The National Center for State Courts similarly described the “civil litigation landscape” in its recent report entitled *Call to Action: Achieving Justice for All—Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee*.²

Those reports also describe the related statistics regarding unemployed or underemployed lawyers—and particularly recent law school graduates—in and across America. As once reported by *The New York Times*, 43 percent of all 2013 law school graduates did not have full-time legal jobs nine months after graduation. The ABA’s Commission on the Future of Legal Services reported that that paradox continues to exist today.

II. Existing Resources in Oregon

We began our investigation by identifying and cataloguing the resources that currently exist for new lawyers and underserved low- and moderate income Oregonians. Those resources are summarized in **Appendix A** to this report.

III. Incubator Programs Generally

Over the past few years, many different law school and consortium-based incubator programs have been established across the country, all seeking to address the persisting 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 qualify for legal aid. As we conducted our investigation and researched those programs, we catalogued, reviewed, compared, and evaluated the various models those incubator programs have taken and the pros and cons of several of them.

The first incubator program was created in 2007 at the City University of New York, and the American Bar Association currently has identified a total of 60 incubator programs across the United States. In August 2016, the ABA published a *Comprehensive Survey of Lawyer Incubators*, which catalogued program characteristics, identified resources and services provided, and predicted the viability of these programs going forward. We address portions of the ABA report in the discussion that follows.

According to a report prepared locally by Don Friedman, Theresa Wright, and Lisa Kenn in June 2016, incubator programs traditionally have taken two forms:

Law-School-Based Legal Incubator. This type of incubator is wholly formed and supported by an ABA-accredited law school. The law school operates and funds the incubator, the incubator is not a separate financial or organizational entity, and it is managed by a member of the law school’s faculty. These incubators are often located at the law school or in space provided by the law school. About one-half of the incubator programs catalogued in the ABA’s Online Incubator Director operate under the auspices of an affiliated law school.

Collaborative/Consortium-Based Legal Incubator. This type of incubator is formed and supported by a collaboration or consortium of interested parties. These parties can be

² National Center for State Courts, *Call to Action: Achieving Justice for All—Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee* (2016), available at <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Report-Web.ashx>.

any combination of state or county bar associations, legal aid organizations, nonprofit startups, for-profit law firms, ABA accredited law schools, etc. They typically are separate financial entities, many with their own nonprofit status. They typically are managed by a limited staff, often including an executive director, pro bono coordinator, and support personnel. The State Bar of Georgia, for example, in collaboration with Georgia's five ABA-accredited law schools, recently launched a highly comprehensive collaborative model legal incubator program called Lawyers for Equal Justice (LEJ).

A. Existing Models

A few examples of successful incubator programs are worth describing in fuller detail. The following examples include both free-standing incubator projects sponsored and operated by a handful of stakeholders, and incubator models operating solely under the auspices of a law school or bar association. These are just a few examples; a summary of existing incubator on a state-by-state basis can be found on the ABA's website.

Chicago-Kent Incubator Program

The Solo & Small Practice Incubator (SSPI) at the Illinois Institute of Technology's Chicago-Kent College of Law is a one-year program designed to offer a select group of entrepreneurial-minded recent IIT Chicago-Kent graduates with valuable experience and ongoing training to help build their professional careers as solo or small firm legal practitioners. The program is intended to accelerate the successful development of newly admitted lawyers in an incubator environment. SSPI encourages and supports its graduates by providing substantive and skills training workshops, coaching in marketing and business development, mentoring support, networking opportunities, and many other resources. Participants are also provided with a working space and basic office fixtures. SSPI participants spend 5 to 10 hours per week with their matched clinical faculty or alumni mentor in the mentor's solo or small practice firm. Time spent in the mentors' firms provide participants with additional experiential training and assists in further enhancing participants' professional careers. There is no fee to participate in the program.

In addition to the working base and office fixtures, the out-of-pocket costs to maintain and facilitate the program, because of its relatively lean structure, are minimal. Those costs generally are limited to occasional snacks, and workshops and trainings, and office supplies.

Justice Entrepreneurs Project (JEP), Chicago, IL

This is an 18-month incubator program for new lawyers (less than 5 years of practice) serving low- to moderate-income clients. The JEP solicits proposals from new attorneys who want to open their own law practices but lack the training and resources to do so. The new lawyers spend the first six months of their fellowship volunteering at legal aid as a way to gain experience in their practice area, while receiving training in areas such as accounting and business. Then, with the support of the program, they begin taking on their own, paying clients—the lower- and moderate-income clients who do not qualify for legal aid—using a fee-for-service arrangement that those clients can afford. The “incubator” provides office space and other resources, which are crucial for the young lawyers as they build their client bases and skills. The program is funded by community partners in law, technology, and business.

The JEP describes itself as a network of independent lawyers who are committed to making quality legal services accessible and affordable for regular people. Its target focus is on serving the legal needs of low- and moderate-income clients whose income is too high to qualify for legal aid but too low to afford

legal assistance in the traditional legal market. The JEP target market is generally defined as people earning between 150 and 400 percent of the federal poverty level.

Substantively, the JEP concentrates on areas of law in which the legal market does not provide sufficient access for low and moderate-income people, including family, housing, consumer, immigration, and criminal law.

The JEP uses innovative methods to make legal assistance more accessible and affordable for clients in the target market and to reach those clients, including:

1. Fixed fees and other alternatives to the billable hour to provide greater fairness, flexibility, transparency and certainty to clients;
2. Limited scope or unbundled representation, when appropriate, to provide clients with additional options for representation; and
3. Using technology to create efficiencies in practice that benefit the client and the practice of law.

One full-time staff member of the Chicago Bar Foundation serves as director of the JEP. An advisory board consists of members from all areas of the legal community, including private firms.

Legal Innovators for Tomorrow (LIFT), New Orleans, LA

LIFT is also an 18-month incubator program developed for new lawyers (again, with less than 5 years of practice) serving low- to moderate-income clients. The LIFT program operates under two models—an incubator, and an accelerator. Participants in the “accelerator” program receive a variety of benefits designed to “accelerate” the development of their legal practices, including legal and practice management training, free resources, mentoring, and networking. The Participants in the “incubator” program have access to subsidized office space at the New Orleans Family Justice Center and focus their practice on domestic violence law and the legal needs of domestic violence survivors. Incubator program participants also receive free resources, mentoring, networking, training, and case referrals.

LIFT attorneys typically maintain their own solo law practice separate and apart from the LIFT program. LIFT is a partnership between the New Orleans Family Justice Center, Southeast Louisiana Legal Services, the Justice & Accountability Center of Louisiana, the State Bar Association, and a handful of other private contributors.

Court Square Law Project, New York, NY

The Court Square Law Project is a collaboration between the NYC Bar Association and the City University of New York School of Law. The project exists to provide legal services to moderate-income clients and jobs to recent law school graduates. The program has been operational since February 2016.

The Court Square Law Project operates under the auspices of the bar association and the law school. Participants are considered part of a single law “firm,” and the firm is staffed by law school faculty and law school contract or administrative staff. The firm has two full-time attorneys, one program coordinator, and up to 20 fellows per year. Each fellow spends 1-2 years in the program.

The Court Square Law Project is funded by the law schools, the bar association, foundation support, grants, donations, and client fees. Their website reports that nine “Founding Sponsor” law firms each contributed \$100,000 in start-up funding for the project. Participants practice in many areas but

provide services only to moderate-income clients. Services are provided for flat fees where possible, and on an unbundled basis where possible.

B. Oregon Models

At least three legal incubator programs currently exist in Oregon.

The Commons Law Center (formerly, Catalyst Law Institute) is a new, nonprofit legal accelerator program that plans to provide services solely in the areas of estate planning, nonprofit formation, family law, and small business startup legal services. They provide sliding scale and fixed-fee services (depending on service type) to clients whose income falls between 125 and 400 percent of the federal poverty level.

The Commons Law Center expects to announce its first class of participants in its legal fellows program in the fall of 2017. The fellows program will consist of three full-time, salaried fellows who will focus on providing legal services as well as community engagement and education to fulfill the program's mission. That mission is to revolutionize access to and delivery of basic legal services, information, and support for underserved people, businesses, and nonprofits. Although the program is designed to be self-sustaining through legal fees generated for services, it is currently engaged in fundraising to support its start-up costs and initial expenses.

The accelerator is using business process methods like Agile and Lean Startup to define its initial service offerings. It is also implementing technology tools like modern Customer Relationship Management (CRM), automated document assembly, and helpdesk-style knowledge management software in an effort to improve the number of matters that a typical lawyer can handle with high-quality results. The program intends to share its findings and methods in a free and open-source manner to allow other lawyers and programs to build upon its successes and learn from its shortcomings.

LIT-Lab—Legal Innovation and Technology Lab. This is a group of lawyers, technologists, entrepreneurs, and concerned citizens who convene through Meetup.com several times a year to discuss innovative developments, technical or otherwise, in the legal industry. It is affiliated with the international Legal Hackers movement,³ a consortium of people engaged in “civic hacking”⁴ to improve access to justice, often through technology. Although the informal LIT-Lab group primarily is organized around information sharing and discussing new developments, its members frequently advocate solutions to legal programs in order to maximize the value of legal resources and level the playing field at a reasonable cost to all parties.

Legal Empowerment Accelerator Project. A Safe Place Family Justice Center is a public-private partnership that provides comprehensive services under one roof to survivors of domestic and sexual violence in Clackamas County. Currently, A Safe Place helps meet survivors' crucial need for legal services through partnerships with LASO and Victim Rights Law Center. Those agencies provide high-quality, survivor-centered services but meet only a fraction of the expressed need due to eligibility requirements, capacity, and demand. CWS seeks to expand essential legal assistance for survivors of domestic and sexual violence through the creation of the Legal Empowerment Accelerator Project

³ Legal Hackers, <https://legalhackers.org>.

⁴ The term “hacking” in this context has the positive connotation of “clever improvements,” as shown on mainstream sites like lifehacker.com.

(LEAP). This accelerator program would give new lawyers the opportunity to provide a determined amount of free and low cost (“low bono”) services to clients of A Safe Place during the course of a 12- to 18-month program. In exchange for their efforts, they would gain professional experience while working in a supportive legal environment.

LEAP participants will apply through their law schools, which will select cohort members in consultation with an advisory board. The project director, an attorney with experience in legal matters that survivors commonly face, will provide mentoring, support, and expertise to the participating lawyers, both in the substantive and procedural aspects of practice and in law office management. The program will provide office space and equipment to the participants in an office complex near A Safe Place. The participants will be responsible for paying bar dues and the required bar malpractice insurance through the OSB’s PLF.

Participating lawyers agree to provide a set number of hours of free and reduced-cost services each month to clients referred from A Safe Place. They will also be free to take other cases of any kind, with the exception of criminal defense. Although participating lawyers operate as solo practitioners, clients will be screened for conflicts of interest. The project director will be an employee of CWS, but the participating lawyers will practice as their own independent law firm.

III. Lessons Learned from Existing Incubators

In its August 2016 Comprehensive Study of Lawyer Incubators,⁵ the ABA reported that existing incubators faced the following as some of their biggest challenges:

- Serving clients on a very limited budget,
- Having more clients than resources,
- Reaching clients within the justice gap,
- Evaluation,
- Participation and competence, and
- Streamlining redundant processes.

When ranked from most challenging to least challenging, incubator programs reported that program sustainability was their biggest challenge. Incubator programs across the country operate on an average annual budget of \$50,000, with a range of budgets running from just under \$50,000 to over \$1,000,000.

The same programs identified the following as issues they would focus on in the future to more effectively implement their program components:

- Tools for evaluating and measuring success,
- Syllabi and course materials for JD law practice management curricula,
- Post-grad incubator/residency and non-profit program curricula,
- Group negotiations for free/discounted goods and services,

⁵ ABA Standing Committee on the Delivery of Legal Services, 2016 Comprehensive Survey of Lawyer Incubators (2016), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_comprehensive_survey_lawyer_incubators.authcheckdam.pdf.

- Eligibility to obtain tools/assistance from a consortium-organized best practices task force on effective uses of technology.

Although we certainly should be aware of these lessons learned as we move forward with an Oregon incubator project, our subcommittee also believes that the issues identified above can be avoided with the right incubator model, structure, and plan. We believe, for example, that involving and encouraging the participation (financially and substantively) of Oregon's for-profit private law firms could be important, because it could significantly decrease program costs and increase sustainability on a longer-term basis. We also believe that the program should develop, early on, mechanisms for evaluating and measuring success on a program-wide basis; business models incorporating various fixed or sliding-scale fee structures; and curricula to help facilitate participant transition from incubator to practice, among other content, to help increase both short- and long-term program success.

V. Oregon Incubator/Accelerator Recommendation

As noted above, **Appendix A** of this report summarizes the resources currently available in Oregon for new lawyers seeking to develop their legal practices, as well as resources available to moderate-income clients seeking legal services in various substantive areas. Based on our review of the scope of those programs, we have concluded that Oregon does not have sufficient legal resources available to low- and moderate-income Oregonians. Moreover, although Oregon has some programming available for new lawyers, and that programming provides some opportunities for new lawyers develop their skills through pro bono representation, there are few, if any, income-generating opportunities for new lawyers to do so.

We therefore recommend that the OSB create an incubator/ accelerator program that will serve Oregon's lower- and moderate-income population—specifically, those individuals whose income falls between 150 and 400 percent of the federal poverty level. The program will serve both to provide necessary legal services and to create income-generating practice opportunities for unemployed or underemployed new lawyers. It will also operate as a center for innovation dedicated to identifying, creating, and testing innovative methods for the delivery of legal services, which will then be made available on an open-source platform to the OSB membership.

We recommend that Oregon's incubator have the essential components described below:

1. **Staff:** We anticipate that, during the startup and operations phases, the incubator will require one or two full-time staff members who are dedicated to this effort. Those staff members may, but need not, have their offices at the Oregon State Bar.
2. **Consortium-Based:** We believe that a consortium-based legal incubator would best address and/or avoid some of the sustainability challenges that many other incubator programs have faced. A consortium-based program would depend heavily on the participation and resources of various stakeholders. Those stakeholders include the OSB, law schools, existing nonprofit and legal aid organizations, and Oregon's for-profit private law firms:

The OSB's membership in this consortium is central. It will spearhead the formation of the Program Development Committee (discussed more below) and its dedicated staff members would create and operate the incubator and accelerator programs on a long-term basis. We also recommend that is, as noted below, whether it could provide no-cost or reduced-cost

PLF coverage or CLE credit to incubator participants. Finally, as discussed also below, members of the OSB's Solo & Small Firm Practice Section might be valuable members of the Program Development Committee and could provide input on the incubator curriculum, mentorship to participants, and feedback on the viability of potential accelerator projects.

The **University of Oregon School of Law** has already demonstrated its willingness to and interest in participating as a member of the consortium. We recommend that the OSB reach out to **Lewis & Clark Law School** and **Willamette University School of Law** as soon as is practicable and inquire whether those schools are also interested in membership. As members of the consortium, the law schools could provide alumni or staff mentors, participant training, office space, or academic support for the incubator curriculum.

Private, for-profit law firms across the state would also play an important role. They will provide the financial resources to ensure that the incubator program can continue through the years. They can also host program participants, which would include providing office space, other administrative resources, mentoring, and training to the incubator participants.

We expect that participation from each of the stakeholders identified above will provide the resources necessary to allow Oregon's incubator/accelerator to operate in a sustainable way, without requiring significant outside fundraising that might otherwise divert funding from existing legal aid programs.

3. **Incubator Component:** The incubator component of this program will allow new lawyers take on roles providing direct legal services to lower- and moderate-income clients. Participants in the program would be based in law firms or in other dedicated office space, ideally in an environment in which other practicing lawyers are available for day-to-day mentoring and engagement. Each incubator participant would develop his or her practice using the program resources and, if at a law firm or other "host" organization, in partnership with the host. The participant's practice would focus on the delivery of services that fulfill unmet legal needs of moderate-income clients. Program hosts may be located across the State. At least one incubator participant should practice in a rural area.
4. **Accelerator Component:** Staff members dedicated to operating the incubator program will also manage the accelerator program, which will operate together with and alongside the incubator program and will focus on identifying, developing, testing, and disseminating creative and innovative strategies and ideas for the delivery of legal services to underserved and moderate-income populations. (A few strategies and ideas currently being explored in Oregon and around the country, for example, include using new technologies to make legal information more accessible or affordable, using mediation and other non-adversarial approaches to problem solving, creative fee-for-service arrangements, "unbundling" legal services, legal process outsourcing, and development of mobile applications.) The accelerator component will also learn about and strategizing with new technologies in a way that furthers the delivery of legal services to moderate-income populations, and, to that end, might coordinate with existing programs—such as LIT Lab—to identify potential projects. We recommend that the accelerator also network and collaborate with other disciplines and industries—law, business, and technology—to share ideas and identify potential solutions.

Note that the accelerator component of this proposal is designed to serve not only the members of the incubator program, but also the OSB's general membership. Its goal will be to use the incubator participants to develop and test ideas and strategies before they are disseminated more broadly. Once they have been tested, those ideas and strategies should be packaged so that they may easily be translated to members of the bar in other practice models and subject areas. The OSB staff members tasked with managing the accelerator program will work with program participants and practicing OSB members to facilitate the best method for dissemination. Those methods might include, among others, an annual report or open-source web platform. Note further that the law schools may have some interest in participating in or helping to develop potential accelerator projects and should be involved in the design of this program component.

5. **Mentoring and professional skills development:** The incubator/accelerator program should use the OSB's existing resources and membership to develop a mentoring program for incubator participants. The mentoring program should focus on developing substantive legal skills, writing skills, networking skills, and professional and business development skills. The mentoring program will last throughout the participant's tenure with the incubator. The OSB should also consider providing opportunities through existing OSB-sponsored networking events and collaborating with other bar associations to provide reduced-cost access to networking events hosted by those associations.
6. **CLE and PLF:** The OSB should consider options to provide program participants with no-cost or reduced-cost CLE and PLF coverage.

V. Recommended Next Steps

The OSB should take the following next steps moving forward.

1. **Dedicate Existing Staff Resources:** We recommend that the BOG and OSB consider a limited staffing commitment of one FTE as project manager for the incubator/accelerator program. That one FTE might be available from existing OSB staff. As the program develops, the OSB should coordinate with the law schools to determine and satisfy additional staffing needs and should consider whether more funding should be dedicated to the incubator/accelerator programs.
2. **Form a Program Development Committee:** We also recommend that the BOG establish a Program Development Committee ("Committee") dedicated to implementing the incubator/accelerator program. One Program Development Committee member should be the full-time OSB staff member referred to above. The law schools should also be represented on the Committee. Others Program Development Committee members should be leaders from the law, business, and technology communities. The Committee should reflect diverse perspectives and include representatives of the other various stakeholder organizations, including nonprofits, private law firms, and LASO.
3. **Formulate the Incubator/Accelerator Program Details.** OSB staff, together with the Planning Development Committee, should take, among other things, the following additional steps toward developing an operating incubator/accelerator program.

- Coordinate with stakeholders. As soon as is practicable, the Committee should convene a meeting of program stakeholders and facilitate their involvement in the planning process going forward.
- Create a business plan. Using business plans from other incubator programs as a guide, coupled with resources from business or technology incubator programs, the Committee should develop a plan for startup and continuing financing of the proposed program. Sources of funding might include community stakeholders (including legal, business, and technology companies), vendors, grant programs, and client fees. The steering committee should create an ongoing business plan, including financing assumptions, projected surplus or deficit, break-even analysis, projected cash flow and balance sheets, etc.
- 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 at the outset 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 will overlap with the identification of program hosts, as many hosts (particularly law firms) should include, as part of their commitment, office space for their respective participant.
- Program application process. The Committee should develop an application process for the participant/fellows program, which will include drafting job descriptions, establishing an application and review process, and developing a plan to advertise the program applications.
- Develop 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, extra-program use of accelerator innovations, etc.

4. Follow Up: The Planning Development Committee should move forward according to the following timeline:

Fall 2017: Program is finalized, curriculum determined, law schools involved and prepared to offer the program to students.

Spring 2018: Incubator participant applications go out and selection process begins.

Fall 2018: Incubator program starts.

Appendix A

Existing Resources for New Lawyers

Oregon State Bar (OSB) Resources

The OSB has a number of programs and resources for new lawyers to help them with their law practices.

New Lawyer Mentor Program (NLMP). Established in 2011, the program recruits experienced lawyers to mentor lawyers in their first year of practice through the completion of an individualized curriculum. The curriculum covers public service and bar service, professionalism, ethics, law office management, working with clients, career satisfaction and work/life balance, and practice area activities.

<http://www.osbar.org/nlmp>.

Oregon New Lawyers Division (ONLD). This division of the OSB offers a variety of programs to assist new lawyers with the transition from law student to lawyer. Every OSB member age 36 or younger or has practiced for six years or less (which totals 25 percent of the bar) automatically is made a member of the ONLD. The ONLD sponsors free and low-cost CLEs and networking events; encourages new lawyers to engage in pro bono, public service, and bar activities; and sponsors the PSPS internship program.

<http://www.osbar.org/onld>.

Practical Skills in Public Service (PSPS). An ONLD initiative, the PSPS program was created in 2011 in response to the challenging economy and its effects on the legal community. The program matches unemployed and underemployed lawyers with participating nonprofit and government organizations with the goal of helping new lawyers gain practical skills.

<http://www.osbar.org/onld/practicalskills.html>.

Diversity & Inclusion (D&I) Program. This OSB program offers fellowships, grants, scholarships, and stipends for law students and new lawyers who advance the mission of the D&I Office.

<http://www.osbar.org/diversity>.

Ethics Hotline. OSB General Counsel's Office offers guidance to all lawyers regarding their ethical obligations. <http://www.osbar.org/ethics/>.

Lawyer-to-Lawyer Program. This program will provide any Oregon lawyer the names and phone numbers of three "Resource Lawyers" who are willing to answer practice-related questions over the phone. <https://www.osbar.org/docs/forms/ltol.pdf>.

General Section Memberships. Each OSB section offers list serves, which are commonly used by new lawyers seeking advice from experienced practitioners. <http://www.osbar.org/sections>.

Bar Program Discounts for New Lawyers. The OSB offers the program discounts for new lawyers, including discounts on membership fees, CLE fees, lawyer referral service participation fee, and section membership fees.

OSB Professional Liability Fund (PLF) Resources

The PLF offers a range of free and confidential services to all lawyers, many of which directly benefit new lawyers in establishing and managing their law practices. <https://www.osbplf.org/>.

Practice Management Advisors. One-on-one help with establishing a law practice, office management, client relations, financial management, office systems, time management, technology and closing a law practice.

Free CLE seminars. Extensive library of CLEs focused on practice management and malpractice avoidance; annual three-day, 20-credit “Learning the Ropes” offered at minimal cost for live attendance, no cost for DVD/audio products.

Practice Aids. Over 400 practice aids including checklists, forms and templates covering both substantive areas and practice management.

Software Discounts. Discounts on software for practice management, conflict checks, editing, business productivity, and client management.

Publications. Lawyers have free access to a *Guide to Setting Up & Running Your Law Office*, *Guide to Setting up & Using your Trust Account*, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, *Oregon Statutory Time Limitation Handbook*, *In Brief* quarterly newsletter, *InPractice* blog, and other resources.

Conference Room. Free use of a downtown Portland conference room and a list of free or low cost conference rooms around the state.

University of Oregon School of Law Resources

The University of Oregon School of Law offers a number of clinic and externship programs to law students. <https://law.uoregon.edu/explore/clinics/>; <https://law.uoregon.edu/explore/externships-home>.

Business Law Clinic. In the Business Law Clinic, which is housed at the law school, students have the opportunity to assist in representing business clients in a simulated law firm environment. Through intensive training under direct supervision, the clinic teaches students the skills necessary to practice transactional law. In the course of a semester, each clinic student assists in representing two businesses. Clinic students are responsible for all aspects of the representation from the initial meeting with the client to the final meeting in which the students present and explain the legal work performed. Types of legal work performed at the clinic include business entity formation, review and drafting of contracts for the sale of services or products, and advice on laws affecting various types of businesses.

Civil Practice and Advanced Civil Practice Clinics. Students represent low-income clients through Lane County Legal Aid and often appear in court or contested case hearings, advocating for clients in social security, welfare, food stamp, public housing, or unemployment benefits matters.

Criminal Defense Clinic. Student defenders conduct client and witness interviews, investigations, and plea negotiations and help defend clients in a range of misdemeanor prosecutions. Practical and hands-on, this clinic prepares students for the realities of criminal defense work.

Criminal Prosecution Clinic and Advanced Criminal Prosecution Clinic. The Criminal Prosecution Clinic, which is housed at the Lane County District Attorney’s Office, offers students the opportunity to prepare and try minor criminal cases under the supervision of an attorney and to assist senior prosecutors on

felony cases.

Domestic Violence and Advanced Domestic Violence Clinics. Students get hands-on experience representing victims of domestic violence and stalking in contested protective order hearings. From office intake to court appearances, the clinics prepare students to be effective client advocates.

Environmental Law Clinics. Students participate in creative and successful litigation on behalf of conservation groups, individuals, and local governments who seek to preserve and restore natural resources in the West. Students learn how to work up cases, prepare expert witnesses, write persuasive motions and memoranda, and appear at oral argument.

Nonprofit Clinic. Interdisciplinary teams of graduate students in Law, Public Policy, and Conflict Resolution assess the organizational health of selected nonprofit organizations (NPOs) in the areas of management, governance, conflict resolution, and legal compliance. The clinic provides detailed recommendations for improving governance, reviews NPO's legal instruments, and advises on actions needed to assure compliance.

Child Advocacy Externships. Give students experience during the summer for Oregon juvenile court judges and practitioners. Those who work with judges do research, prepare for, and observe all types of hearings in juvenile delinquency and dependency cases, and work on a major law reform project under the judge's direction. Students placed with practitioners are involved in all areas of the attorneys' practices.

Domestic Violence Externship. Students work at the Klamath Falls LASO (Legal Aid Services of Oregon) office where they represent domestic violence survivors in a range of matters, including FAPA orders, stalking orders, family law, housing, and employment issues. The externship exposes students to the challenges faced by low-income, rural victims of violence, and provides students valuable in-court experience.

Lewis & Clark Law School Resources

Lewis & Clark Law School offers a number of clinic and externship programs to law students. <https://law.lclark.edu/clinics/>; http://law.lclark.edu/offices/career_services/externships/.

Animal Law Clinic. Students in the Animal Law Clinic conduct research, represent clients, work on clinic projects, and work with attorneys outside the clinic to develop the field of animal law and encourage consideration of the interests of animals in legal decision making. Their work includes: research, transactional work, litigation, and strategic planning. Where possible, students also shadow local lawyers, work with lawyer practitioners around the country, observe legal proceedings, and conduct field work to better understand the problems facing animals.

Criminal Justice Reform Clinic. The mission of the CJRC is to dismantle systemic discrimination in the criminal justice system especially as it relates to underserved communities. Projects have included addressing wrongful convictions and innocence; criminal justice reform including death penalty, amicus, and Eighth Amendment work; and legal issues facing individuals returning to the community from incarceration.

Earthrise Law Center. This is the domestic environmental law clinic at Lewis & Clark. Its goals are to advance efforts to protect the environment by serving as a resource for public interest organizations needing legal representation and to train and educate law students through direct involvement in complex environmental and natural resource issues.

Lawyering Program. The law school's Lawyering program gives students the skills necessary to investigate, analyze, and communicate legal issues, policies, practices and arguments. Students learn the elements of legal writing, analysis and research, craft written and oral arguments, and hone their skills to make them more successful advocates. The lawyering professors are experienced and well-respected in their field and focus on hands-on learning opportunities in smaller, more intimate class settings.

Low-Income Taxpayer Clinic. Students represent taxpayers of lesser means in controversies with the Internal Revenue Service, including audits and appeals before that agency, and trials and hearings before the U.S. Tax Court. Students work under the supervision of an experienced tax attorney who is a full-time member of the law school faculty. The clinic accepts for representation only cases that maximize the student's opportunities to learn and develop practical lawyering skills.

National Crime Victim Law Institute. Students work closely with attorneys on a wide range of victims' rights related issues. They provide technical support to victims' rights attorneys and advocacy organizations through legal writing and research, as well as participate in the drafting of amicus curiae briefs.

Small Business Legal Clinic. Law students working under the direction of an experienced, licensed attorney represent small and emerging businesses in transactional (not litigation) matters.

Willamette University College of Law Resources

Willamette University College of Law offers a number of clinic and externship programs to law students.
<http://willamette.edu/law/programs/clp/index.html>;
<http://willamette.edu/law/programs/externship/index.html>.

Business Law Clinic. Students provide transaction services to non-profit executives and emerging small businesses.

Child and Family Advocacy Clinic. Students work to advance legal protections that provide stability to the family structure and nurture children's healthy development. Clinic participants provide pro bono legal representation to individual children and families in crisis.

Human Rights and Immigration Clinic. Students represent clients seeking asylum for persecution they suffered abroad or victims of trafficking. Students have also worked on a variety of cases under the Alien Tort Statute and the Torture Victim Protection Act, which allow non-citizens to bring tort claims for violation of the law of nations in U.S. federal courts.

Trusts and Estates Clinic. Students represent clients who need non-tax estate planning. Most clinic clients, whether single or married, have children who are too young to manage property themselves. Other clients have adult children, are childless, or are terminally ill or elderly.

Multnomah Bar Association Resources

Young Lawyers Section. Plans regular CLE series emphasizing practical skills for young lawyers. In 2017, the MBA will host the Young Litigators Series, a series of CLE programs providing fundamental instructions on the basics of practice management and litigation.

MBA Solo Small Firm Committee. Develops CLE programs that are of particular interest to solo and small firm practitioners.

Existing Resources for Low- and Moderate-Income Oregonians

Civil Legal Aid Organizations: Legal Aid Services of Oregon, Oregon Law Center, Center for Non-Profit Legal Services

Low-income clients in Oregon can receive free civil legal services through three non-profits that are part of an integrated delivery system that is designed to provide relatively equal levels of high quality client services in all 36 Oregon counties. There are two statewide programs, Legal Aid Services of Oregon and the Oregon Law Center, and one countywide program, the Center for Non-Profit Legal Services in Medford.

The three legal aid nonprofits join with the Oregon State Bar, the courts and others to routinely engage in strategic planning to allocate resources to efficiently and effectively serve clients and to adjust to changing client demographics and needs. They provide services in high-priority cases relating to food, shelter, medical care, income maintenance and physical safety. Currently the most common case types are family law (most cases involve domestic violence), housing, consumer, income maintenance, employment, health and individual rights. Legal aid provides a full range of legal assistance, from simple advice and limited services to litigation, negotiated settlements and representation in administrative proceedings.

Oregon's legal aid programs currently serve approximately 22,000 low-income and elderly Oregonians a year from offices located in 17 communities. Low-income clients must generally be at or below 125% of the federal poverty level to qualify.

Legal Aid also operates numerous pro bono programs around the state that serve clients with a wide variety of legal issues, including family law, elder law, bankruptcy and other consumer issues, landlord/tenant, criminal records expungements, tax issues, simple estate planning and uncontested guardianships.

Legal aid has a client education website, <http://oregonlawhelp.org/> that provides extensive information about the most common legal problems faced by low-income families, including protections from abuse, housing law, family law, and legal issues affecting seniors and people with disabilities. Legal aid provides classes, booklets, and hotlines to help low-income individuals learn about their rights and responsibilities so they can avoid or quickly resolve potential legal disputes.

OSB Lawyer Referral Services/Modest Means Program

Program Goal Statement

Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels.

Program Description

The Lawyer Referral Service (LRS) began as a mandatory program in 1971 when attorney advertising was limited by ethics rules. A voluntary program since 1985, LRS is the oldest and largest program in RIS and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and

software) support the other department programs. Approximately 550 OSB members participate as LRS panel attorneys. The Referral and Information Services Department (RIS) also offers several other programs that help both the people and the lawyers of Oregon. The Modest Means Program (MMP) is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense. Problem Solvers is a pro bono program offering legal advice for youth ages 13-17. Lawyer to Lawyer connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The Military Assistance Panel (MAP) connects military personnel and their families in Oregon with pro bono legal assistance. Attorneys volunteering for this program are provided training on the Servicemembers' Civil Relief Act (SCRA) and other applicable law.

Call Handling

Total call volume from the public increased 1.75% in 2016 with a total of 74,393 calls. Even with increased volume, the Referral & Information Services Department (RIS) was able to provide service to more callers and capture more referrals by focusing on reducing the number of callers who abandon the call queue due to long wait times. Due to this effort, only 3% of callers abandoned an RIS call queue in 2016. Although this represents a .04% increase over 2015, the department was down 1.5 FTE for the entire year. Despite the lack of staff, the abandoned call ratio is a vast improvement from 2008, when the department was fully staffed, receiving 6% less calls, and losing 10.11% of callers.

A new training schedule was implemented for staff in 2014 and continued throughout 2015 and 2016, with every staff meeting now including a substantive law overview for a different area of law to ensure staff is making accurate referrals. Enhanced training has reduced errors among staff, and use of instant messaging software has helped staff assist each other with referral questions without interrupting active client calls. RIS staff updated the department training guide in order to train new employees in a more uniform and efficient manner. RIS staff also updated the department's resource guide that is used to provide callers with community organizations that may be able to offer assistance. The guide contains approximately 200 different organizations and community resources and is organized by area of law. The guide will be made available to other legal service providers and will eventually be hosted on the bar's public website.

Maintaining a full RIS staff was a challenge in 2016, with three .5 FTE positions currently remaining open. Working with the HR department, RIS created new advertisements for the open positions that emphasize the benefits of working for the bar and the team-oriented environment of the RIS department. The BOG also approved a .5 FTE increase for the RIS department in order to move all accounting responsibilities into RIS and out of the Accounting Department. This change should improve the department's ability to track remittance payments and make invoice adjustments for the panelists.

Overall call volume increased in 2016, reaching 74,393 calls and 4,676 online referral requests. RIS made 47,772 total referrals – a 2.8% increase in referrals over the previous year. Totals by program area are:

LRS	44,677
Modest Means	2,925
Problem Solvers	136
Military Assistance	34

The gap between calls and referrals is due to the fact that RIS functions both as a referral service and an information center. As stated above, over the years RIS has compiled a massive resource guide that staff members use to assist callers who may benefit from community resources, charities or government agencies. RIS is currently updating the guide and transferring it into a format that can be posted on the bar's public website.

Marketing

The public-oriented focus for 2015-2016 was to increase traffic to the OSB website, including the Legal Help page, to inform potential clients about available resources. Throughout 2015, RIS worked with the Communications & Public Services Department to continue the pilot Craig's List and Google Ad Words campaigns. Staff posted a "Need Legal Help?" message at various times on Craig's List. The posting included an embedded link to the "Legal Help" page on the bar's website. At the same time RIS Staff started two Google Ad Word campaigns. The first campaign, "OSB Website," focused on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, "RIS," focused on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. These campaigns have resulted in a combined 7,767 clicks and 2,534,987 impressions in 2015. This in turn resulted in a 6% increase in visits to the RIS "finding the right lawyer" web page, with 86,780 visits in 2015.

During 2016 the Communications Department began filming a "Legal Q&A" video series and posting the videos to the OSB public website. As videos are uploaded, a Google Ad campaign focusing on the same area of law is initiated in order to draw additional traffic to the OSB public website (which includes a link to our online referral request form).

Finally, RIS has revised the publication "Legal Issues for Older Adults." The publication will be provided to the public in both hard copy and electronic formats as part of our grassroots outreach to legal stakeholders and the public. The guide will be available in English, Spanish, Russian, Vietnamese, Mandarin and Korean.

Outreach to members remains focused on current panelists; with total registration remaining stable in 2016, no active recruitment of new panelists was warranted. However, the MMP is in need of new panelists in some under-served areas, such as Eastern Oregon and some parts of the coast. RIS staff is working with the Creative Services Department to create several MMP recruitment advertisements for the Bar Bulletin in order to boost attorney participation.

Modest Means Expansion

Following up on the BOG's directive to explore Modest Means Program expansion, RIS worked with the Public Service Advisory Committee (PSAC) to begin preliminary efforts to create Modest Means panels for Elder Law and Appellate Law. RIS staff met with both sections to gauge attorney interest in participating in these areas of law at a reduced rate. RIS staff and the PSAC will continue these efforts in 2017 with the goal of creating a pilot project.

In 2016 the PSAC voted unanimously to make a recommendation to the BOG on a global change to percentage fees in the form of a \$200 "trigger" amount. If a referral does not result in the panelist earning and collecting at least \$200 on the case, the attorney will not pay a remittance to the bar. The BOG's Budget and Finance Committee will review this recommendation in early 2017. Implementation

of the trigger will require approximately 40 hours of programming by the IT department. Depending on the timeline of the AMS implementation, the trigger may be delayed significantly.

Unforeseen circumstances caused the RIS Department to develop its own referral software at the start of 2015. Since the go-live date on April 22, 2015, RIS has made more than 80,000 referrals in the new system with virtually no issues. Bringing the software in-house allowed RIS to implement several new features, including single sign-on with the bar's website, enhanced reporting speed, and a more user-friendly payment system. Member feedback has been uniformly positive since implementation, and the bar is saving \$7,500 per year in fees that were paid to a third-party software developer. RIS staff will continue monitoring the new system and making improvements where needed.

Disability Rights Oregon (DRO)

DRO provides advocacy and legal services to people with disabilities who have an issue related to their disability and that falls within their goals and priorities. They focus on cases that will make positive changes for the community, cases where a person is at risk of long-term harm, services to minority, rural and other underserved communities, and information and materials for self-advocacy.

<https://droregon.org/>.

Youth Rights & Justice

Lawyers with YRJ represent children in the foster care system, parents in dependency, and youth in juvenile court. Services generally are limited to Multnomah County, with the exception of appellate legal services, which extend statewide. <http://www.youthrightsjustice.org/>.

Oregon Court Self-Help Center

The Oregon Judicial Department has established a page on its website called the "Self-Help Center" which directs self-represented parties to a number of resources, including interactive forms for family law, small claims, residential FED, and FAPA cases. The OJD has plans to continue adding to this forms bank. <http://www.courts.oregon.gov/help/Pages/default.aspx>.

Catholic Charities Immigration Legal Services

Catholic Charities provides high quality immigration legal services to low income immigrants and refugees, and engages in public education, training and community outreach in order to promote justice for all newcomers and conditions for their full participation in American society.

http://www.catholiccharitiesoregon.org/services_legal_services.asp.

Catholic Charities Low Income Taxpayer Clinic

Provides free representation to resolve personal income tax concerns with the Internal Revenue Service and sometimes with the Oregon Department of Revenue.

Immigration Counseling Service (ICS)

To receive services from ICS, individual's income must be below 200% of the federal poverty line. ICS provides direct legal services to asylees, refugees, and assistance with DACA, T&U visas, a deportation defense. <http://ics-law.org/>.

Lutheran Community Services Northwest Immigration Counseling and Advocacy Program

Provides low-cost immigration counseling to the Portland Metro's refugee and immigrant populations. Immigration Counseling is provided by or supervised by accredited representatives who have been given permission to give immigration advice by the U. S. Board of Immigration Appeals (BIA). ICAP counsels immigrants and refugees about their rights and responsibilities pertaining to their immigration status, helps clients with all immigration forms and applications, and represents clients before the U.S.C.I.S. and Immigration Court. Their staff and counselors can serve clients in English, Spanish, Russian, Vietnamese, Korean and Arabic. <http://www.lcsnw.org/services.html>.

Refugee Disability Benefits Oregon (RDBO)

RDBO provides direct representation of refugees on social security disability applications. <http://www.rdbo.org/refugee-disability-benefits-of-oregon/>.

Portland State University Student Legal Services

Provides free legal services to current PSU students in a variety of areas of law, including, bankruptcy, employment, personal injury, expungement, immigration, landlord-tenant, small claims, traffic, family, and consumer. <https://www.pdx.edu/sls/home>.

St. Andrew Legal Clinic (SALC)

St. Andrew Legal Clinic is a public interest law firm established in 1979 that provides legal services to low- and moderate-income individuals with family law needs. It charges fees on a sliding scale, based on income, family size, and ability to pay. It serves Multnomah, Washington, Clackamas, Columbia and Yamhill counties with ten lawyers and ten staff (which includes an executive director and development director). The clinic provides full-service representation to approximately 380 clients and limited-scope representation to an additional 240 clients on an annual basis. <http://www.salcgroup.org/>.

Victim Rights Law Center (VRLC)

Established in 2003, the VRLC is a nonprofit law firm that provides free legal services to victims of rape and sexual assault in the areas of privacy, safety, immigration, housing, education, employment and financial stability, in order to help rebuild their lives. The VRLC serves Multnomah, Washington, and Clackamas Counties, in addition the state of Massachusetts. The Oregon office has seven lawyers and a program coordinator. In addition to providing direct legal services, the VRLC also provides training and mentorship to pro bono lawyers, policy advising to the United States Department of Justice, and training for university administrators and law enforcement about sexual assault response. Oregon's office provides direct representation to approximately 200 victims per year. <https://www.victimrights.org/>.

Pro Bono Services

A number of formal and informal pro bono programs exist in Oregon, not all of which are catalogued in this Appendix. The OSB maintains a list of certified pro bono programs, which can be found on the OSB website here: <https://www.osbar.org/probono/VolunteerOpportunities.html>.

Legal Aid Services of Oregon also maintains a list of pro bono opportunities in the Portland metro area, which can be found on the LASO website here: https://lasoregon.org/getinvolved/item.5774-Portland_Metro_Pro_Bono_Opportunities.



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