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A Move Toward Equal Access to Justice

Four billion people live “outside of the rule of law—with little access to basic legal tools.”¹ This predicament is not unique to third-world countries: According to the World Justice Project’s most recent survey, the United States is tied for 99th out of 126 countries in terms of access to and affordability of a civil justice system. Yet access to justice should be the hallmark of the American legal system. In the words of Chief Justice John Marshall, “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever [they] receive[] an injury.”² And “[o]ne of the first duties of government is to afford that protection.”³

As the branch of government with constitutional responsibility over the administration of justice, the Utah judiciary has been in the vanguard of initiatives aimed at solving the access-to-justice problem. To this end, the judiciary, under the leadership of the Utah Supreme Court and the Judicial Council, has relatively recently established state-wide pro bono efforts, moved to systematize court-approved forms and make them easily accessible online to all, established a new legal profession in Licensed Paralegal Practitioners, and piloted an online dispute resolution model for small claims court. Each of these initiatives takes an important step toward narrowing the access-to-justice gap. But the most promising initiative involves profoundly reimagining the way the law is regulated in order to harness the power of entrepreneurship, capital, and machine learning in the legal arena.

In this regard, in late 2018, the Utah Supreme Court, at the request of the Utah State Bar Association, charged John Lund (past President of the Bar) and Justice Deno Himonas with organizing a work group to study and make recommendations to the Court about optimizing the regulatory structure for legal services in the Age of Disruption in a manner that fosters innovation and promotes other market forces so as to increase access to and affordability of legal services. With this objective in mind, members of the Utah court system and the State Bar and academics and other experts, working closely together, have begun to envision and outline what a new regulatory structure might look like. This regulatory structure involves, among other things, (1) loosening restrictions on lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing; (2) providing for broad-based investment and participation in business models that provide legal services to the public, including non-lawyer investment and ownership of these entities; and (3) creating a regulatory body under the auspices of the Utah Supreme Court to develop and implement a risk-based, empirically-grounded regulatory process for legal services. This body would also, potentially, solicit non-traditional sources of legal services, including non-lawyers, and allow them to test innovative legal service models and delivery systems through the use

¹ Hadfield, G.K. (2017) *Rules for a Flat World*, p. 281, Oxford University Press.

² *Marbury v. Madison*, 5. U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803).

³ *Id.*

of a “regulatory sandbox” approach, which permits innovation to happen in designated areas and addresses risk and generates data to inform the regulatory process.

Bridging the access-to-justice gap is no easy undertaking: it requires multi-dimensional vision, strong public leadership, and perseverance. It also requires timely action. Knowing this, the work group intends to complete its work and provide a written report with specific recommendations to the Supreme Court by June 30, 2019.