

ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES

Issues Paper Concerning New Categories of Legal Services Providers *October 16, 2015*

The ABA Commission on the Future of Legal Services has not decided at this time whether to propose any resolutions concerning the issues described in this paper.

I. Executive Summary

The ABA Commission on the Future of Legal Services is seeking feedback on whether United States jurisdictions should be encouraged to create new categories of judicially-authorized-and-regulated legal services providers (hereafter LSP or LSPs) to perform discreet and limited legal tasks with the goal of improving access to legal services.

The Commission's efforts in this area are guided by the growing experience with LSPs in various United States jurisdictions. Examples include federally-authorized legal services providers; courthouse navigators in New York; courthouse facilitators in California and Washington State; limited practice officers in Washington State; limited license legal technicians in Washington State; and document preparers in Arizona, California, and Nevada. In each of these instances, the LSPs are intended to facilitate greater access to legal services and the justice system.

The Commission developed this issues paper to elicit broad-based feedback, including from consumers of legal services, on whether more supreme courts should be encouraged to authorize and regulate these kinds of LSPs for discrete, limited legal tasks. To be clear, the focus of this issues paper is on courts creating new categories of LSPs and concomitant rules and regulations to ensure their education, oversight, and accountability.¹ As a result, the concept discussed here is consistent with the long-standing ABA policy in support of state-based judicial regulation of the legal profession and the practice of law by licensed lawyers.

II. The Access to Justice Gap in the United States

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex. Many who need legal advice cannot afford to hire a lawyer and are forced to represent

¹ This paper does not address a separate, but related, issue: the extent to which existing and largely unregulated online legal services providers should be subject to regulation by judicial authorities.

themselves. Even those who can afford a lawyer often do not use one because they do not recognize their problem as having a legal solution or they prefer less expensive alternatives. For those whose legal problems require use of the courts, but who cannot afford a lawyer, the underfunding of our court systems further aggravates the access to justice crisis, as court programs designed to assist these individuals may be cut or not implemented in the first place.

Numerous studies over many decades reveal that cost is a significant impediment to accessing legal services for most low and moderate income Americans, especially when they face significant civil legal problems.² Millions in need of representation cannot afford to hire a lawyer. For example, in New York State alone, “some 1.8 million litigants in civil matters” do not have representation when addressing the “core essentials of life—housing, family matters, access to health care and education, and subsistence income.”³ Deborah Rhode documents in her research that “[a]ccording to most estimates, about four-fifths of the civil legal needs of the poor, and two- to three-fifths of the needs of middle-income individuals, remain unmet.”⁴ In other words, as Jordan Furlong puts it, “the legal market, viewed in its entirety, is like an iceberg, 85% hidden below the surface. Lawyers have concerned themselves only with the small fraction above water. Everyone else is down there on their own, holding their breath.”⁵

III. Addressing the Access to Justice Gap

In August 2014, as a response to the escalating access to justice crisis in the United States, the American Bar Association created the [Commission on the Future of Legal Services](#).⁶ The Commission is charged with examining how legal services are delivered in the United States and recommending innovations to improve the delivery of, and the public’s access to, those services. In order to advance this mandate, the Commission created six

² See, e.g., Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low Income Americans* (2009), available at http://www.lsc.gov/pdfs/dcoumenting_the_justice_gap_in_america_2009.pdf; Roderick B. Mathews & Juan Carlos Botero, *Access to Justice in the United States Findings from the Newly Released Rule of Law Index of the World Justice Project*, WORLD JUSTICE PROJECT (2010), available at http://worldjusticeproject.org/sites/default/files/486481access_to_justice_in_the_united_states_virginia_lawyer_12-10.pdf; Rebecca L. Sandefur, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478040.

³ Task Force to Expand Access to Justice to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York* at 2 (Nov. 2014) available at <https://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS%20TaskForce%20Report%202014.pdf>. Notably, this number has decreased from 2.3 million in 2010, due to a series of access-to-justice programs launched in New York State, including the implementation of a court navigator program, discussed below in Part IV of this memorandum. See *id.*

⁴ DEBORAH RHODE, ACCESS TO JUSTICE 3 (2004).

⁵ Jordan Furlong, *The Incidental Lawyer*, LAW21 (April 24, 2014), available at <http://www.law21.ca/2014/04/incidental-lawyer/>.

⁶ The Commission consists of prominent lawyers from a wide range of practice settings as well as judges, academics, and other professionals who have important perspectives and expertise on the delivery and regulation of legal services in the United States. The Commission roster is available [here](#).

Working Groups. Additional information about the Commission, including descriptions of the Commission’s six Working Groups, can be found on the Commission’s [website](#).

As part of its charge, the Commission engaged in extensive research and review of judicially-authorized-and-regulated LSPs, other than lawyers, who are already delivering legal services in various United States jurisdictions. The Commission also studied regimes for such providers that were legislatively enacted to ensure that it had a complete picture of the landscape for such professionals. While recognizing that the use of LSPs is only one potential option to address unmet legal needs, this issues paper describes the Commission’s research on LSPs and seeks feedback on the desirability and viability of broader adoption and regulation of LSPs by judicial authorities throughout the U.S. as one way to address the access to justice crisis.

IV. The Expanding Range of Legal Services Providers

The phrase “legal services providers” does not currently have a widely shared meaning, but the Commission believes that it may usefully refer to fully licensed lawyers as well as those who deliver legal services on a more limited basis with or without lawyer supervision.⁷ The focus of this issues paper is on the judicial creation of categories of LSPs other than lawyers.⁸

A growing number of United States jurisdictions have authorized LSPs other than lawyers to help address the unmet need for legal services,⁹ and additional jurisdictions are considering doing so.¹⁰ As the Washington Supreme Court observed in implementing the Limited Practice Rule for Limited License Legal Technicians, “there are people who need only limited levels of assistance that can be provided by non-lawyers.”¹¹ The Commission studied and considered six examples of already-existing LSPs:

- (1) **Federally-Authorized LSPs.** There is a wide range of legislatively authorized LSPs serving in federal courts and agencies. For example, bankruptcy petition preparers assist debtors in filing necessary legal paperwork in the United States

⁷ This definition of “legal services providers” is analogous to the definition of “health care provider,” which includes both doctors and other categories of professionals who are authorized to deliver health care services. *See, e.g.*, 29 CFR 825.125.

⁸ Again, to be clear, this paper does not address whether existing and largely unregulated online legal services providers should be subject to regulation by judicial authorities.

⁹ *See* Robert J. Derocher, *Mind the Gap: Bar Associations Work Toward a ‘Watershed Moment’ for Legal Services*, AMERICAN BAR ASSOCIATION, available at http://www.americanbar.org/publications/bar_leader/2014-15/september-october/mind-gap-bar-associations-work-toward-watershed-moment-for-legal-services.html.

¹⁰ *See* Robert Ambrogi, *Who says you need a law degree to practice law?*, THE WASHINGTON POST (Mar. 13, 2015), available at https://www.washingtonpost.com/opinions/closing-the-justice-gap/2015/03/13/a5f576c8-c754-11e4-aa1a-86135599fb0f_story.html.

¹¹ Wash. Exec. Order No. 25700-A-1005 (June 15, 2012), <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

Bankruptcy Court.¹² Bankruptcy petition preparers are only permitted to populate forms; additional services may constitute the unauthorized practice of law.¹³ Notably, “research on lay specialists who provide legal representation in bankruptcy and administrative agency hearings finds that they generally perform as well or better than attorneys.”¹⁴

Other examples of federal agencies utilizing the services of those who would fall under the umbrella of LSPs include the Department of Justice (DOJ), the Department of Homeland Security (DHS), the Equal Employment Opportunity Commission (EEOC), the Internal Revenue Service (IRS), the Patent and Trademark Office (PTO), and the Social Security Administration (SSA). Both the Board of Immigration Appeals, within DOJ, and U.S. Citizenship and Immigration Services, within DHS, permit accredited representatives who are not licensed lawyers to represent aliens in immigration proceedings.¹⁵ Individuals who are not licensed to practice law may represent claimants before the EEOC in mediations, although they are not entitled to fees if an adverse finding is made against the employer.¹⁶ Several types of professionals in addition to lawyers are authorized to practice before the IRS subject to special regulations, including certified public accountants, enrolled agents, enrolled retirement plan agents, low income taxpayer clinic student interns, and unenrolled return preparers.¹⁷ Patent agents are authorized to practice before the PTO on a limited basis—for preparing and filing patent applications (and amendments to applications) as well as rendering opinions as to the patentability of inventions.¹⁸ The SSA permits individuals who are not licensed to practice law to represent claimants. Representatives may obtain information from the claimant’s file, assist in obtaining medical records to support a claim, accompany a claimant to interviews/conferences/hearings, request reconsideration of SSA determinations, and assist in the questioning of witnesses at SSA hearings as well as receive copies of SSA determinations.¹⁹

¹² See Penalty for Persons Who Negligently or Fraudulently Prepare Bankruptcy Petitions, 11 U.S.C § 110, available at <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title11/html/USCODE-2011-title11-chap1-sec110.htm>; National Association of Bankruptcy Petition Preparers, available at <http://nabpp.com/>.

¹³ See *Bankruptcy Petition Preparer Guidelines*, UNITED STATES TRUSTEE CENTRAL DISTRICT OF CALIFORNIA (March 1, 2014), available at http://www.justice.gov/sites/default/files/ust-regions/legacy/2014/03/10/bbp_guidelines.pdf.

¹⁴ Deborah L. Rhode, *Enhancing Access to Justice Through Alternative Regulatory Frameworks* (working draft) (citing Herbert Kritzer, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK 76, 108, 148, 190, 201 (1998)). A more recent report, however, warns of potential abuse by bankruptcy preparers who do not adhere to the federal law requirements. See Increased Use of Bankruptcy Preparers Raises Concerns (2012), available at <http://www.uscourts.gov/news/2012/06/18/increased-use-bankruptcy-petition-preparers-raises-concerns>. One way to address this is for a supreme court to certify all document preparers, including federal bankruptcy petition preparers, as does Arizona. *Id.*

¹⁵ See 8 C.F.R. §§ 292.2 & 1292.2, available at <http://www.justice.gov/eoir/recognition-and-accreditation-program>.

¹⁶ See <http://www.eeoc.gov/>.

¹⁷ See http://www.irs.gov/publications/p947/ar02.html#en_US201410_publink1000148593.

¹⁸ See <http://www.uspto.gov/learning-andresources/ip-policy/becoming-practitioner>.

¹⁹ See <http://www.socialsecurity.gov/representation/index.htm>.

(2) Courthouse Navigators (New York, Arizona). New York’s judicially created courthouse navigator program, launched in 2014, prepares “college students, law students and other persons deemed appropriate ... to assist unrepresented litigants, who are appearing” in housing court in nonpayment, civil, and debt proceedings.²⁰ Courthouse navigators are not permitted to give legal advice and do not give out legal information except with the approval of the Chief Administrative Judge of the Courts.²¹ The duties of courthouse navigators include using computers located in the courthouse to retrieve information, researching information about the law, collecting documentation needed for individual cases, and responding to a judge’s or court attorney’s questions about the case.²² The program is volunteer-based and operates under the supervision of a court navigator program coordinator.

The main goals of the program are to “help litigants who do not have an attorney have a productive court experience through offering non-legal support” and to give people (often students) practical experience as well as an opportunity to help people in need, make new contacts, and interact with lawyers and judges.²³ In 2014, 301 navigators were trained to provide services through 14 training meetings.²⁴ The Housing Court Navigators contributed about 3,400 pro bono hours to the program and helped approximately 2,000 unrepresented tenants and landlords and the Civil Court Navigators assisted over 1,300 litigants.²⁵

Arizona launched a similar initiative in 2015—the Court Navigator Pilot Program.²⁶ Over 80 percent of the time in Arizona, individuals are faced with the challenge of representing themselves in family court disputes.²⁷ According to Arizona’s 2015 Commission on Access to Justice Report, the program will “help guide the self-represented litigant in efficiently completing the family court process.”²⁸ The court will train and supervise undergraduates from Arizona State University to serve in this role.²⁹

(3) Courthouse Facilitators (California, Washington State). Courthouse facilitators provide unrepresented individuals with information about court

²⁰ See http://www.courts.state.ny.us/courts/nyc/housing/rap_prospective.shtml.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See *New York State Courts Access to Justice Program Providing New Pathways to Legal Services, Assistance and Information* (2014), available at http://www.nycourts.gov/ip/nyaj2j/pdfs/NYA2J_2014report.pdf.

²⁵ *Id.*

²⁶ *Arizona Commission on Access to Justice Report to the Arizona Judicial Council* (March 26, 2015), available at <http://www.azcourts.gov/Portals/74/ACAJ/ReportACAJ.pdf>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

procedures and legal forms in family law cases.³⁰ In California, the Judicial Council administers the program by “providing funds to these court-based offices, which are staffed by licensed attorneys.”³¹ The California Family Code mandates that a licensed lawyer with expertise in litigation or arbitration in the area of family law work with the family law facilitator to oversee the work of the facilitator and to deal with matters that require a licensed attorney throughout the process.³² Courthouse facilitators are governed by California Family Code, which established an office for facilitators in over 58 counties in California.³³ California’s Advisory Committee on Providing Access and Fairness has been given the task of implementing a plan to give greater courthouse access to litigants who are unable to obtain representation.³⁴ Courthouse facilitators are one of the options for litigants without such representation.³⁵ While courthouse facilitators are not permitted to provide legal advice, they help to refer unrepresented clients to legal, social services, and alternative dispute resolution resources.³⁶ More than 345,000 individuals visit the family law facilitators’ offices throughout California each year.³⁷

Washington State has an analogous program established by the Washington Supreme Court, with oversight from the Family Courthouse Facilitator Advisory Committee. The committee is charged with establishing minimum qualifications and administering continued training requirements for courthouse facilitators.³⁸ During 2007, facilitators statewide conducted approximately 57,000 customer sessions and made 108,000 customer contacts.³⁹ The vast majority of facilitator program customers report being very satisfied with the services they receive. Nine out of ten customers agree that they feel more knowledgeable and prepared immediately after a visit with a facilitator, and 82% say they have more trust and confidence in the courts.⁴⁰ Facilitator-assisted litigants report more positive court

³⁰ For a description of Washington courthouse facilitators, see http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=108. For California, see <http://www.courts.ca.gov/selfhelp-facilitators.htm>.

³¹ *Family Law Facilitators*, PROGRAMS FOR SELF-REPRESENTED LITIGANTS FACT SHEET (May 2015), available at <http://www.courts.ca.gov/documents/proper.pdf>. See also CAL. FAM. CODE § 10002 (West 1997).

³² *Id.*

³³ *Family Law Facilitators*, PROGRAMS FOR SELF-REPRESENTED LITIGANTS FACT SHEET (May 2015), available at <http://www.courts.ca.gov/documents/proper.pdf>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Background, Policy, and Services of the Child Support Commissioner and Family Law Facilitator Program*, available at http://www.courts.ca.gov/documents/Program_Background_Policy_and_Services.pdf.

³⁸ See Wash. Gen. R. 27 (2002), available at

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gagr27.

³⁹ WASHINGTON’S COURTHOUSE FACILITATOR PROGRAMS FOR SELF-REPRESENTED LITIGANTS IN FAMILY LAW CASES: SUMMARY REPORT (2008), available at <http://www.courts.wa.gov/wscct/docs/Courthouse%20Facilitator%20Program.pdf>.

⁴⁰ *Id.*

experiences, are more satisfied with court proceedings, outcomes, and choice of representation, and have more trust and confidence in the courts than unassisted self-represented litigants.⁴¹ Moreover, nearly all judicial officers and administrators associated with a facilitator program indicate that the program has a positive impact on self-represented litigants, improves access to justice and the quality of justice, and increases court efficiency.⁴² The biggest challenges facing facilitator programs include program funding, managing self-represented litigants' needs for legal advice, and ongoing facilitator training.⁴³

(4) Limited Practice Officers (Washington State). The Washington Supreme Court authorizes certification of limited practice officers to select and complete real estate closing documents.⁴⁴ The Limited Practice Board was created to oversee the administration of limited practice officers and ensure that officers comply with the Limited Practice Rule, APR 12.⁴⁵ Limited practice officers are not permitted to provide legal advice or representation.⁴⁶

(5) Limited License Legal Technicians (Washington State). The Limited License Legal Technician (LLLT) is authorized and regulated by the Washington Supreme Court and is “the first independent paraprofessional in the United States that is licensed to provide some legal advice.”⁴⁷ To become a LLLT, one must successfully “complete an education that includes both community college level courses ... and law school level courses for the practice area education...” Prior to licensure, the prospective LLLTs must complete 3,000 hours of work under the supervision of a licensed attorney; they must pass three exams prior to licensure (including a professional responsibility exam); and they must carry malpractice insurance.”⁴⁸ The first LLLTs are licensed in the area of family law.⁴⁹

(6) Document Preparers (Arizona, California, and Nevada). The California legislature implemented a legal documentation assistant program in 2000,

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See *Limited Practice Officers*, WASHINGTON STATE BAR ASSOCIATION, available at <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Limited-Practice-Officers>.

⁴⁵ *Id.*

⁴⁶ See Wash. Admission to Practice Rule 12 (1999). The Admission to Practice Rules are subject to approval and modification by the Supreme Court of Washington on recommendation from the Washington State Bar Association, available at

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr12.

⁴⁷ Paula Littlewood, *The Practice of Law in Transition*, NW LAWYER at 13 (July-August 2015).

⁴⁸ *Id.*

⁴⁹ While not part of the Commission's study, it also should be recognized that several foreign jurisdictions have implemented various forms of LSPs, including Canada and England/Wales. See *CBA Legal Futures Initiative*, THE CANADIAN BAR ASSOCIATION, available at

http://www.cbafutures.org/CBA/media/mediafiles/PDF/Reports/FuturesExecSum_Recommendations.pdf; See also Legal Services Act, 2007, c. 29 (U.K.), available at <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=3&NavFrom=2&parentActiveTextDocId=3423426&ActiveTextDocId=3423429&filesize=4184>.

providing the public with “an experienced professional who is authorized to prepare legal documents” and to assist “‘self-help’ clients” to “handle their own legal matters without the cost of an attorney.”⁵⁰ Uncontested divorces, bankruptcies, and wills are examples of areas in which California’s LDAs are permitted to work.⁵¹ These LDAs are not permitted to give legal advice or represent a client in the courtroom.⁵² They often have knowledge, professional experience, and education similar to that of paralegals.⁵³ The program includes minimum educational and competency requirements.

The Arizona Supreme Court adopted a certification program for legal document preparers in 2003.⁵⁴ Arizona mandates that all certified LDAs satisfy minimum education and testing requirements as well as attend a minimum of ten hours of approved continuing education each year.⁵⁵ Moreover, LDAs in Arizona are regulated by the Arizona Code of Judicial Administration,⁵⁶ and Arizona provides a list that is available to the public of LDAs who have violated the Arizona Code of Judicial Administration.⁵⁷ In these instances, the LDAs have had their certificates either revoked or suspended.⁵⁸

As of March 2014, Nevada offers a similar program.⁵⁹ Like California, the Nevada program is legislatively authorized, but it does not include a minimum educational or competency component. Nevada requires that all legal document preparers be registered with the Secretary of State.⁶⁰ Nevada also has a process for consumers to file complaints and provides a list of suspended and revoked licenses.⁶¹

In addition, many United States jurisdictions are contemplating the adoption of new LSP programs. For example, in December 2014, the Oregon Legal Technicians Task Force recommended to the Oregon State Bar Board of Governors that “it consider the general concept of a limited license for legal technicians as one component of the BOG’s overall

⁵⁰ See *Frequently Asked Questions about Legal Document Assistants*, CALIFORNIA ASSOCIATION OF LEGAL DOCUMENT ASSISTANTS, available at <http://calda.org/visitors/>; See also CAL. BUS. & PROF. CODE § 6400-6456 (1998), available at <http://calda.org/business-professions-codes>.

⁵¹ For a full list of areas in which LDAs specialize, see <http://calda.org/visitors/#WhoAreLDA>

⁵² See *California Legal Document Assistant Frequently Asked Questions*, available at <http://calda.org/visitors/>.

⁵³ *Id.*

⁵⁴ See *Legal Document Preparers*, available at <https://www.azcourts.gov/cld/Legal-Document-Preparers>.

⁵⁵ *Id.*

⁵⁶ See ARIZ. ADMIN. CODE § 7-201 and § 7.208 (2003).

⁵⁷ See *Arizona Supreme Court-Legal Document Preparer Program*, available at <http://www.azcourts.gov/Portals/26/2014/Revoked%20Suspended%20List%20LDP%207-01-14.pdf>.

⁵⁸ *Id.*

⁵⁹ See *Access to Justice Commission*, STATE BAR OF NEVADA, available at <http://www.nvbar.org/atj>.

⁶⁰ See NEV. REV. STAT. ANN. § 240A.030 (West 2014).

⁶¹ See *Nevada Secretary of State Complaint Filing Process*, available at <http://www.nvsos.gov/index.aspx?page=1353>.

strategy for increasing access to justice.”⁶² In 2013, the California State Bar Board Committee on Regulation, Admission, and Discipline Oversight created a working group that recommended that California offer limited licenses to practice law without the supervision of an attorney, specifically “discrete, technical, limited scope of law activities in non-complicated legal matters in 1) creditor/debtor law; 2) family law; 3) landlord/tenant law; 4) immigration law.”⁶³ Further study is being conducted by the State Bar of California’s Civil Justice Strategies Task Force. Minnesota recently made a similar recommendation,⁶⁴ and other states, including Colorado,⁶⁵ Connecticut,⁶⁶ Florida,⁶⁷ Michigan,⁶⁸ New Mexico,⁶⁹ and Utah⁷⁰ are exploring this sort of expansion of the concept of who can render legal and law-related services and thus who would fall under the proposed categorization of a LSP.

⁶² See OREGON STATE BAR ASSOCIATION LEGAL TECHNICIANS TASK FORCE FINAL REPORT TO THE BOARD OF GOVERNORS (Feb. 13, 2015), available at http://www.bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf.

⁶³ See Memorandum from Staff, Limited License Working Group, Legal Aid Ass’n of Cal. To Members, Limited License Working Group, Legal Aid Ass’n of Cal. 2 (June 17, 2013). For more details, see the California Bar Limited License Working Group: <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/LimitedLicenseWorkingGroup.aspx>.

⁶⁴ See *Report and Recommendations*, MINNESOTA STATE BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION (June 2015)(recommending that the MSBA consider establishing a limited-license legal technician certification “to identify a less costly path to a career in legal services and address unmet needs for specific types of legal services”), available at <https://lawyerist.com/lawyerist/wp-content/uploads/2015/06/report-of-the-future-of-legal-education-task-force.pdf>.

⁶⁵ See James Carlson, *Colorado Studying New Limited Legal License*, COLORADO SUPREME COURT (Spring 2015)(stating that “the Colorado Supreme Court Advisory Committee formed a subcommittee to study Washington’s program and make recommendations” regarding Washington’s recent action towards the Limited License Technician program), available at <http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>.

⁶⁶ See *Connecticut Bar Association Task Force on the Future of Legal Education and Standards of Admission Report* (2014) (recommending that non-lawyers be allowed to perform some limited legal services via a post-bachelor’s degree training program that would be more than a paralegal program but less than a JD program), available at http://c.yimcdn.com/sites/www.ctbar.org/resource/resmgr/CT_Lawyer_Volume_25_-_Public/Pages_from_March_15_-_Reform.pdf

⁶⁷ See Mark D. Killian, *Both Exciting and Scary, The Bar and the Court Look to the Future*, THE FLORIDA BAR NEWS (Feb. 15, 2015), available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/e9879a5d551f2bfb85257de70048d3f3!OpenDocument>; See also *Vision 2016*, THE FLORIDA BAR, <http://www.floridabar.org/vision2016>.

⁶⁸ See 21st Century Practice Task Force, STATE BAR OF MICHIGAN, available at <http://www.michbar.org/generalinfo/futurelaw>.

⁶⁹ See *2014 State Plan for the Provision of Civil Legal Services to Low Income New Mexicans*, THE COMMISSION ON ACCESS TO JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW MEXICO (Jan. 2015), available at <http://www.nmbar.org/NmbarDocs/forMembers/ATJ/2014StatePlan.pdf>.

⁷⁰ See *Report and Recommendations on the Future of Legal Services in Utah*, FUTURES COMMISSION OF THE UTAH STATE BAR (2015) (noting that the “Supreme Court’s Task Force on limited legal license technicians is currently examining the potential for people other than lawyers to meet [legal] needs”), available at www.utahbar.org/members/futures/.

Some of these LSPs are recent innovations; others have been in existence for many years. For example, Washington State implemented LPOs over thirty years ago, and document preparers have existed for over a decade in Arizona and California. In contrast, New York’s court navigator program emerged in 2014, and the initial class of Washington LLLTs took their first licensing exam in May 2015. Although their origins and regulatory structures differ, each LSP category is rooted in a common purpose—to make available discreet and cost-effective legal and law-related services to those whose legal problems may not require a legal services provider with a law license.

An important initiative is currently underway to better appreciate the impact of LSPs—the Roles Beyond Lawyers Project—jointly supported by the American Bar Foundation, the National Center for State Courts, and the Public Welfare Foundation.⁷¹ The project researchers have developed conceptual frameworks for both designing and evaluating programs in which people who are not fully qualified attorneys provide assistance that was traditionally only available through lawyers. The frameworks are accessible to jurisdictions seeking to design new programs, and to those seeking to evaluate the efficacy and sustainability of programs currently in operation. In addition, the project researchers are applying the frameworks to their empirical study of two existing programs, New York’s Court Navigators and Washington’s Limited License Legal Technicians. Other jurisdictions that implement various approaches to new categories of licensed LSPs will want to take appropriate steps to establish metrics and gather data, so that they can understand and verify that the addition of new forms of providers have yielded the desired improvements in access to justice and affordability of services.

An approach that is analogous to those cataloged above has been used in the delivery of medical services. Healthcare is now delivered not only by licensed doctors, but also by an increasing array of licensed and regulated providers, such as nurse practitioners, physicians’ assistants, and pharmacists. The “medical profession and nurse practitioners [are] a poignant example of less costly service providers who have become a more widely used, professionalized, and respected component of the health care market.”⁷² These providers supplement the work performed by doctors, but do not replace doctors. Similarly, LSPs are not meant to replace lawyers. They are intended to fill gaps where lawyers have not satisfied existing needs. A number of scholars⁷³ and regulators⁷⁴ predict

⁷¹ This initiative is supported by the Public Welfare Foundation through a grant to the American Bar Foundation. Lead researchers are Thomas Clarke, Vice President for Research and Technology, National Center for State Courts, and Rebecca Sandefur, Associate Professor of Sociology and Law, University of Illinois at Urbana-Champaign and Faculty Fellow, American Bar Foundation. For more information, see Rebecca L. Sandefur & Thomas M. Clarke, *Increasing Access to Justice Through Expanded “Roles Beyond Lawyers”*: Preliminary Evaluation and Classification Frameworks, AMERICAN BAR FOUNDATION (April 2015), available at http://www.americanbarfoundation.org/uploads/cms/documents/rbl_evaluation_and_program_design_frameworks_4_12_15.pdf.

⁷² Jack P. Sahl, *Cracks in the Profession’s Monopoly Armor*, 82 *FORDHAM L. REV.* 2635, 2662 (2014)(citation and quotation omitted).

⁷³ See, e.g., Benjamin Barton, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION* 235 (2015)(“If significant numbers [become LLLTs] and charge less that would certainly help access to justice for the middle class.”); Brooks Holland, *The Washington State Limited License Legal Technician*

that LSPs will improve access to legal services by offering assistance to those in need at a lower cost than lawyers. These predictions are based on the assumption that paraprofessionals in the legal market, like those in other fields, will be able to offer services at lower price points because their cost of doing business will be lower, largely because they will have lower educational costs to amortize.

In addition to facilitating increased access to legal services by reducing costs, the creation of LSPs has other possible benefits. First, it shifts the regulatory focus at the state level away from the difficult task of defining the practice of law and toward a more productive focus on determining who should be authorized to deliver legal services of various kinds and how they should be regulated. Second, as recognized by the ABA Task Force on the Future of Legal Education, certification or licensure as an LSP can be a less expensive path to a career in legal services for those who are unable or unwilling to devote the time and expense required to obtain a traditional law license.⁷⁵ Third, LSPs can serve as a point of access to lawyers for matters that fall outside of the competence and authorized scope of the LSPs' practice.

The Commission does not endorse any particular category of LSP. Jurisdictions that wish to move in this direction might consider ways to harmonize their approaches with existing models and regulations to assure greater uniformity and provide LSPs with greater mobility across jurisdictional lines. In all cases, the Commission urges that any new categories of LSPs be guided by the regulatory objectives identified in the Commission's proposed [Resolution and Report to the House of Delegates on the Development of Model Regulatory Objectives](#), including those objectives focused on the development of proper client protection mechanisms.

V. Conclusion

The Commission seeks comments on two issues: (1) whether the concept and definition of "legal services providers" should include lawyers and non-lawyers; and (2) whether state judicial authorities should be encouraged to create new categories of judicially-

Practice Rule: A National First in Access to Justice, 82 MISS. L.J. SUPRA 75, 90 n.62, 120 (2013), http://mississippilawjournal.org/wp-content/uploads/2013/02/3_Holland_Final.pdf (observing that "the access to justice gap might be partially closed by allowing nonlawyers to engage in a specified range of activities subject to regulatory oversight")(citations omitted).

⁷⁴ See, e.g., Stephen R. Crossland & Paula C. Littlewood, *The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession*, 65 S.C. L. REV. 611, 613 (2014) (explaining that Washington State's LLLT program was designed "address access-to-justice issues for those who cannot afford attorneys").

⁷⁵ See *Task Force on the Future of Legal Education Final Report*, AMERICAN BAR ASSOCIATION at 24-25, ("The J.D. program seeks to develop professional generalists, whose services can be costly. ... However, many people today cannot afford the services of these professional generalists or may not need legal services calling for their degree of training. There is ... a need for ... professionals who are qualified to provide limited law-related services without the oversight of a lawyer."), *available at* http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html. While the Commission recognizes the findings of the Task Force Report, it takes no position regarding the recommendations contained in the Report.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

authorized-and-regulated legal services providers to perform discreet and limited legal tasks in an effort to facilitate greater access to justice. The Commission is especially interested in receiving: (1) materials describing other LSP programs; (2) data and evidence about the effectiveness of LSP programs including usage, cost-savings, and customer satisfaction; and (3) information about challenges or obstacles presented by LSP programs.

The Co-Chairs of the Regulatory Opportunities Working Group, Paula Littlewood and Chief Justice Barbara Madsen, welcome your feedback. Should you have questions, please contact Paula Littlewood at paulal@wsba.org; the Commission's Chair, Judy Perry Martinez, at jpmartinez6@gmail.com; and the Commission's Vice Chair, Andrew Perlman, at aperlman@suffolk.edu. We are eager to receive and incorporate your input. Any responses to the questions posed in this paper, as well as any comments on related issues, should be directed by **December 31, 2015** to:

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Comments received may be posted to the Commission's website.