

**EXECUTIVE SUMMARY**

**REPORT AND RECOMMENDATIONS**  
**MINNESOTA STATE BAR ASSOCIATION**  
**CHALLENGES TO THE PRACTICE OF LAW TASK FORCE**

**May, 2015**

Responding to the rapidly changing legal marketplace, the Minnesota State Bar Association (MSBA) Council established the Challenges to the Practice of Law Task Force (the “Task Force”) in October of 2013. The Task Force’s charge was to explore and make recommendations as to how the MSBA can assist member lawyers in responding to emerging challenges, including though not necessarily limited to challenges posed by student debt loads, technological changes, and activities that may represent unauthorized practice of law.<sup>1</sup>

Sixteen members, including attorneys from both private practice and public sector, comprised the Task Force.<sup>2</sup> At its first meeting, the group as a whole identified the primary challenges on which it would focus, including the emergence of nontraditional service providers, changing business models and legal technology, the need to rethink conventional mentorship models, and reduced availability of legal services in rural communities. Responding to these concerns, it formed four subcommittees: Mentoring, Economics of Practice, Technology, and Rural Practice and the Unauthorized Practice of Law.

The Task Force as a whole met between January 2014 and April 2015, in addition to numerous subcommittee meetings. In this time, many resources and much thoughtful discussion culminated in the report that follows. Led by co-chairs Paul Floyd and Susan Dickel Minsberg, the meetings included reports by the subcommittee chairs, presentations by outside groups, and discussion of recent developments in the legal profession. These presentations included a report from Dave Bateson on his experience at the May 2014 National Conference on Mentoring in Columbus, Ohio; Bridget Gernander’s<sup>3</sup> proposal for a portal to triage the legal needs of clients with low and moderate income to the right resource in the Minnesota legal community;<sup>4</sup> a presentation from Joe Kaczrowski, MSBA’s Online Services Director, regarding current and upcoming practice tools and programs available to MSBA members, and a viewing of video from the Disruptive Innovation in Legal

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<sup>1</sup> Richard Kyle, *MSBA’s Race for Relevance*, MINN. BENCH & BAR (Sept. 12, 2014), available at <http://mnbenchbar.com/2014/09/msbas-race-for-relevance/>.

<sup>2</sup> For the roster of task force members, see Appendix A.

<sup>3</sup> Staff person for the Minnesota State Court’s Legal Services Advisory Committee.

<sup>4</sup> Her proposed plan was created in response to the federal Legal Services Corporation’s report on the future of using technology to reduce the justice gap. See Legal Services Corp., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE (Dec 2013), available at [http://www.lsc.gov/sites/lsc.gov/files/LSC\\_Tech%20Summit%20Report\\_2013.pdf](http://www.lsc.gov/sites/lsc.gov/files/LSC_Tech%20Summit%20Report_2013.pdf).

Services conference organized by Harvard Law School.<sup>5</sup>

In light of the information reviewed and its discussions, the Task Force makes the following recommendations, which are laid out in the following report and appendices.

### Technology

1. The MSBA should create a permanent Technology Committee or subcommittee, which may be housed within a particular section, whose mission it is to keep abreast of changing technology and determine how the MSBA can best assist its members to stay at the forefront of those changes. This includes, but is not limited to, exploring software options that may be offered to aid MSBA members in their law practice, particularly those who serve low and modest income clients

2. The MSBA should seek a formal ethics opinion from the Minnesota Lawyers Professional Responsibility Board that provides guidance to lawyers on best practices for using cloud based software and for storing data on third party vendor servers accessible only through the internet.

### Resources and Information for Attorneys

3. The MSBA should establish a “Resources” section on their website that will provide links to helpful resources for attorneys interested in alternative practice models and innovative, entrepreneurial methods of providing legal services, with a sub-focus on small and solo providers in greater Minnesota. The MSBA should provide for the regular update of this section with new and relevant materials.

4. The MSBA should produce On Demand CLEs covering topics in alternative fee structures and practice models with practical advice for practitioners as well as interviews with Minnesota lawyers who use and advocate the use of alternative fee structures and practice models. The MSBA, through its Outstate Practice Section, in coordination with other Sections, should provide regular CLE programs with a focus on greater Minnesota.

5. The MSBA, through its Outstate Practice Section and other Sections, should work with the law schools and other institutions to encourage lawyers, especially recently licensed lawyers, to practice in greater Minnesota.

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<sup>5</sup> See Stephanie Kimbro, *Video – Disruptive Innovation in Legal Services at Harvard*, VIRTUALLAWPRACTICE.ORG, <http://virtuallawpractice.org/3122/disruptive-innovation-in-legal-services-at-harvard/> (Mar. 13, 2014).

### Protecting and Assisting the Public

6. The MSBA should partner with other legal organizations, the law schools, and the court to explore creation of a state-wide panel of attorneys who can serve modest means clients through unbundled representation, sliding scale fees or other “low bono” methods. The goal of such a project would be to expand the number of attorneys working to meet the unmet need for moderate cost legal services and to improve the market for legal services for Minnesota attorneys who provide unbundled and sliding scale services.

7. The MSBA should engage in outreach and education to lay persons in Minnesota to raise awareness of the important services that attorneys provide, including dispute resolution and risk management, and helping lay persons identify when a lawyer’s assistance is helpful and necessary. The MSBA should actively work with the courts and legislature to define the “practice of law” and to provide remedies for customers of non-lawyer providers similar to those available to clients of the legal profession.

### Mentoring

8. The MSBA should support a change to the CLE rules to offer some amount of CLE credit for lawyers who participate in approved formal mentor programs. The CLE credits should be available to the attorneys who mentor and to new attorneys who sign up to be mentored.

9. The MSBA should affirmatively support existing mentor programs run by affinity organizations, MSBA sections, law schools, and local bar associations. As part of that support the MSBA should create a clearinghouse website or webpage with information about the available programs and contact information for each program. The MSBA should explore the creation of a formal mentor program for new lawyers.

## **TECHNOLOGY**

### Introduction

Current and emerging technology undoubtedly assists lawyers and the bar with efficiently serving the legal needs of clients. The pervasive use of modern technology has allowed lawyers to maintain files, documents, confidential client information and communications and everything in-between in digital form. Technology and use of the internet has enhanced lawyers’ ability to communicate with their clients and has provided clients with easy access to their own data from anywhere in the world. Digital data is cheaper to store,

easier to update, simpler to transfer and easier to pinpoint information quickly. Use of web based programs and data storage services creates unparalleled savings in storing, maintaining and retrieving client data. Nevertheless, certain risks accompany use of web based technology, the internet and digital data. Client data must be maintained in confidence and preserved in a format that can be easily recoverable in the future if it is needed. A problem not found with the storage of documents, digital data must be stored in such a way that it can be re-produced in its original unmodified format. And, web based programs and internet based data storage services can be hacked into. Accompanying the benefits of technology are the ethical risks faced by lawyers when, ethical rules of conduct may have been compromised simply because the ethical rules have not keep pace with technological capabilities.

Technology is here to stay – as is the relatively rapid pace at which it changes, evolves and impacts the delivery of legal services. According to the recently released 2014 AltmanWeil Report on Law Firms in Transition, lawyers surveyed agreed that a new generation of lawyers will be in charge ten years from now that will embrace and effectively utilize technology.<sup>6</sup> They will drive the improved use of technology to serve clients. And, “everyone will have to embrace technology.” When asked about the most likely change agent in the legal market over the next ten years, 32% chose technology innovation as the most likely change agent.<sup>7</sup> Only 10% of respondent lawyers believed that law firms will take the lead in reinventing the legal market.<sup>8</sup> As technology is here to stay and will only advance exponentially along the way, lawyers must learn how to identify and use new technologies to add value to client work, reduce overhead costs, increase efficiencies in the provision of legal advice and thereby improve their ability to compete for legal work.

With an understanding that technology will help shape the future of the practice of law as well as provide its own challenges, the Task Force Subcommittee on Technology focused its research on projects that may provide guidance to Minnesota lawyers on the effective use of technology in law practices in solo, small and medium sized firms while staying clear of ethical conduct violations. Additionally, the Subcommittee on Technology examined how other state bar associations and legal aid service providers are using technology to serve low income to modest means clients and how technology can assist lawyers in the management of their own law practice to stay competitive with larger firms. Technology has greatly influenced the practice of law and will continue to do so. To stay abreast of this ever changing technolandscape, the Task Force recommends that a Technology Committee be permanently created and placed within the Practice Management and

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<sup>6</sup> THOMAS S. CLAY & ERIC A. SEEGER, LAW FIRMS IN TRANSITION 86 (2014) available at [http://www.altmanweil.com/dir\\_docs/resource/f68236ab-d51f-4d81-8172-96e8d47387e3\\_document.pdf](http://www.altmanweil.com/dir_docs/resource/f68236ab-d51f-4d81-8172-96e8d47387e3_document.pdf).

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

Marketing Section of the MSBA.

### Rules of Professional Conduct

One of the biggest hurdles for lawyers seeking to embrace technology affecting their practices is to sort through questions about how that technology relates to traditional ethics rules that have been in effect long before things like the internet, the cloud and social media came into existence. In recent years, efforts have been made to bring ethics rules into closer alignment with changing technology. In 2009, the ABA Commission on Ethics 20/20 was created to review the impact of technology on the ABA Model Rules of Professional Conduct, and to propose appropriate revisions in the rules. In 2013, the commission developed a number of recommendations that were adopted by the association's policymaking House of Delegates on issues such as attorney-client privilege, protection of confidential information and the use of internet based technology.

Recently, the Minnesota State Bar Association (MSBA) and the Lawyers Professional Responsibility Board (LPRB) petitioned the Minnesota State Supreme Court to adopt amendments to the Minnesota Rules of Professional Conduct (MRPC) that mirror many of those proposed by the ABA 20/20 Report. As these two groups were working together to draft the petition for ethical rule changes, the Subcommittee on Technology was reviewing the MRPC and determined to recommend a similar approach. The Minnesota Supreme Court recently adopted all recommendations made by the MSBA and the LPRB. The new Rules became effective April 1, 2015. Minnesota rules now mirror those proposed by the ABA 20/20 Report.

### Cloud Based Computing and Storage

While these amendments to the rules of professional conduct are necessary to advise lawyers on the responsibilities and safe use of technology, they do not address all of the concerns faced by Minnesota lawyers' use of technology in their law practices. Additional issues surround the use of web based software and the storage of client sensitive documents, files, and data on servers owned by third parties outside of the direct control of lawyers, or "in the cloud." The Minnesota Lawyers Professional Responsibility Board has not issued an opinion on the ethics of cloud storage or cloud computing. Because use of these systems is pervasive among Minnesota lawyers, it is time for the LPRB to provide guidance on what the "reasonable" use of this technology entails. To do nothing leaves Minnesota lawyers exposed to lawsuits and ethics complaints when inevitably something goes wrong, such as: data is lost; the servers are breached; the web host goes out of business and doesn't provide access to data; or no data encryption was used.

**Recommendation #1: The MSBA should seek a formal ethics opinion from the Minnesota Lawyers Professional Responsibility Board that provides guidance to lawyers on best practices for using cloud based software and for storing data on third party vendor servers accessible only through the internet.**

Today's law firms, especially the small and solo firms, are using cloud based computing to both create and store attorney client communications, client data and sensitive emails and documents. Use of a cloud based system creates cost efficiencies necessary for the survival of smaller firms. In the modern legal profession, technology plays a critical role in the efficient delivery of legal services. The "cloud" has been a significant factor behind technological advancements in most industries, including the legal profession. Cloud computing, broadly defined, is a category of software and services delivered over the internet rather than installed locally on a user's computer. This once mystical concept of storing data on remote, third-party servers has become the norm. The discussion has moved from whether lawyers can use the cloud in their law practice to how to use it effectively and safely to represent clients. Cloud computing offers significant advantages over computer based hard drive storage, including:

- Minimal upfront costly investments;
- Providing efficiencies as lawyers can access documents and information from anywhere and at any time as long as there is an internet connection;
- Relatively user friendly setup and configuration;
- Creating a back-up system not available with the typical storage process for paper files; and
- Easy communication with client and uncomplicated exchange of documents.

Because cloud computing places clients' data and documents on remote servers outside of the lawyer's direct control, it is also cause for some concern regarding client confidentiality and the applicable rules of professional conduct. Providing competent representation to clients now means that lawyers not only have to understand the technology, they need to know how it works, what issues it creates for clients and what ethical issues it creates for lawyers.

Nineteen states have issued opinions on cloud computing.<sup>9</sup> All of these states

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<sup>9</sup> ABA Law Practice Division, Legal Technology Resource Center, *Cloud Ethics Opinions Around the U.S.*, AMERICANBAR.ORG,

have said that cloud computing is permitted and instituted a duty of reasonable care.<sup>10</sup> Some examples of specific duties or requirements from these opinions include:

- Utilizing reasonable security precautions such as password protection and encryption;
- Periodically reviewing security precautions;
- Understanding how the software/service provider handles data storage and security;
- Weighing the sensitivity of the data;
- Consulting an expert if the lawyer does not possess technology expertise;
- Vendor must have an enforceable obligation to preserve confidentiality and security; and should notify lawyer if served with process for client data;
- Conducting due diligence investigation of any potential vendor; and
- Instructing the vendor to preserve confidentiality of data.<sup>11</sup>

Closely related to the concept of cloud computing is the use of online backup systems. Six states have issued opinions concerning web based storage of data and documents.<sup>12</sup> In the situations submitted by most lawyers to their governing board, the lawyer seeks guidance from their state ethics board or committee on whether electronic client files, which contain confidential client information and communications, stored on a server or other computer device physically located and maintained by a third party outside the attorney's direct control and supervision, meets the state's ethical standards. In general, the state boards have directed that the lawyer's duty to protect client confidentiality is not absolute.<sup>13</sup> In order to comply with the rule, the lawyer must act competently and reasonably to safeguard confidential client

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[http://www.americanbar.org/groups/departments\\_offices/legal\\_technology\\_resources/resources/charts\\_fyis/cloud-ethics-chart.html](http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/cloud-ethics-chart.html) (last visited May 11, 2015).

<sup>10</sup> *Id.*

<sup>11</sup> *See id.*

<sup>12</sup> North Dakota is the only state to have an ethics opinion directly addressing this issue, having done so in 1999. <https://www.sband.org/userfiles/files/pdfs/ethics/99-03.pdf>. The committee concluded that a law firm may subscribe to an online backup service, "provided the law firm ensures that the security of the data transmission and the security of the data storage are adequate for the sensitivity of the records that are to be transmitted and stored." *Id.*

Arizona, Massachusetts, Nevada, New Jersey, and Vermont have each issued generally relevant opinions on this topic. ABA Law Practice Division, Legal Technology Resource Center, *FYI: The Ethics of Online Backup Systems*, AMERICANBAR.ORG, [http://www.americanbar.org/groups/departments\\_offices/legal\\_technology\\_resources/resources/charts\\_fyis/OBSethicsfyi.html](http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/OBSethicsfyi.html).

<sup>13</sup> *See* State Bar of Nevada Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 33 (Feb. 9, 2006), available at [http://nvbar.org/sites/default/files/opinion\\_33.pdf](http://nvbar.org/sites/default/files/opinion_33.pdf).

information and communications from inadvertent and unauthorized disclosure. Additionally, state ethics boards have determined that the lawyers who hire the outside vendors must ensure the outside party is aware of the lawyer's obligation of confidentiality, and is itself obligated, whether by contract, professional standards, or otherwise, to assist in preserving such confidential information.<sup>14</sup>

The Arizona Board of Ethics found that an attorney must be competent to evaluate the nature of the potential threat to client electronic files and to evaluate and deploy appropriate computer hardware and software to accomplish that end.<sup>15</sup> An attorney who lacks or cannot reasonably obtain that competence, it held, is ethically required to retain an expert consultant who does have such competence.<sup>16</sup> An Iowa ethics committee provided a detailed and thorough list of suggested questions that lawyers should ask all cloud computing providers.<sup>17</sup> The questions focus on assisting lawyers in assessing the accessibility and security of their data stored in the cloud<sup>18</sup>:

- Will I have unrestricted access to the stored data?
- Have I stored the data elsewhere so that if access to my data is denied I can acquire the data via another source?
- Have I performed due diligence regarding the company that will be storing my data?
- Is it a solid company with a good operating record, and is its service recommended by others in the field?
- In which country and state is it located, and where does it do business?
- Does its end user's licensing agreement (EULA) contain legal restrictions regarding its responsibility or liability, choice of law or forum, or limitation on damages?
- Likewise, does its EULA grant it proprietary or user rights over my data?
- What is the cost of the service, how is it paid, and what happens in the event of nonpayment?
- In the event of a financial default, will I lose access to the data, does it become the property of the vendor, or is the data destroyed?
- How do I terminate the relationship with the vendor?
- How do I retrieve my data, and does the vendor retain copies?

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<sup>14</sup> See Advisory Committee on Professional Ethics, Appointed by the S. Ct. of N.J., Op. 701 (Apr. 10, 2006), *available at* [http://www.judiciary.state.nj.us/notices/ethics/ACPE\\_Opinion701\\_ElectronicStorage\\_12022005.pdf](http://www.judiciary.state.nj.us/notices/ethics/ACPE_Opinion701_ElectronicStorage_12022005.pdf).

<sup>15</sup> See State Bar of Arizona Ethics Opinion, 05-04: Electronic Storage; Confidentiality (July 2005), *available at* <http://www.azbar.org/Ethics/EthicsOpinions/ViewEthicsOpinion?id=523> (last visited May 11, 2015).

<sup>16</sup> *Id.*

<sup>17</sup> See Iowa State Bar Association, Committee on Ethics and Practice Guidelines, Ethics Opinion 11-01: Use of Software as a Service – Cloud Computing (Sept. 9, 2011), *available at* [http://205.209.45.153/iabar/ethics.nsf/e61beed77a215f6686256497004ce492/02566cb52c2192e28625791f00834cdb/\\$FILE/Ethics%20Opinion%2011-01%20--%20Software%20as%20a%20Service%20-%20Cloud%20Computing.pdf](http://205.209.45.153/iabar/ethics.nsf/e61beed77a215f6686256497004ce492/02566cb52c2192e28625791f00834cdb/$FILE/Ethics%20Opinion%2011-01%20--%20Software%20as%20a%20Service%20-%20Cloud%20Computing.pdf).

<sup>18</sup> *See id.*



- Are passwords required to access the program that contains my data?
- Who has access to the passwords?
- Will the public have access to my data?
- If I allow non-clients access to a portion of the data, will they have access to other data that I want protected?
- Recognizing that some data will require a higher degree of protection than other data, will I have the ability to encrypt certain data using higher level encryption tools of my choosing?

Decisions from other state ethics committees and boards provide sufficient guidance to assist the LPRB in providing Minnesota lawyers with the best practices available for using the web for cloud computing and client data storage.

#### Provide Technology Solutions at a Lower Cost to MSBA Members

**Recommendation #2: The MSBA should create a permanent Technology Committee or subcommittee, which may be housed within a particular section, whose mission it is to keep abreast of changing technology and determine how the MSBA can best assist its members to stay at the forefront of those changes. This includes, but is not limited to, exploring software options that may be offered to aid MSBA members in their law practice, particularly those who serve low and modest income clients.**

Technology can provide lawyers with software tools that manage and organize files, coordinate calendars, provide calendar tracking for litigation cases as well as large document and electronic case management systems. While very helpful to the practice of law, these systems can become expensive and out of reach for small to medium size firms. Providing some of these services to Minnesota lawyers at discount rates would enhance many small law firms' practices. Currently, the MSBA provides a research tool, Fast Case, and is scheduled to begin providing a case management software called Clio. Access to Fast Case is included within the MSBA membership and Clio is a service that is provided to MSBA members with a contractual relationship directly with Clio. MSBA members receive a ten percent discount on the Clio monthly rates. Microsoft's SharePoint with Office 365 will be offered shortly to MSBA members at a ten percent discount as well. There are many other types of litigation support software programs like Summation and Relativity that would be beneficial to MSBA members. The Task Force recommends that the newly formed Technology Subcommittee work with MSBA staff to further explore additional software that may be offered to assist MSBA members in their law practice.

### Use of Technology to Assist Lawyers who Serve Low Income Clients

Based on a 2012 study, the Legal Services Corporation estimates that no more than 20% of poor persons with civil legal needs are able to get assistance.<sup>19</sup> Technology has revolutionized the delivery of all kinds of services throughout the public and private sectors of the United States and the world. Importantly, it can assist lawyers who work with low income and modest means clients. The application of current technology to innovative ways of providing legal services may be the breakthrough needed to provide legal services to this large population whose legal needs remain unmet.

Deployment of new technological advances to the practice of law could fill this gap in services through the use of legal portals and document assembly software. Access to justice could be met by providing a litigant with easy access to legal information about her rights, allow one to apply for legal aid electronically, provide access to a legal aid or pro bono attorney so the potential litigant may talk to the attorney over her computer, and find and complete the forms needed to file in court. All of this can be accomplished through legal portals and document assembly software systems. A legal portal could be a static web site that provides information about certain legal issues and provides information to potential litigants such as forms, names and phone numbers of lawyers practicing in that field of law; helpful legal summaries and answers to typical questions. It could also be a workspace where a litigant could store information, receive updates or messages from the court or her attorney, apply for services, or complete forms or make appointments or court dates. A document assembly system could be part of a static or an interactive portal. A document assembly system typically uses simplified (“plain”) language questions to obtain the information necessary to complete pleadings, a letter, or other document; instructions, explanations, and tips can be built into the interview, and system features can stop a litigant from making errors. Through branching logic the end result depends upon the questions answered.

A leading designer of web-based document assembly services believes that the state-wide legal aid organizations’ websites that coordinate volunteers, provide training materials, share and collaborate on resources, are transforming the way legal services are provided to low and modest means clients. Document assembly systems currently being developed by these organizations and by courts could be used by solo and small firms as well. One noted expert has observed:

It is difficult to overestimate the importance of these statewide Web sites as foundational building blocks for transformational delivery changes. These sites prove the Internet framework on which to

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<sup>19</sup> LEGAL SERVICES CORPORATION, REPORT OF THE PRO BONO TASK FORCE 2 (Oct. 2012), *available at* [http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF\\_%20Report\\_FINAL.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf).

hang new services and new approaches to collaboration. Their authenticity and interface consistency make these sites viable platforms for information and service delivery innovation across the country.<sup>20</sup>

One of the best known and most widely cited document assembly systems is called “A2J Author,” a cloud based software tool that walks the user through the litigation process step-by-step. As litigants answer a series of questions, a form is assembled in the background using HotDocs document assembly software. There are thousands of HotDocs templates stored on the national LawHelp Interactive (“LHI”) server for the use of advocates, and pro bono volunteers through legal aid and court websites. In 2011, more than a half-million interviews were conducted using LHI, generating over 300,000 documents. Another interactive tool developed to help self-represented litigants complete court forms is the Interactive Community Assistance Network (“I-CAN!”) program. I-CAN! and “LHI” forms are in use in Minnesota and can be found on the Court’s Self Help Center website [www.mncourts.gov/selfhelp](http://www.mncourts.gov/selfhelp) and Legal Aid’s Lawhelp website [www.lawhelpmn.org](http://www.lawhelpmn.org). Document assembly forms can also be linked to Court e-filing systems, and there has been testing of this in the Minnesota courts also.

The Legal Aid Society of Orange County (“LASOC”) created the I-CAN! program and it is used in at least seven states (as of 2012). LASOC has used the technology underlying I-CAN! to create a new online service called Legal Genie to connect litigants using I-CAN! forms to lawyers willing to review the forms electronically, and give legal advice for a fee. The forms are reviewed by an attorney from the California State Bar-certified Lawyers Referral Service (“LRS”), who also provides up to thirty minutes of telephone consultation to inform litigants about the court process and give brief advice.

While document assembly projects using HotDocs and A2J Author provide helpful resources for low to moderate income self-represented litigants, technologies like these require significant technical expertise, staff time, and funding resources. These programs are proven to provide effective, efficient and inexpensive services (once designed) to clients of modest means.

The MSBA provides mndocs, an automated document assembly program designed to run through the new [HotDocs Market](#). The new cloud-based mndocs enables members to access forms from a wide range of devices and locations. While mndocs is only available to MSBA members, there is an additional charge to use it. The Task Force encourages the MSBA to consider making this technology available for free or at a reduced cost to attorneys who serve low or modest-means clients.

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<sup>20</sup> Ronald W. Staudt, *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*, 42 Loy. L.A. L. Rev. 1117, 1126 (2009)

## **ECONOMICS of PRACTICE AND OUTSTATE PRACTICE**

### Introduction

Many of today's challenges to the practice of law are most palpable with respect to the economics of the practice. Whereas practices which were long considered de rigueur among lawyers—the billable hour, the partner-associate model, and a lawyer's performance of all aspects of legal work (whether customized to the client or not, facilitated by technology or not)—are no longer profitable for many lawyers and law firms.

Pressure to change the economic model of practice is coming from multiple sources. New technology in areas such as discovery, legal research, document generation, brief generation, and case outcome analysis are resulting in the increased commodification of legal services and driving down costs by increasing efficiencies.<sup>21</sup> Lawyers whose livelihoods depend upon these types of legal tasks are likely to find their work displaced by computers that can work faster, cheaper, and around the clock. Some of these technologies also make legal tools available to the general public, obviating the need for assistance from a licensed attorney altogether.

Second, there is the pressure from clients to reduce costs while offering expanded legal services—the “more for less” problem.<sup>22</sup> The current economic climate following the severe economic downturn of 2008-2009 is putting pressure on lawyers to lower their prices, as are the above-mentioned technologies which are leading to the commodification of legal services and aiding consumers in making price comparisons. Corporations are looking to control prices by hiring in-house counsel or contract attorneys, and individuals are looking elsewhere to solve their legal problems. Ironically, as lawyer underemployment has increased following the recession, demand for low- and moderate-cost legal services for individuals has increased, and yet this demand for legal services is largely unmet.<sup>23</sup>

Third, the liberalization of the laws governing the legal profession is resulting in competition from non-lawyers for work that was traditionally the province of lawyers only.<sup>24</sup> Although the American Bar Association has resisted new hybrid business forms, such as the Multidisciplinary Practice firms (MDP) embraced in Europe, such competition is already occurring from multinational MDPs abroad, and lawyers can anticipate that the rule against fee sharing with

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<sup>21</sup> See John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *FORDHAM L. REV.* 3041, 3042-43 (2014).

<sup>22</sup> See generally, RICHARD SUSKIND, *TOMORROW'S LAWYERS* (2013).

<sup>23</sup> See Ann Juergens, *Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients*, 39 *WILLIAM MITCHELL L. REV.* 80, 83 (2012).

<sup>24</sup> See SUSKIND, *supra* note 22.

nonlawyers may one day be modified or eliminated altogether. Laws and legal decisions permitting competition from document-drafting software and websites like LegalZoom, and also from Limited License Legal Technicians is also reshaping the work the lawyers can profitably perform.

Fourth, demand for change is coming from within the profession itself. There is greater demand among lawyers for improved work-life balance and job satisfaction. Many lawyers are dissatisfied with the emphasis on the billable hour, the partnership track, and the traditional law firm hierarchy. Lawyers are finding innovative and practical ways to make a living while working less, and having more time for family, community, and self. Keeping costs low can also enable lawyers to serve low- and modest-means clients, leading to a greater sense of fulfillment at work.

#### Resources and Information for Attorneys

**Recommendation #3: The MSBA should establish a “Resources” section on their website that will provide links to helpful resources for attorneys interested in alternative practice models and innovative, entrepreneurial methods of providing legal services, with a particular focus on small and solo providers in greater Minnesota. The MSBA should provide for the regular update of this section with new and relevant materials. A sample of materials and links is attached as Appendix B.**

Responding to the challenges concerning the economics of practice demands innovation from Minnesota’s lawyers, but innovation is stymied by lack of accurate and relevant information on alternatives to the traditional practice model. Therefore, the MSBA should take steps to educate its members by providing current, helpful, and, whenever possible, empirically supported information on these topics. The most accessible and visible way for attorney members to receive this information is on the website. The MSBA may find it helpful to partner with MN CLE toward this end. Further, the MSBA may wish to include information on active programming and current resources aimed at helping practitioners solve their practice management and profitability issues, such as the Practice Management Section, the Solo/Small Listserv, Practicelaw, and resources from Minnesota Lawyers Mutual and Minnesota CLE. In addition, the MSBA cohort groups that engage solo/small practitioners in a particular topic of interest such as marketing or virtual law practice are valuable programs. The Solo/Small Soapbox blog on the MSBA website and page in the Bench & Bar magazine provide a forum for practitioners to post on these topics and others.

Additional efforts are needed to inform attorneys about non-traditional delivery of legal services in greater Minnesota to help address any gap that may exist between legal needs and available attorneys in greater Minnesota. Simply directing those in need of specialized legal services who live in greater

Minnesota to urban providers may not adequately deliver a truly professional/trusted advisor relationship, particularly where communication is limited to the telephone and electronic means.

Alliances among local practitioners in greater Minnesota and larger law firms holds some promise in providing specialized and varied legal services to clients outside the metro area. Attorneys who have specialized practices and are willing to physically travel to client locations (with minimal or no charges for driving time), may also help fulfill this need.<sup>25</sup>

**Recommendation #4: The MSBA should produce On-Demand CLEs covering topics in alternative fee structures and practice models with practical advice for practitioners as well as interviews with Minnesota lawyers who use and advocate the use of alternative fee structures and practice models. The MSBA, through its Outstate Practice Section, in coordination with other Sections, should provide regular CLE programs with a focus on greater Minnesota.**

Similar to the prior recommendation, education is critical. On-Demand CLEs are an effective and low-cost information delivery tool for bar members across the state. The Outstate Practice Section Council of the MSBA has made continuing legal education with a greater Minnesota focus a priority. The Section has identified appropriate topics, and contemplates many of these presentations will be cosponsored by other MSBA sections. The Section is currently working closely with the New Lawyers Section on programming. The two sections co-sponsored a CLE in April of 2015 on the Anatomy of a First Client Contact.

Providing interviews of practitioners with experience using alternative practice models and fee structures will enhance the credibility of using such models and provide information that is relevant to Minnesota practitioners specifically.

The MSBA can perhaps best serve greater Minnesota attorneys by working with the Outstate Practice Section and other Sections to explore potential solutions to the challenges facing practitioners today. These solutions would then be communicated to members through MSBA programs and to law students through partnerships with the law schools.

Through an ongoing effort to communicate options and studying the effects of various solutions adopted by entrepreneurial practitioners who have successfully implemented non-traditional practices, the MSBA can help promote the delivery of legal services to clients in greater Minnesota and provide opportunities to its members.

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<sup>25</sup> Pluto Legal, PLLC, is an example of a Minnesota firm utilizing house calls and a mobile practice. See Pluto Legal, *Our Team*, PLUTOLEGAL.COM, <http://www.plutolegal.com/ourteam.php> (last visited May 11, 2015).

### Attracting the Next Generation of Lawyers to the Outstate

National publications outside the legal field have identified attraction of professionals to rural America as an issue with Millennials, affecting not just the practice of law, but many professions and businesses.<sup>26</sup>

**Recommendation #5: The MSBA, through its Outstate Practice Section and other Sections, should work with the law schools and other institutions to encourage lawyers, especially recently licensed lawyers, to practice in greater Minnesota.**

There are many examples of programs initiated in other states in response to this problem.<sup>27</sup> Most if not all of these programs are in their infancy, and should be monitored on an ongoing basis to determine their results and potential applicability in Minnesota.

The MSBA should also explore ways to partner with existing or new programs in Minnesota. The University of St. Thomas School of Law recently created a scholarship program for law students interested in practicing in greater Minnesota.<sup>28</sup> Members of the Outstate Practice Section have volunteered to serve as mentors for these students. This is a one example of how the MSBA can be involved in such programs.

A concerted effort should be made to dispel the common perception among law students (and others) that outstate practice is a general practice and that specialized and boutique practices are not workable outside the metropolitan area.

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<sup>26</sup> See e.g., Tim Post, *Rural Minnesota Districts Finding it Tougher to Lure New Teachers* MPR News (Sept. 4, 2014), available at <http://www.mprnews.org/story/2014/09/04/minnesota-rural-teacher-shortage>; Olga Khazan, *Why Are There So Few Doctors in Rural America?*, THE ATLANTIC (Aug. 28, 2014), available at <http://www.theatlantic.com/health/archive/2014/08/why-wont-doctors-move-to-rural-america/379291/>.

<sup>27</sup> See e.g., S.D. Sup. Ct., *Rural Attorney Recruitment Program*, South Dakota Unified Judicial System, <http://ujs.sd.gov/Information/rarprogram.aspx> (last visited May 11, 2015) (describing South Dakota's Rural Attorney Recruitment Program); Lorelei Laird, *In Rural America, There are Job Opportunities and a Need for Lawyers*, ABA JOURNAL (Oct. 1, 2014) (describing programs in North Dakota, Maine, and Georgia); NSBA, *Rural Practice Initiative (RPI)*, NEBAR.ORG, <http://www.nebar.com/?page=RPI> (last visited Apr. 8, 2015) (describing Nebraska's plan to attract student's to rural practice); American Bar Association, *ABA Announces Catalyst Grant Recipients for its Legal Access Job Corps*, AMERICAN BAR ASSOCIATION NEWS ARCHIVES (July 10, 2014), [http://www.americanbar.org/news/abanews/aba-news-archives/2014/07/aba\\_announces\\_cataly.html?sc8cid=14DCA347](http://www.americanbar.org/news/abanews/aba-news-archives/2014/07/aba_announces_cataly.html?sc8cid=14DCA347) (including a description of Arkansas' fellowships for newly admitted lawyers who will serve under the direction of a legal aid lawyer representing clients in rural areas for one year).

<sup>28</sup> <http://www.stthomas.edu/law/admissions/financingyoureducation/scholarships/>

## Protecting and Assisting the Public

**Recommendation #6: The MSBA should partner with other legal organizations, the law schools, and the court to explore creation of a state-wide panel of attorneys who can serve modest means clients through unbundled representation, sliding scale fees or other “low bono” methods. The goal of such a project would be to expand the number of attorneys working to meet the unmet need for moderate cost legal services and to improve the market for legal services for Minnesota attorneys who provide unbundled and sliding scale services.**

While Minnesota attorneys experience under- and unemployment, there is a vast unmet need for legal services among low- and moderate-income persons. The Hennepin and Ramsey County bar associations have taken the lead by investing in attorney panels for “modest means” clients.<sup>29</sup> However, outside of these two counties there is currently no referral service for low bono services. This leaves the courts and other triage services such as 211 in greater Minnesota largely unable to refer persons who would be otherwise eligible for modest means representation.<sup>30</sup>

Based on a report from the Legal Services Corporation, stakeholders in Minnesota are discussing the creation of a single website portal for triaging legal needs of clients and matching those needs with the right resource.<sup>31</sup> In some cases, the clients will be low income and be matched with civil legal aid programs through online intake. In other cases, the clients will be referred to court self-help services. But there will also be cases where clients are over income for civil legal aid, but do need the assistance of a lawyer. This is where the MSBA comes in.

In anticipation of a website portal being created, the MSBA should organize a panel of attorneys outside of Hennepin and Ramsey counties who agree to serve modest means clients through unbundled representation, sliding scale

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<sup>29</sup> Hennepin County offers the Low Fee Family Law Project which is “designed to allow affordable representation to the working poor, with income just above the financial bracket where services are available through other legal services providers.” Hennepin County Bar Ass’n, *Volunteer Lawyers Network and Pro Bono Services*, HBCA.ORG, <http://www.hcba.org/?page=vlnandprobono#LowFee> (last visited May 11, 2015). Ramsey County provides the Modes Means Program in which “[p]articipating attorneys agree to charge no more than \$55/hour and ask for a retainer of no more than \$600.” Ramsey County Bar Ass’n, *Attorney Referral Service of Ramsey County*, RAMSEYBAR.ORG, <http://www.ramseybar.org/attorney-referral-service/> (last visited May 11, 2015).

<sup>30</sup> Call for Justice, LLC, is one source of information on legal resources in greater Minnesota, but there are not any for “low-bono,” <http://callforjustice.org/wp-content/uploads/2013/12/Greater-MN-Cheat-Sheet-4-23-2015.pdf>.

<sup>31</sup> LEGAL SERVICES CORPORATION, REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE (Dec. 2013), available at [http://www.lsc.gov/sites/lsc.gov/files/LSC\\_Tech%20Summit%20Report\\_2013.pdf](http://www.lsc.gov/sites/lsc.gov/files/LSC_Tech%20Summit%20Report_2013.pdf).



fees or some other form of “low bono.” The MSBA should consult with Hennepin and Ramsey County Bar Associations to learn from their experience with modest means panels. Establishing a greater Minnesota panel would benefit both modest-means clients as well as MSBA members who are looking for alternative ways to make a living. Although in the end the MSBA may not be the best place to “house” such a panel, the MSBA should spearhead its exploration by leading a collaborative effort with other legal organizations such as Call for Justice, the law schools, and the courts.

A new legal incubator program called the Collaborative Community Law Initiative (CCLI) for recent graduates of Hamline and William Mitchell College of Law should provide useful information in this effort. Participating attorneys will receive training and mentoring from experienced lawyers to start their own community-based practices, with the goal of serving lower-income Minnesotans.<sup>32</sup>

**Recommendation #7: The MSBA should engage in outreach and education to lay persons in Minnesota to raise awareness of the important services that attorneys provide, including dispute resolution and risk management, and helping lay persons identify when a lawyer’s assistance is helpful and necessary. The MSBA should actively work with the courts and legislature to define the “practice of law” and to provide remedies for customers of non-lawyer providers similar to those available to clients of the legal profession.**

An ABA study on civil legal needs has shown that the two biggest obstacles to the provision of legal services for middle-income persons is affordability and lack of information, particularly with regard to information about when a lawyer would be helpful or necessary.<sup>33</sup> Both low-income and moderate-income Americans view the justice system as not at all helpful even when they have a legal problem, either because they perceive lawyers as unhelpful and unnecessarily costly, or because they think they can solve their legal problems on their own. But attorneys know firsthand that the assistance of a trained and licensed attorney can be invaluable. Lawyers experience time and again that, without their intervention, outcomes for clients and companies would likely be much worse, and that the unique expertise that a lawyer lends to a matter adds significant value. But the ABA study makes clear that we are not effectively communicating this message to potential clients, who are the public at large.

Although the Task Force is not advocating the MSBA embark on a media campaign, which it recognizes is an expensive and on-going endeavor, many

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<sup>32</sup> See Dan Heilman, *Incubator to Help Young Lawyers—And Their Clients*, MINNESOTA LAWYER (Apr. 30, 2015), available at <http://minnlawyer.com/2015/04/30/incubator-to-help-young-lawyers-and-their-clients/>.

<sup>33</sup> See Juergens, supra note 3, at 84.

professional organizations engage in outreach activities to raise awareness of their profession and to market professionals to potential clients. For example, the website of the Minnesota Society of Certified Public Accountants has both a webpage aimed at the public as well as a webpage for the press that highlights accomplishments of CPAs in Minnesota, and offers to connect organizations with CPAs for speaking engagements on a variety of topics.<sup>34</sup> This type of outreach and education is essential to raise the public awareness of the important services that lawyers provide. The MSBA's [MN Find a Lawyer](#) directory provides links for the public to access which answer frequently asked questions about attorneys and provide information on choosing the right attorney. These resources could be expanded and other avenues for providing information to the public should be explored.

Non-lawyer competition has grown recently with the formation of numerous online "form" companies. Some small firm lawyers, especially in greater Minnesota, believe that they can better compete with non-lawyers if costs and limitations on lawyers (e.g., license fees, malpractice threats and insurance premiums, ethical constraints) are similarly applied to competitors. On the other hand, some practitioners do not consider online form services to be a threat, as consumers of those services may be unlikely to seek services from a lawyer.

While an obvious solution available to lawyers is to adapt their practices to focus on legal advice rather than form preparation, this does not address the concern of consumer protection. Often lawyers are called upon, at substantially more expense, to correct mistakes made in preparation of forms by non-lawyers. At present, there may be insufficient remedies available to consumers in Minnesota as against non-lawyer service providers.

The Minnesota Court of Appeals, in State v. Milliman,<sup>35</sup> provided some guidance as to what constitutes the unauthorized practice of law. In that case, the court applied Minnesota law, which made it unlawful for any person, except for members of the bar, to perform legal services, and found that a nonlawyer who levied a judgment using otherwise legal papers was guilty of the unauthorized practice of law because he described himself as an "attorney in fact" in the levy papers.<sup>36</sup> Although the narrow holding of the case was that the term "attorney" in the levy statute refers to an attorney-at-law and not an attorney-in-fact, the Court outlined the general issues and provided substantial guidance on the unauthorized practice of law (UPL).<sup>37</sup> The Court made it clear that UPL enforcement is based upon an "abiding concern for the public interest."<sup>38</sup>

A recent ABA survey of state Unlicensed Practice of Law Committees does not

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<sup>34</sup> See Minnesota Society of Certified Public Accountants at <http://www.mncpa.org/>

<sup>35</sup> State v. Milliman, 802 N.W. 2d 776 (Minn. Ct. App. 2011).

<sup>36</sup> See *id.* at 778.

<sup>37</sup> See *id.* at 777.

<sup>38</sup> *Id.* at 780.

indicate active involvement of the MSBA in enforcement of UPL in Minnesota.<sup>39</sup> That is likely due to the fact that the attorney general is responsible for UPL enforcement in Minnesota.<sup>40</sup> Since the ABA survey indicates that UPL enforcement is becoming more active nationwide, the MSBA should take a fresh look at what can be done to increase UPL enforcement in our state. Perhaps amendments to our statute governing the unauthorized practice of law are needed. An overall analysis would include weighing the potential risks and benefits of either a statutory approach or a court case approach.

## **MENTORING**

### Introduction

Among the topics the Task Force considered was mentoring for new lawyers. Many new lawyers report the need for mentoring as they adjust to the practice of law. Some new lawyers in larger firms or companies have access to mentors. Many new lawyers do not. New lawyers who open their own law practice, in particular, are looking for mentoring.

The Task Force sought to answer the following questions regarding mentoring for new lawyers. See Appendix C for the sources consulted in this undertaking.

1. What exactly do we mean when we talk about mentoring for new lawyers? What type of relationship is involved? In what ways can or should mentoring help the new lawyer?
2. What are other states doing with respect to mentoring in the legal profession? What other programs are being tried? How successful have those other programs been?
3. What mentoring is already available to new lawyers in Minnesota?
4. Is it feasible to consider a new mentor program run by the MSBA at this time? What could such program look like? What are the challenges to creating a new program?
5. What are the Task Force Recommendations with respect to mentoring for new lawyers in Minnesota?

### What is Mentoring For New Lawyers?

Mentoring is a term that most people claim to understand, yet often results in widely divergent explanations. At its core, mentoring is the transfer of information and wisdom from a more experienced lawyer to a less experienced

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<sup>39</sup> See generally AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON CLIENT PROTECTION, 2012 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES, 5, 14, 22, 26 (May 2012), available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2012\\_upl\\_report\\_charts\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2012_upl_report_charts_authcheckdam.pdf)

<sup>40</sup> Minn. Stat. § 481.02.

lawyer within the boundaries of an ongoing, supportive relationship. The mentor and mentee develop trust and open communication. The mentor must be invested in the success of the mentee.

Social scientists have identified distinct mentoring functions. The first mentoring function is the psychosocial mentoring function. The psychosocial mentoring function involves the mentor helping the mentee develop the sense of self-worth and self-confidence necessary to be a successful lawyer. It can involve being a good listener or supporting the mentee during difficult times. It may involve helping the mentee accept and learn from mistakes.

The second mentoring function is the career mentoring function. The career mentoring function is focused on the practical skills and experiences needed for the new lawyer to advance in his career. Career mentoring can involve giving the mentee appropriate work assignments. It can involve giving feedback to a mentee on written work or observing a mentee in action. It may involve “teaching” skills to the mentee.

The third mentoring function is the role modeling function. Role modeling involves the mentor allowing the mentee to observe her doing the work of the lawyer. It may mean having the mentee spend the day shadowing the mentor or allowing the mentee to examine the file information system the mentor uses. Role modeling is the idea that the protégé is observing the mentor do her work and learning from that observation.

Most social scientists endorse these first three mentoring functions. Some combine the role modeling and career mentoring functions. A smaller number of writers argue for a fourth mentoring function as it relates to lawyers, a professionalism mentoring function. Advocates of the professionalism function argue that legal mentors must mentor their mentees on the basic values and professional rules inherent to our profession. The mentoring function would involve mentoring the new lawyer on the ethics of duty as well as the ethics of aspiration.

Whether focused on three or four mentoring functions, mentoring has become a hot topic in the legal profession. New lawyers claim they want more mentoring and mentoring is often listed as a possible solution to a variety of ailments in the profession, from the loss of collegiality and decreased professionalism, to improved business skills or legal skills.

A threshold issue the Task Force identified is that the wide range of mentoring functions is both a strength and a weakness. When lawyers talk about mentoring, they often have one of the mentoring functions in mind. However, another lawyer may conceive of mentoring as an entirely different mentoring function. Further, differing program objectives may mean focusing on differing mentoring functions. While mentoring can be a very effective and multifaceted

tool, it is most effective when applied to a well-defined objective and with a well-considered process so that the mentors and mentees understand which mentoring function is to be used.

#### The Current State of Mentoring For New Lawyers Across the United States

Mentoring in the legal profession has been on the rise for the past decade. Of note, in 2005 Georgia became the first state to mandate mentoring for new lawyers. The Georgia program has continued to this date. Other states mandating mentoring for new lawyers include Utah and Oregon. In addition, several larger voluntary state wide mentoring programs have begun in the last ten years. These programs have seen good enrollment from new lawyers and mentors and have received favorable reviews from participants. States with notable voluntary mentor programs include Ohio, Indiana, Illinois, and South Carolina. While the Ohio program is voluntary and run by the state's supreme court, close to 68% of new lawyers have participated annually.<sup>41</sup> Several other states have also begun considering large-scale mentor programs. New York and California have begun to explore the possibility of mandatory mentor programs.

Local bar association mentoring programs have also rapidly increased in states where there are active local bar associations. Dallas and Des Moines, for example, have begun local bar association mentor programs.

States with successful statewide mentor programs have shared some common elements. First, most of the states with large statewide mentor programs have focused their programs around professionalism initiatives. Many have been created by and run out of, Supreme Court Professionalism Commissions. They have clearly defined goals to improve the collegiality and professional conduct of new lawyers. They are decidedly not job placement programs and they are not career success initiatives. Their skill development programming is focused around professional skills most likely to be implicated in professional misconduct cases, often client communication skills and practice management skills.

A second common element of the larger statewide program is that they offer CLE credits to the mentors and the mentees for their participation. The number of credits varies by program. In Georgia, the first year lawyer earns all of her required first year CLE credits through the mentoring program. Other states offer six or nine CLE credits to the mentors and the mentees. Offering CLE credits for mentoring appears to be a key aspect of these successful programming. One possibility is that offering the CLE credits sends the message to the participant that mentoring is a learning experience. Offering the CLE credits may also avoid making mentoring an additional commitment

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<sup>41</sup> Lori Keating, Secretary, Supreme Court of Ohio's Commission on Professionalism.

on top of an already busy schedule.

#### The Current State of Mentoring for New Lawyers in Minnesota

While Minnesota lacks a statewide mentoring program for new lawyers, there are several positive opportunities for new lawyers to obtain mentoring. The MSBA's Esquire 36 mentoring program had some success for the few years it was offered. Esquire 36 currently focuses its efforts on matching employers with new attorneys seeking jobs, particularly in greater Minnesota. The program facilitates connections between employers and prospective employees at the MSBA Annual Convention Nine Days in June events that are held across the state. Other MSBA sections and initiatives have offered mentoring or training engagements. Several of the affinity bar associations have successful mentor programs. Additionally, the Hennepin County Bar Association runs its own mentoring program. Other local bar associations have tried similar programs. The local law schools all offer mentoring opportunities of some kind for law students. Related organizations like Lawyers Concerned for Lawyers also offer mentoring for lawyers. While there is no comprehensive mentor program for all new lawyers, there are a wide range of smaller mentoring opportunities available. A list of current mentor programs that the Task Force reviewed is included in the Appendix C.

#### Budgetary Constraints to Creating New Mentor Programs

Well-run formal mentor programs are expensive. The programs the Task Force explored in other states all have specific staffing attached to them. Many of the most successful attorney mentoring programs are run by Supreme Court Commissions on Professionalism and have the benefit of dedicated funding streams from those courts. As more fully explained in the recommendations below, the Task Force supports the exploration of a possible new mentor program for lawyers run by the MSBA. At the same time, the Task Force recognizes that the creation of a program of any size will require budget and staffing. The Task Force is mindful of the difficult economic times for the practicing bar and, by extension, the MSBA.

#### Task Force Recommendations Related to Mentoring for Newer Lawyers

Based upon the above factors and our research, the Task Force has arrived at the following recommendations with respect to mentoring for new lawyers in Minnesota.

**Recommendation #8: The MSBA should support a change to the CLE rules to offer some amount of CLE credit for lawyers who participate in approved formal mentor programs. The CLE credits should be available to the attorneys who mentor and to new attorneys who sign up to be mentored.**

At its core, mentoring is a professional development relationship. Each of the mentoring functions serves to move the protégé forward in her professional growth. Teaching and learning are inherent in the mentoring relationship. This recommendation is an acknowledgement of that reality.

Other states with successful formal mentor programs grant CLE credit for the mentor and the mentee in formal mentor programs. In Georgia, for example, a lawyer's first year of CLE credits are achieved through participation in its required Transitions to Practice mentor program. Different states allow differing amounts of CLE credits for participation in appropriate formal mentor programs. Importantly, the states that allow CLE credit for participating in formal mentor programs grant credit for both the mentor and the mentee.

The purpose of the Minnesota CLE Rules is, in part, "to require that lawyers continue their legal education and professional development."<sup>42</sup> The relationship between mentor and mentee fits squarely within that purpose. Mentoring is not intended to be the only source of professional development of learning for a lawyer, but it is one effective component of learning and development. Allowing some CLE credit for participating in appropriate mentor programs is a reasonable extension of that purpose.

The Task Force recognizes that there are a number of details to be worked out in approving this type of change. First, the Task Force would recommend CLE hours only for participation in approved formal mentor programs. The Minnesota Supreme Court would need to adopt guidelines for what constitutes an approved program. The Task Force recommends that approved programs have a formal curriculum for topics or experiences to be covered in the mentor program so that the curriculum can be reviewed for appropriateness.

The Task Force also acknowledges that the number of CLE hours for mentoring should be limited. While mentoring is a strong and effective teaching tool, it is not a replacement for all other forms of continuing education. Other states that have adopted CLE credit for mentoring have ranged between six and twelve hours per CLE reporting requirement. The Task Force recommends additional discussion and study as to what amount of CLE credit would be most effective and appropriate.

**Recommendation #9: The MSBA should affirmatively support existing mentor programs run by affinity organizations, MSBA sections, law schools, and local bar associations. As part of that support the MSBA should create a clearinghouse website or**

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<sup>42</sup> Minn. Bd. Of Continuing Legal Ed., Rules of the Minn. St. Bd. of Continuing Legal Ed. 1 (Aug. 1, 2014), available at <https://www.mbcle.state.mn.us/mbcle/pages/rules.asp#rule1>.

**webpage with information about the available programs and contact information for each program. The MSBA should explore the creation of a formal mentor program for new lawyers.**

Minnesota already has several good mentor programs for newer lawyers. The MSBA, district bar associations, affinity bar associations, Inns of Court, and related organizations like Lawyers Concerned for Lawyers, among others, offer mentoring, coaching or similar one-to-one learning experiences. A list of the programs that the Task Force is aware of is included in Appendix C. The task force recognizes the value of these programs and encourages the MSBA to formally acknowledge its support of these programs.

One of the key areas of support that the MSBA could offer is to create a clearinghouse website or webpage identifying the existing programs, providing contact information for the programs and providing a brief summary. MSBA members may not be aware of the opportunities that already exist to find mentoring. A clearinghouse webpage offers a simple one-stop place for lawyers to go to learn what programs are available to them.

Mentoring is a popular idea and mentoring in the legal profession has continued to rise over the past ten years. The Task Force notes that the companion Task Force on the Future of Legal Education has recommended that the MSBA "...should develop an ongoing program to identify places needing increased services and promote mentorship between interested graduates and practicing lawyers in those outstate areas." This Task Force agrees that a new MSBA mentor program is an idea that should be explored further. However, the wide range of possible objectives and program structures, and the varying staffing and costs associated with different programs, requires additional study and discussion beyond the scope of this Task Force.

Comment [NKM1]: Insert citation

Formal mentor programs can be used to advance professional development in several different ways and across the mentoring functions. For example, several states have created formal mentor programs structured around improving professionalism for new lawyers. A new mentor program for Minnesota lawyers could adopt a similar goal and similar structure as those other successful programs. Alternatively, a new mentor program could be built around improving professional skills for new lawyers or improving career satisfaction for new lawyers. Because mentoring can be used in a wide variety of ways, a new formal mentor program run by the MSBA could be structured around several possible objectives.

Additionally, the size of any new program could vary. Would this program be open to all new lawyers or just a select number? A program open to all new lawyers, even voluntary, could be as large as 700-900 mentees and a



corresponding number of mentors. A program of that size is a large undertaking that would require full time staffing to administer in order to be successful. Alternatively, a smaller program of less than 100 mentees and mentors might be successfully administered part-time.

Depending upon the size, the necessary budget and staffing to run a successful formal mentor program may vary. The states with successful formal mentor programs all dedicate staffing to run those programs. The programs have costs associated with them. The Task Force recommends additional exploration of what type of program is feasible for the MSBA, if any, given financial constraints.

For the foregoing reasons the Task Force believes the best course of action at this time is for the MSBA to further explore creating a new formal mentor program. Future consideration of the program should answer the following key questions:

1. What are the specific stated objectives of a new formal mentor program?
2. How many participants will the program serve?
3. What staffing and budget will the MSBA dedicate to a new formal mentor program?
4. How long will the new program run (one year cycles; three year cycles)?

#### **SUMMARY**

In conclusion, following over a year of thoughtful discussion and research, the Minnesota State Bar Association's Challenges to the Practice of Law Task Force makes the nine formal recommendations found on pages 2-3 of this Report.

APPENDIX A

**MSBA Challenges to the Practice of Law Task Force Membership**

CO-CHAIRS

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Susan Dickel Minsberg

TECHNOLOGY SUBCOMMITTEE

Susan Wiens – Chair  
Susan Ledray  
Todd Scott

UNAUTHORIZED PRACTICE OF LAW AND RURAL PRACTICE

Dennis O'Toole – Chair  
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David Jacobsen  
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Jeanne Kosieradzki

MENTORING

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## APPENDIX B

### RESOURCES ON ALTERNATIVE PRACTICE MODELS

Compiled by Amanda Maly

#### Introduction

This appendix contains links to resources on the following billing structures:

- Flat Fee;
- Unbundling;
- Sliding Scale;
- Virtual Practice; and
- House Calls

In general, resources for attorneys that wish to learn about flat fee, unbundling, and virtual practice are available in the greatest number. The highest quality resources exist on the topics of unbundled services and virtual practice. The articles on these topics are more credible (expert-written, found in respected legal publications versus blogs, etc.). Furthermore, there are well-organized sites for both of these topics that provide links to many resources, forms, and ethical opinions. In contrast, there are limited quality resources for sliding scale practice and a great lack of resources for attorneys that want to learn about making house calls. Though a few articles exist on lawyers that make house calls, there are no practical resources on this topic. From the articles that are available on the topic, major practical issues for making house calls include attorney safety and how to make this type of practice profitable.

Another major issue that appears to affect all areas of alternative practice is the quality of resources available. The best resources, meaning the most complete, easiest to find and use, are sponsored by private businesses, which have an obvious bias and interest in marketing. For example, Clio provides quite a few useful practical guides. Here are links to materials CLIO provides on alternative practice models in general:

- <http://files.goclio.com/marketo/ebooks/flexible-practice-models-for-flexible-law-firms.pdf?aliid=37697633>
- <http://www.goclio.com/2014/02/28/alternative-practice-models/>
- <http://www.goclio.com/2014/10/24/how-alternative-practice-models-are-saving-clients-money/>
- <https://www.youtube.com/watch?v=GEDMMU6HPGI> (CLIO lecture on alternative practice models)

That being said, the law schools and American Bar Association have well-supported and extremely informative free materials that create less concern about bias. Here are links to some examples of materials on alternative practice models in general:

- [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/ls\\_del\\_innovations.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_innovations.authcheckdam.pdf)
- [https://www.youtube.com/watch?v=1qg\\_jmyFNAw](https://www.youtube.com/watch?v=1qg_jmyFNAw) (video of lecture at Stanford)
- <https://www.youtube.com/watch?v=oK5HJvvhmro> (video of lecture at Harvard)

One final issue is that Google searches about practice models often do not return the most useful materials. It takes a bit of digging to get beyond law firm marketing materials. This supports the idea having a centralized catalogue of resources for attorneys that need guidance in the area of alternative practice models.

### **Flat Fee aka “Value Billing”**

#### **General Information**

- David Cameron Carr, *Attorney Fees: Five Keys to Ethical Compliance*, GPSOLO (October/November 2010).

Link: [http://www.americanbar.org/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/solo\\_lawyer\\_ethics\\_fee\\_client\\_relationship.html](http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/solo_lawyer_ethics_fee_client_relationship.html)

This article contains general information about multiple fee structures, including flat fee arrangements. It is well supported and contains application of ethical rules, though the focus is on California’s ethics rules.

- Derek Coulen, *Why you should consider giving flat fees a chance*, GOCLIO.COM (July 30 2014).

Link: <http://www.goclio.com/2014/07/30/flat-fees-a-chance/>

This link provides a good overview of flat-fee billing; however, this is sponsored by Clio. It is not clear if their marketing and software sales would benefit from attorneys using a flat fee system.

- *Flat Fees*, CAMARA & SIBLEY.

Link: <http://www.camarasibley.com/fees.php>

This is a good example of “who” is using flat fee structures. This example shows how a firm has implemented a flat-fee pricing model as well as how that firm explains it to potential clients. The informational page on the firm site

includes a FAQ type section, examples of the firm fees, and a discussion of why the firm uses flat fees as well as links to articles about flat fee billing throughout.

### **Effectiveness + Pros and Cons**

- Rachel M. Zahorsky, *Facing the Alternative: How does a Flat Fee System Really Work*, ABA Journal (Mar. 01, 2012).

Link:

[http://www.abajournal.com/magazine/article/facing\\_the\\_alternative\\_how\\_does\\_a\\_flat\\_fee\\_system\\_really\\_work](http://www.abajournal.com/magazine/article/facing_the_alternative_how_does_a_flat_fee_system_really_work)

This article is a well-supported piece detailing the “secrets” behind making an alternative fee structure work by both credible primary sources and detailed illustrative examples and statistics. The article also contains a link to a PDF ([http://www.abajournal.com/files/ABA\\_AltBillingLogo.pdf](http://www.abajournal.com/files/ABA_AltBillingLogo.pdf)) of how an alternative fee structure actually functions during litigation.

- Jeremy Byellin, *Starting Out Fresh: Hourly Billing or Flat-Fee*, THOMSON REUTERS LEGAL SOLUTIONS BLOG (Oct. 3, 2012).

Link: <http://blog.legalsolutions.thomsonreuters.com/small-law-firms/starting-out-fresh-hourly-billing-or-flat-fee/>

- Kevin Houchin, *Flat-Fee Billing Can Set You Free*, LAWYERIST (July 30, 2010).

Link: <https://lawyerist.com/12184/flat-fee-billing-set-you-free/>

These are largely opinion-based blogs. They may be useful because the authors lay out the thought process behind fee arrangement choices, including a pro/con discussion about flat fee arrangements. However, there is no specific support or source for any of the points they make, but instead consist of general discussions on the topic.

- *Value Billing v. Flat Fee v. Hourly Rates*, SOLOSEZ POPULAR THREADS (Oct. 2012).

Link:

[http://www.americanbar.org/content/dam/aba/publications/solosez/threads\\_2012\\_10\\_value\\_billing\\_v\\_flat\\_fee\\_v\\_hourly\\_rates.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/solosez/threads_2012_10_value_billing_v_flat_fee_v_hourly_rates.authcheckdam.pdf)

This archive of forum postings on the ABA website has very little author transparency or support from credible sources. It is a great discussion about how actual practitioners feel about billing structures.

## **Forms and How-To's**

- Louisiana State Bar Association's Practice Aid Guide: The Essentials of Law Office Management

Link: <https://www.lsba.org/Members/PracticeAidGuide.aspx>

There is a sample flat fee arrangement form on the Louisiana bar website (<http://files.lsba.org/documents/PracticeAidGuide/S3FeeAgreementAuthorityRepresentFlatFee.doc>). It may not be perfectly in line with Minnesota law, but it is a good example of a helpful form available for free on the internet.

- Webinar: How to Make Flat Fee Billing Work for your Law Firm.

Link: <http://www.mylawfirmmarketing.com/webinar-flat-fee-sm/>

This is not a free resource but from the outline, it appears to cover a variety of topics for practitioners that want to use flat fee billing arrangements including case studies, step-by-step implementation instructions, and best practices. This could serve as an example of how to structure a very useful set of materials for the MSBA website.

- A Clio Webinar: Flat Fees for Fun and Profit

Link: <http://landing.goclio.com/flat-fee-for-fun-and-profit-e.html>

This is technically a free webinar, but it requires signing up on Clio's website (presumably so the company can market its products to you). Again, from the outline, it covers the basics of a flat-fee model, ethical issues, and how to calculate a flat fee.

- Edward Poll, *Flat Fees and Contingency Fees – Do They “Fix” Hourly Rates*, LAW PRACTICE TODAY (June 2007).

Link: <http://apps.americanbar.org/lpm/lpt/articles/fin06071.shtml>

This article covers a few fee topics and is not particularly well supported by outside sources. It does, however lay out a plan for a lawyer who would like to set up a flat fee arrangement without creating too great a discount for the client.

## **Unbundling aka “Limited Scope” or “Discrete Task” Representation**

### **General Information**

- *Unbundled legal services*, WIKIPEDIA (July 25, 2014).

Link: [http://en.wikipedia.org/wiki/Unbundled\\_legal\\_services](http://en.wikipedia.org/wiki/Unbundled_legal_services)

This is a Wikipedia entry, which has inherent credibility issues. However, it provides an easy-to-read, comprehensive overview of the unbundled model. It also contains links to many other helpful resources and backs up most statements with some type of quote or fact from another source.

- Nicole Black, *Unbundled legal services: Steph Kimbro tells you everything you need to know*, MyCase.com ( Feb. 26, 2013).

Link: <http://www.mycase.com/blog/2013/02/unbundled-legal-services-steph-kimbro-tells-you-everything-you-need-to-know/>

This is another excellent overview of unbundled services provided in interview format. The interview subject is a recognized expert on the topic and she backs up most statements with fact. However, MyCase is case management software and this resource raises similar concerns to the CLIO resources.

- David L. Hudson, Jr., *What ethics issues to consider when offering unbundled legal services*, ABA JOURNAL (June 1, 2013).

Link: [http://www.abajournal.com/magazine/article/lawyers\\_offering\\_unbundled\\_legal\\_services\\_must\\_consider\\_the\\_ethics\\_issues/](http://www.abajournal.com/magazine/article/lawyers_offering_unbundled_legal_services_must_consider_the_ethics_issues/)

This is a well-supported article discussing ethics issues with the unbundled services model from a credible source. It contains application of various ethical rules as well as quotes and advice from experts on the topic: Stephanie Kimbro and Forrest Mosten.

### **Effectiveness**

- Stephanie L. Kimbro, *Law a la Carte: the Case for Unbundling Legal Services*, GPSOLO (September/October 2012).

Link: [http://www.americanbar.org/publications/gp\\_solo/2012/september\\_october/law\\_a\\_la\\_carte\\_case\\_unbundling\\_legal\\_services.html](http://www.americanbar.org/publications/gp_solo/2012/september_october/law_a_la_carte_case_unbundling_legal_services.html)

This is another well-supported article from a credible source in which Kimbro advocates for the use of the unbundled model as well as covers areas in which unbundling is not appropriate, i.e., criminal law.

### **Forms and How-Tos:**

- The Pro Se/Unbundling Resource Center, *Resources*, AMERICANBAR.ORG.

Link: [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources.html](http://www.americanbar.org/groups/delivery_legal_services/resources.html)

This is an extremely comprehensive set of resources including fee agreements, articles, ethics opinions, best practices, and court rules on unbundling. It is maintained by the ABA and is both well-organized and easy-to-navigate.

- *Changing the Face of Legal Practice: “Unbundled” Legal Services*, UnbundledLaw.org.

Link: <http://www.unbundledlaw.org/>

Building on the ABA’s library described above, this site provides a FAQ, link to a PLI course, and risk management materials (fee agreements, sample forms, best practices, etc.) specific to family law and civil practice.

- Stephanie Kimbro, *Using Technology to Unbundle Legal Services*,

Link: <http://jolt.law.harvard.edu/symposium/articles/Kimbro-UsingTechnologytoUnbundleLegalServices.pdf>

This resource is currently down so I cannot provide a description. But I have accessed this article before and it remains a result in Google searches so it is likely a temporary issue. Kimbro is a well-regarded expert on the topic of technology in law and unbundling and this article is published in a highly credible source (Harvard Journal of Law & Technology).

- YouTube Videos:

Links: <https://www.youtube.com/watch?v=goN1ETgj2aI> (CALI)

<https://www.youtube.com/watch?v=tyhYXO-c5HE> (Stanford Discussion)

These are both hour-long discussions on the unbundling of legal services. The Stanford discussion is a presentation by Stephanie Kimbro and focuses on ethics and technology issues. The CALI lecture (part of a larger open, online course called “Topics in Digital Law Practice”) is very comprehensive and covers many aspects of unbundling.

### **Sliding Scale aka “Low Bono”**

#### **General Information**

- *Innovative Programs to Help People of Modest Means Obtain Legal Help*, AMERICANBAR.ORG.

Link: [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources/programs\\_to\\_help\\_those\\_with\\_moderate\\_income.html](http://www.americanbar.org/groups/delivery_legal_services/resources/programs_to_help_those_with_moderate_income.html)



This is a resource guide organized by state that describes various programs to provide legal services to middle income clients, including sliding fee models.

- *Incubator/Residency Programs Directory*, AMERICANBAR.ORG.

Link: [http://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_wards/program\\_main/program\\_directory.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_wards/program_main/program_directory.html)

This is a directory of law school programs aimed at providing experience for new practitioners/students while providing low-cost/sliding-scale legal services.

- *Minnesota Attorneys offering legal services on a sliding fee scale*, SLIDINGFEEATTORNEYS.COM.

Link: <http://www.slidingfeattorneys.com/>

This is a directory of attorneys in Minnesota that provide sliding fee services. It is aimed at prospective clients, but could be used for attorneys that wish to network and learn how others in the area are utilizing this practice model. The website also briefly describes how a sliding fee works as well as unbundling legal services on its FAQ page. The organization that runs the website does not provide specific referrals.

### **Effectiveness, Forms, and How-To's**

- LowBono.org: Solos and small firms committed to serving their communities.

Link: <http://www.lowbono.org/>

This site is sponsored by the Law School Consortium Project. It contains a forum, resource library, a training and event calendar, and referrals. Access to these materials requires membership through a regional site. The link for Minnesota's affiliated organization is: <http://www.projusticemn.org/>.

- Tamara Suttle, *How to Create and Use a Sliding Fee Scale*, All Things Private Practice (Apr. 17, 2012).

Link: <http://www.allthingsprivatepractice.com/how-to-create-and-use-a-sliding-fee-scale/>

This blog entry contains step-by-step instructions on how to set up a sliding fee scale. It is easy to read and contains several other helpful resources, including a link to the U.S. Federal Poverty Guidelines and samples of sliding fee scales hosted on a Montana non-profit site,

(<http://www.mtpca.org/scale.htm>) as well as other blog entries by the author that address the effectiveness and challenges associated with sliding scale work (<http://www.allthingsprivatepractice.com/setting-different-fees-for-different-clients/> and <http://www.allthingsprivatepractice.com/reduced-fees-sliding-scales-and-lessons-learned-series/>).

### **Virtual Practice aka “ELawyering”**

#### **General Information**

- *Virtual Law Firm*, WIKIPEDIA.ORG (Dec. 11 2014).

Link: [http://en.wikipedia.org/wiki/Virtual\\_law\\_firm](http://en.wikipedia.org/wiki/Virtual_law_firm)

Again, this is a Wikipedia entry on virtual law practice, which raises credibility concerns. But, this page contains many links to quality articles and resources on the topic as well as an accessible overview of the topic.

- Danielle Jenene Powell, *The Counselor: How Rachel Rodgers Built Her Virtual Legal Practice*, FAST COMPANY (Apr. 15, 2013).

Link: <http://www.fastcompany.com/3008304/mobilizing/counselor-how-rachel-rodgers-built-her-virtual-legal-practice>

This is a fact-filled article from a credible source. It contains an informative narrative of an attorney using a virtual practice model which includes specific tips about data security and marketing as well as discusses work-life balance issues.

- Joshua Poje, *Virtual Law Practice*, ABA TECHREPORT (2014).

Link: <http://www.americanbar.org/publications/techreport/2014/virtual-law-practice.html>

This article is from a credible source and cites Stephanie Kimbro as well as other data to buttress the author’s claim that virtual practice supports efficiency, effectiveness, and balance. It is also a more recent article from an industry specific publication than the Fast Company article above.

- David Lat, *Looking to Build and Grow a Virtual Law Practice? These Lawyers Can Help*, ABOVEHELAW.COM (July 31, 2013).

Link: <http://abovethelaw.com/2013/07/looking-to-build-and-grow-a-virtual-law-practice-these-lawyers-can-help/>

This blog entry details a tool to help attorneys build and grow a virtual law practice. The entry contains links to the tool (<https://www.upcounsel.com/home/about>) and comments on the entry show a

deeper dialogue on the topic from within the legal community. However, blog entries raise a number of credibility concerns – for example, this particular entry could be a sponsored post.

### **Effectiveness**

- Carolyn Elefant, *Virtual Firms on the Decline – Why??*, MYSHINGLE.COM (Aug. 16, 2013).

Link: <http://myshingle.com/2013/08/articles/trends/virtual-firms-on-the-decline-why/>

This is an article describing various pitfalls that may have lead to a decrease in virtual law practice. The article links to several other articles within the site on the topic of virtual practice and provides detailed discussion of virtual practice issues. It starts with statistics from the ABA, however, the article is largely based on the author’s general observations and opinion.

- Kevin Crews, *The Door to a Virtual Law Practice is Always Open: and the Proper Use of Technology Can Keep It That Way*, THE FLORIDA BAR JOURNAL (June 2014).

Link:

<http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/8c9f13012b96736985256aa900624829/91d9cbb53e2234e885257ce500700ba9!OpenDocument>

This is a well-supported article from a credible source. The author weighs the benefits to both clients and lawyers as well as analyzes some risks and mitigation techniques associated with the technology of virtual law practice.

### **Forms and How-To’s**

Link: <http://virtuallawpractice.org/>

This is Stephanie Kimbro’s comprehensive page on Virtual Practice. Through her blog, she provides practice management tools, ethics updates, as well as articles on gamification and legal education. The ABA Journal links to this site through its “Blawg” page ([http://www.abajournal.com/blawg/virtual\\_law\\_practice/](http://www.abajournal.com/blawg/virtual_law_practice/)).

- YouTube Videos:

[https://www.youtube.com/watch?v=g9\\_fyWaNYE8](https://www.youtube.com/watch?v=g9_fyWaNYE8) – One hour seminar delivered by Stephanie Kimbro and sponsored by CALI.

<https://www.youtube.com/watch?v=oepWzddMp5k> – 30 minute webinar video on Virtual Law Firm Basics and Benefits by ABA Law Practice Division, sponsored by CLIO.

[https://www.youtube.com/watch?v=\\_uTo6kbXz8c](https://www.youtube.com/watch?v=_uTo6kbXz8c) – This is a nearly two hour video of a seminar on The Virtual Law Office and Technology delivered at the May 2014 Contra Costa County Bar Association’s Law Practice Management Series. This video focuses on thoughtful discussion of data ethical concerns in particular. Though the lawyers do some software demos throughout the video, this type of information may be quite useful to practitioners who are trying to determine what tools to use.

<https://www.youtube.com/watch?v=vKf5afNIh6o> – This is a short video (less than three minutes) by the LexBlog Network, with steps to more efficient and virtual law practice. It focuses on basics such as using PDFs to keep files in non-paper format. The video is an advertisement for a conference but does provide some helpful tips.

### **House Calls**

#### **General Information**

- Thomas Jordan, *These attorneys make house calls in growing legal specialty*, The Best Times (June 2005).

Link: <http://www.elderlawmemphis.com/documents/BestTimesArticle-6-05.pdf>

This article provides illustrations of attorneys in Tennessee who make house calls as a component of their elder law practices. The article is from a small news magazine in Memphis aimed at adults age 50 and over. The author notes a few ethical reasons that support this practice model and the article contains facts to support its stance. However, the author generally relies on anecdote to make his point and the article is almost ten years old.

- Brian Katkin, *Lawyer Makes House Calls*, Legal Times (Aug. 4, 2008).

Link: <http://www.law.howard.edu/1173>

This article is similar to the one above – it focuses on a specific example of an elder law attorney and is somewhat outdated. Furthermore, it is no longer available in its original format.

- *Making House Calls – Not Just For Doctors Anymore*, Next Generation Legal Services, PLLC (Apr. 13, 2014).

Link: <http://nextgenlawfirm.com/2014/04/13/making-house-calls-just-doctors-anymore/>

This is a firm's marketing materials, however, like the Camara & Sibley flat-fee example; it shows how a firm advertises and uses this model in practice.

### **Effectiveness**

- Arden Dale, *Why Your Adviser Should Make House Calls*, Wall Street Journal (Oct. 24, 2010).

Link:

<http://www.wsj.com/articles/SB10001424052702304011604575564132231657218>

This article advocates for estate planning attorneys (and financial advisers) making house calls as part of their practice. It contains limited fact-support, but is in a credible source and contains the quotes and viewpoints of several practitioners at notable firms.

- *Attorneys making house calls*, Wisconsin Law Journal (Dec. 14, 2009).

Link: <http://wislawjournal.com/2009/12/14/attorneys-making-house-calls/>

This article is another example of an anecdotal piece with examples of attorneys practicing elder law and estate planning and using house calls. This article goes one step further and examines some pros and cons (including the issue of safety) as well as provides some advice for practitioners. Furthermore, it has local significance because it mentions Minnesota and western Wisconsin attorneys.

## APPENDIX C

### **Mentoring**

Information compiled by Amanda Maly and David Bateson

#### **I. What are other state bar associations doing in the area of mentoring?**

Around twenty states, including Minnesota, have no current, comprehensive (for all members), state-bar-sponsored mentoring program.

Connecticut and Florida have no actual program, but do have mentoring pages on their websites. These provide links to smaller associations' mentor programs and a variety of other resources. Vermont has a unique program for starting a small or solo firm that is in a pilot phase this year. There are two or three new attorney participants working with an advisory committee at the bar. The D.C. bar provides a service where new attorneys can submit questions to two bar staff members.

About twenty states, including Arizona, Colorado, Illinois, and Louisiana have voluntary programs. Common attributes of these include an application process, a matching process provided by the bar association, and a general set of guidelines and suggested activities and meeting topics. Some states, like Ohio, provide CLE credit for participation. For many of these programs, the structure is very informal and is merely a suggested list of topics for the pairs to discuss. In Massachusetts, mentoring takes place in "circles" or groups of attorneys in similar practice areas.

Roughly six states, including Georgia, Nevada, Oregon, and Utah have mandatory programs. Generally, new attorneys must register for these during their first year of admission. CLE credit is given to the mentors and either CLE credit or some other requirement is fulfilled by completion of the program for the new lawyers. Some programs, like Utah and Oregon collect fees from the new lawyers to fund the program. Required programs generally offer an option for the new lawyers firm to choose the mentor. These programs have a more structured curriculum, although offer plenty of variation based on the skills and useful topics for different practice areas.

Generally, all bar-sponsored mentoring programs utilize both location and practice area as the primary matching factors for mentors and mentees. These programs typically take one year to complete.

See **Part IV** for a list and description of each state’s mentor program.

## **II. How can confidentiality and professionalism issues be handled in lawyer-to-lawyer mentoring programs?**

### **A. State bar associations:**

Arizona: “When discussing a particular case, Mentees must pose their questions in the hypothetical form, to avoid disclosing client identities and confidential information and to avoid any potential conflicts of interest. Mentees must not ask Mentors to perform any legal research or work for them.”<sup>43</sup>

Colorado: “The Mentor Program is a professional relationship. It does not contemplate and is not intended to create a formal association or attorney-client or work product relationship between the Mentee and the Mentor. Similarly, for Mentors and Mentees not of the same law firm or office, the Mentor Program does not create an attorney-client relationship between the Mentor and the Mentee’s clients; Mentees must ultimately exercise their own independent professional judgment on behalf of their clients.”<sup>44</sup>

D.C.: “A lawyer officially connected with the D.C. Bar Practice Management Service Committee is deemed to have a lawyer-client relationship with any lawyer-counselee being counseled under programs conducted by or on behalf of the committee.”<sup>45</sup>

Illinois: The Illinois Commission on Professionalism has a sample mentor agreement including a clause prohibiting the New Lawyer from identifying any client or client confidence to the Mentor as well as seeking professional or legal advice from the mentor about specific legal matters or clients.<sup>46</sup>

Iowa: Iowa’s Ethics Opinion 13-04 recommends that mentees become “of-counsel to the mentor’s firm in order to exchange client information with the mentor” and thus be considered part of the law firm for all ethics purposes.<sup>47</sup>

Nevada: “In all cases, the Nevada Rules of Professional Conduct should be followed. For an inside the firm or office mentorship, the confidentiality of

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<sup>43</sup> [http://www.azbar.org/media/54460/2013\\_mentor\\_program\\_application.pdf](http://www.azbar.org/media/54460/2013_mentor_program_application.pdf) at page 3.

<sup>44</sup> <http://coloradomentoring.org/mentorsmentees/mentee-application/>

<sup>45</sup> ABA draft rule page 3.

<sup>46</sup> ABA draft rule page 3.

<sup>47</sup> ABA draft rule page 4.

communications between the mentor and new lawyer may also depend on the firm's or office's policies. For an outside mentorship, the new lawyer shall not reveal to the mentor any confidential communications between the new lawyer and the new lawyer's client. ... All discussions should be at a hypothetical level. Always refer to the Nevada Rules of Professional Conduct. Contact your insurance provider and consult an attorney should you be named in the lawsuit."<sup>48</sup>

New Hampshire: "Associates should pose their questions in the form of a hypothetical and give anonymous fact patterns when seeking the advice of the Mentor with respect to professional, ethical, and practical assistance. The Program does not anticipate Mentors rendering professional services to an Associate's clients, and Associates must exercise their own professional judgment with respect to their own clients.

... Associates are cautioned to take appropriate steps to avoid any possible perception of the existence of an attorney/client relationship by their Mentor with the Associate's clients. Associates should not request that Mentors perform legal research. Hypothetical scenarios or fact patterns should be used whenever possible by Mentors and Associates in discussing legal matters. Associates are cautioned to obtain consent of their client before discussing and/or disclosing specific names or facts with their Mentor."<sup>49</sup>

New Mexico: New Mexico Rule 24-110 instructs program participants to speak in hypothetical terms when discussing client-issues in short-term discussions (not providing ongoing representation advice). "Regardless of whether issues are discussed in hypothetical terms, the outside mentoring lawyer shall run a conflict check and shall treat all client information discussed with the new lawyer as confidential under Rules 16-106 to 16-112 NMRA."<sup>50</sup>

North Carolina: Proposed ethics opinion from the state bar extends the definition of informed consent to mentor relationships, including lawyer-to-lawyer. Mentor and mentee sign confidentiality agreement and the client gives informed written consent.<sup>51</sup>

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<sup>48</sup> <http://www.nvbar.org/tip/faq>

<sup>49</sup> <http://www.nhbar.org/uploads/pdf/MentorProgramBooklet.pdf>

<sup>50</sup> New Mexico Rule 24-110(l) available at [http://www.nmcompcomm.us/nmrules/NMRules/24-110\\_11-1-2014.pdf](http://www.nmcompcomm.us/nmrules/NMRules/24-110_11-1-2014.pdf).

<sup>51</sup> ABA draft rule page 5.



Ohio: “Mentoring agreement prohibits identification of client, discussion of client confidences, or seeking/offering legal advice between mentor and protégé. Mentor and protégé must speak in hypotheticals when discussing legal matters.”<sup>52</sup>

Oregon: Oregon Formal Opinion No. 2011-184 extends the definition of informed consent to situations where the client agrees to allow to the attorney to reveal information to a mentee. The mentee must sign a confidentiality agreement and the client must give informed written consent.<sup>53</sup>

Tennessee: Mentoring agreement allows participants to use hypotheticals or share actual information which is impliedly authorized under the rules.<sup>54</sup>

Texas: “For an inside the firm or office mentorship, the confidentiality of communications between the mentor and beginning lawyer will depend on the firm’s or office’s policies. For an outside mentorship, the beginning lawyer shall not reveal to the mentor any confidential communications between the beginning lawyer and the beginning lawyer’s client.”<sup>55</sup>

Utah: “Where practical the new lawyer and the mentor shall discuss new lawyer client specific issues in hypothetical terms. If hypothetical terms are not practical under the circumstances as determined by the lawyers, a lawyer providing or seeking short-term limited guidance or counsel within the mentoring relationship is not subject to the Utah Rules of Professional Conduct regarding Confidentiality of Information because the disclosure is impliedly authorized under the circumstance and is necessary to carry out the purposes of the NLTP.”<sup>56</sup>

**B. Model ABA rule:** Coming spring 2015? The ABA draft extensively covers the considerations of this topic, i.e., weighing the benefit to the mentor/mentee relationship, protecting the mentee and mentor from involuntary disclosure, and protecting the client.

### III. Attorney mentoring in Europe

From Mentoring in our Evolving Profession (2014), pages 115 – 117:

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<sup>52</sup> ABA draft rule page 6.

<sup>53</sup> ABA draft rule page 6.

<sup>54</sup> ABA draft rule page 7.

<sup>55</sup> Texas Bar Transition to Practice FAQ, available at

[http://www.texasbar.com/Content/NavigationMenu/AboutUs/StateBarPresident/TransitiontoPractice/T2P\\_FAQ.p](http://www.texasbar.com/Content/NavigationMenu/AboutUs/StateBarPresident/TransitiontoPractice/T2P_FAQ.pdf)

df.

<sup>56</sup> New Mexico Supreme Court Rule 14-808(h) (2).

- Mentee versus protégé: Europe follows a developmental approach to mentoring, meaning it is less directive and mainly focuses on the mentee's thinking process. A mentor typically does not mentor someone over whom he has direct authority.

#### **IV. State Bar Association and State Supreme Court Mentor Programs**

##### **A. States with bar-sponsored mentor programs**

##### **Arizona**

1. Program name/website:
  - One-to-One Mentor Program
  - <http://www.azbar.org/sectionsandcommittees/committees/mentorcommittee>
2. Structure: Participation is voluntary, by application for both mentor and mentees. Third year law students may participate as well. The program matches a mentor with a mentee and suggests that they meet once a month (initiated by the mentee) to discuss topics such as career challenges, "war stories," practical application of the rules of conduct, and career development. Participation as a mentor through the Mentor Program qualifies as voluntary pro bono public service. Mentors in the Mentor Program may also receive up to 2.0 hours of ethics CLE credit.<sup>57</sup>
3. How is it funded? The program is funded by the state bar association. In the 2013-2014 committee wrap-up notes, it says that the committee had "[b]egun development of strategies to cope with current and future State Bar budget constraints and discussed the potential impact on Mentor Program and Mentor Committee's work."<sup>58</sup>

##### **Arkansas**

1. Program name/website:
  - Lawyer-2-Lawyer
  - [http://www.arkbar.com/pages/mentor\\_program.aspx](http://www.arkbar.com/pages/mentor_program.aspx) (password required)
2. Structure<sup>59</sup>: This is a voluntary program matching new lawyers with experienced lawyers based on factors including geographic location and practice area. It is intended to be an informal and relaxed program where participants can discuss professional issues and network. There is no fee.

<sup>57</sup> <http://www.azbar.org/sectionsandcommittees/committees/mentorcommittee>

<sup>58</sup> [http://www.azbar.org/media/665350/mentor\\_committee\\_wrap\\_up\\_report\\_2013-2014.pdf](http://www.azbar.org/media/665350/mentor_committee_wrap_up_report_2013-2014.pdf) at page 1. Consider emailing someone at AZ bar for an update on the funding situation.

<sup>59</sup> [http://issuu.com/arkansas\\_bar\\_association/docs/the\\_arkansas\\_lawyer\\_spring\\_2012issuu](http://issuu.com/arkansas_bar_association/docs/the_arkansas_lawyer_spring_2012issuu) at page 7.

## Connecticut

1. Program name/website: N/A.
2. Structure: The Connecticut Bar Association does not run a mentoring program, but oversees the work of the pilot programs administered by the local/regional bar associations.
3. How is it funded? Funded by the smaller associations.

## Delaware

1. Program name/website:
  - DBSA Mentoring Program
  - <http://www.dsba.org/dsba-mentoring-program/>
2. Structure<sup>60</sup>: Participation in the program is voluntary and both mentors and mentees are admitted by application. The DBSA Mentoring Program matches newly admitted attorneys (less than three years of practice) with “more experienced members of the Delaware Bar in their substantive area of practice or some other area of interest where the requesting mentee desires mentoring.”

## District of Columbia

1. Program name/website:
  - D.C. Bar Practice Management Service Committee
  - <http://www.dcbar.org/bar-resources/practice-management-advisory-service/about.cfm>
2. Structure<sup>61</sup>: This is not a one-on-one mentoring program. The Practice Management Advisory Service “is a free and confidential service of the D.C. Bar that provides practice management information and resources to D.C. Bar members.” The program is staffed by two experienced small/solo firm attorneys who “assist D.C. Bar members in all aspects of practice management, including financial management, client relations and communication, business planning, office technology, and office systems and procedures such as calendar and docketing systems.”
3. How is it funded? The program is overseen by the Practice Management Service Committee, a standing committee of the DC Bar.<sup>62</sup>

## Florida

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<sup>60</sup> <http://www.dsba.org/dsba-mentoring-program/>

<sup>61</sup> <http://www.dcbar.org/bar-resources/practice-management-advisory-service/about.cfm>

<sup>62</sup> See *id.*

1. Program name/website:
  - Mentoring Matters
  - <http://www.flayld.org/involved/mentoring/matters/>
2. Structure: The bar provides a video series<sup>63</sup> as well as a list of mentoring programs throughout the state.<sup>64</sup>
3. How is it funded? The young lawyers division sponsored the Mentoring with the Masters series and the smaller associations provide the actual mentoring programs.

## Georgia

1. Program name/website:
  - <http://www.gabar.org/membership/tilpp/>
2. Structure<sup>65</sup>: The program is a mandatory education requirement that matches beginning lawyers with an experienced mentor. There is a CLE component that “lays the groundwork for and supports the Mentoring component.” The program was developed and operated by the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency.
3. How is it funded? Funding for the program is provided by a \$10 per member dues increase (effective for the Bar year that began on July 1, 2005).<sup>66</sup>

## Idaho

1. Program name/website:
  - Idaho State Bar Mentor Program
  - [http://www.isb.idaho.gov/member\\_services/mentorprogram.html](http://www.isb.idaho.gov/member_services/mentorprogram.html)
2. Structure<sup>67</sup>: Idaho has a voluntary, by application, mentor program. The state bar matches a new lawyer with an experienced lawyer in their community.<sup>68</sup> After the experienced lawyer makes the initial contact, the bar recommends that the pair communicate monthly for at least a year.<sup>69</sup> The application asks the new lawyer to list factors that he or she believes are relevant to selecting a mentor as well as the practice area on which he or she intends to focus.<sup>70</sup>

<sup>63</sup> <http://www.flayld.org/masters/>

<sup>64</sup> <http://www.flayld.org/involved/mentoring/matters/>

<sup>65</sup> <http://www.gabar.org/membership/tilpp/other-bars.cfm>

<sup>66</sup> [http://www.gabar.org/membership/tilpp/upload/TILPP\\_Executive\\_Summary\\_011608.pdf](http://www.gabar.org/membership/tilpp/upload/TILPP_Executive_Summary_011608.pdf)

<sup>67</sup> [http://www.isb.idaho.gov/member\\_services/mentorprogram.html](http://www.isb.idaho.gov/member_services/mentorprogram.html)

<sup>68</sup> [http://www.isb.idaho.gov/member\\_services/mentorprogram.html](http://www.isb.idaho.gov/member_services/mentorprogram.html)

<sup>69</sup> See *id.*

<sup>70</sup> [http://www.isb.idaho.gov/pdf/general/mentor\\_app1106.pdf](http://www.isb.idaho.gov/pdf/general/mentor_app1106.pdf)

## Illinois

1. Program name/website:
  - ISBA Lawyer-to-Lawyer Mentoring Program
  - <http://www.isba.org/mentoring>
2. Structure<sup>71</sup>: All active ISBA members who have been admitted less than 2 years and practice or intend to practice in Illinois can apply to the program. After acceptance, new attorneys are matched with an experienced ISBA mentor. The pair develops a mentor plan and completes it through at least 8 in-person meetings. Both participants get CLE credit; in particular, new attorneys get credit toward fulfillment of their MCLE requirement. The program focuses on participants that live outside of the scope of other commission-approved programs.
3. How is it funded? The program is sponsored by over 75 organizations across the state, including the bar association and the Illinois Supreme Court Commission on Professionalism.<sup>72</sup>

## Indiana

1. Program name/website:
  - Mentor Match
  - [http://www.inbar.org/?page=mentor\\_match](http://www.inbar.org/?page=mentor_match)
2. Structure<sup>73</sup>: The program is voluntary and both mentors and mentees apply. If a mentee does not have a mentor in mind, the bar association helps them locate one from its database. The pair follows a curriculum they design for a year, receiving CLE, ethics, and APC credits. The curriculum requires six hours and four quarters of time and discussion.

## Iowa

1. Program name/website:
  - ISBA Mentor Program
  - <http://www.iowabar.org/?page=ISBAMentorProgram>
2. Structure<sup>74</sup>: Participation is voluntary and requires application. Mentors and mentees are matched by the YLD Mentoring Committee based on information from their application. The program requires 6 hours or 3-4 meetings a year to discuss any of a variety of recommended topics.

## Kentucky

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<sup>71</sup> <http://www.isba.org/mentoring>

<sup>72</sup> <http://www.2civility.org/programs/>

<sup>73</sup> [http://www.inbar.org/?page=mentor\\_match](http://www.inbar.org/?page=mentor_match)

<sup>74</sup> <http://www.iowabar.org/?page=ISBAMentorProgram>

1. Program name/website:
  - Find a Mentor
  - <http://kbagps.org/find-a-mentor>
2. Structure<sup>75</sup>: The bar association provides a website for mentors (experienced attorneys) to create a profile and make themselves available to newly license Kentucky attorneys to provide advice and guidance when requested. A mentee looking for assistance can locate a mentor by location or practice area. “This self-initiated contact from mentees to potential mentors may involve a single issue, or entail a more lasting, formal mentor relationship. The limits of the relationship are determined by the preferences of the participants.”

## **Louisiana**

1. Program name/website:
  - Transition into Practice
  - <https://www.lsba.org/sld/TIPMentorApplication.aspx>
2. Structure<sup>76</sup>: Transition into Practice has recently been formally approved the state supreme court and the pilot program will begin in January 2015. “The TIP Program will be available to new attorneys admitted into practice in 2014, with pilot programs in Baton Rouge, Shreveport and greater New Orleans” It is a voluntary program and mentors will receive credit for participation. Attorneys outside the pilot areas are encouraged to sign up as the bar association hopes to expand the program soon.

## **Maryland**

1. Program name/website:
  - Court of Appeals Mentoring Program
  - <http://marylandprofessionalism.org/images/pdf/mentoring-brochure-1-13.pdf>
2. Structure<sup>77</sup>: The program is run by the Maryland Professionalism Commission. It is a voluntary program that matches a new lawyer with an experienced lawyer according to their location and practice area. Participants are required to meet in-person six times and engage in select activities outlined in the Mentoring Agreement.

## **Massachusetts**

1. Program name/website:

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<sup>75</sup> <http://kbagps.org/find-a-mentor>

<sup>76</sup> <https://www.lsba.org/sld/TIPMentorApplication.aspx>

<sup>77</sup> <http://marylandprofessionalism.org/images/pdf/mentoring-brochure-1-13.pdf>

- MBA Mentoring Circles
  - <http://www.massbar.org/for-attorneys/mentor-circles>
2. Structure<sup>78</sup>: The Mentoring Circles are groups of bar members that meet at least 4 times per year to “in a confidential setting to meet and guide one another.” Groups are determined by location and made of 8-12 attorneys with varying experience levels. Participants must be in good standing with the bar association. After filling out an application, the bar places participants. If the applicable circle for an applicant is full, he or she is placed on a waitlist.

### **Michigan**

1. Program name/website:
  - SBM Mentoring Center
  - <http://www.michbar.org/programs/mentorcenter.cfm>
2. Structure<sup>79</sup>: Participation is completely voluntary. Participants make a mentor or mentee profile on the website, search for potential pairing, and then create the mentor/mentee experience the pair is interested in.

### **Nevada**

1. Program name/website:
  - Transitioning into Practice
  - <http://www.nvbar.org/tip>
2. Structure<sup>80</sup>: The program is mandatory for all newly admitted attorneys unless they have practiced more than five years in another jurisdiction. Deferrals are available for lawyers not intending to practice immediately. Appointed mentors participate in a training program. Lawyers in large firms may be assigned a mentor by their employer. Other lawyers may choose from a list the state supreme court publishes. If a lawyer cannot find their own mentor, the bar will match him or her with one. There is a curriculum of required activities and electives including basic skills activities.
3. How is it funded? There is a \$350 TIP program fee for the new lawyers.

### **New Hampshire**

1. Program name/website:
  - Mentor Program
  - <http://www.nhbar.org/uploads/pdf/MentorProgramBooklet.pdf>

<sup>78</sup> <http://www.massbar.org/media/1278358/mentoringcirclesfaqs.pdf>

<sup>79</sup> <http://www.michbar.org/programs/mentorcenter.cfm>

<sup>80</sup> <http://www.nvbar.org/tip/faq>

2. Structure: Participation is voluntary. Attorneys who have practiced more than five years in New Hampshire, are in good standing with no disciplinary history, and are approved by the New Lawyers' Committee may apply to be a mentor. Attorneys who are licensed in New Hampshire and have not practiced law for the last three consecutive years in any practice area may apply to be a mentee. The relationships are to be shaped by each pair, but the bar association provides a number of suggested activities.

### **New Jersey**

1. Program name/website:
  - Young Lawyers Division Mentoring Program
  - <http://www.njsba.com/about/news-archives/archived-press-releases/345.html>
2. Structure<sup>81</sup>: Attorneys with 15 or more years of experience and 10 or more years in the bar association may volunteer to serve as mentors and young lawyers may apply to have a mentor. Beyond a 2009 press release, none of the forms appear to be available to the public online.

### **New Mexico**

1. Program name/website:
  - Bridge the Gap: Transitioning into the Profession<sup>82</sup>
  - [http://www.nmbar.org/nmstatebar/Membership/Mentorship\\_Program/Nmstatebar/For\\_Members/Bridge\\_the\\_Gap\\_Mentorship\\_Program.aspx?hkey=9a869992-db6d-4690-813c-16db1f3237ac](http://www.nmbar.org/nmstatebar/Membership/Mentorship_Program/Nmstatebar/For_Members/Bridge_the_Gap_Mentorship_Program.aspx?hkey=9a869992-db6d-4690-813c-16db1f3237ac)
2. Structure<sup>83</sup>: Mandatory for first-year lawyers. Qualified mentors volunteer and are chosen to serve for a year. Mentors and new lawyers meet at least 12 times, at least 7 times in person, to discuss practical issues and complete activities chosen from the program curriculum. Both mentors and mentees receive CLE credit.
3. How is it funded? Participants must pay \$300.

### **North Carolina**

1. Program name/website:
  - Mentorship Program

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<sup>81</sup> <http://www.njsba.com/about/news-archives/archived-press-releases/345.html>

<sup>82</sup> [http://www.nmcompcomm.us/nmrules/NMRules/24-110\\_11-1-2014.pdf](http://www.nmcompcomm.us/nmrules/NMRules/24-110_11-1-2014.pdf)

<sup>83</sup>

[http://www.nmbar.org/nmstatebar/Membership/Mentorship\\_Program/Nmstatebar/For\\_Members/Bridge\\_the\\_Gap\\_Mentorship\\_Program.aspx?hkey=9a869992-db6d-4690-813c-16db1f3237ac](http://www.nmbar.org/nmstatebar/Membership/Mentorship_Program/Nmstatebar/For_Members/Bridge_the_Gap_Mentorship_Program.aspx?hkey=9a869992-db6d-4690-813c-16db1f3237ac)



- <http://www.ncbar.org/members/practice-management/mentoring/>
- 2. Structure<sup>84</sup>: The program is voluntary and offers both a one-on-one option and a situational option where new attorneys can ask seasoned attorneys for advice on various matters. Mentees must be active members in good standing with the state bar and have practiced less than three years. Mentors must have a minimum of five consecutive years of active practice, be in good standing with the state bar with no disciplinary record. The relationship and curriculum is flexible and to be determined by the mentor pairings.

### **Oregon**

1. Program name/website:
  - New Lawyer Mentoring Program
  - <http://www.osbar.org/nlmp>
2. Structure<sup>85</sup>: This is a mandatory program for newly admitted lawyers. New lawyers are matched with mentors that have either volunteered through the bar association, work at the new lawyer's employer, or the new lawyer has nominated. The program requires 18-24 hours through the year and there is a curriculum of activities that can be chosen by the pairs. Mentors receive CLE credit.
3. How is it funded? There is a \$100 fee for the new lawyer, due at completion.

### **Pennsylvania**

1. Program name/website:
  - Mentoring Program
  - <http://www.pabar.org/public/committees/minybar/mentoring/>
2. Structure: This is a voluntary, one-on-one, mentoring program where both mentors and mentees apply.<sup>86</sup> The committee provides loose guidelines for a mentor/mentee relationship but there is no set curriculum and requirements.<sup>87</sup>
3. How is it funded? Sponsored by the Minority Bar Committee but open to all bar members.<sup>88</sup>

### **South Carolina**

1. Program name/website:

<sup>84</sup> <http://www.ncbar.org/media/383071/mentoring-program-guidelines.pdf>

<sup>85</sup> [http://www.osbar.org/\\_docs/programs/mentoring/NLMP\\_FAQ.pdf](http://www.osbar.org/_docs/programs/mentoring/NLMP_FAQ.pdf)

<sup>86</sup> <http://www.pabar.org/public/committees/minybar/mentoring/mentoringprogramdescription.pdf>

<sup>87</sup> <http://www.pabar.org/public/committees/minybar/mentoring/rolesandresponsibilities.pdf>

<sup>88</sup> <http://www.pabar.org/public/committees/minybar/mentoring/mentoringprogramdescription.pdf>

- Mandatory Lawyer Mentoring Program
  - <http://www.commcle.org/MentoringProgram.html>
2. Structure<sup>89</sup>: This is a mandatory program for new lawyers. Mentors receive 4 CLE credits. If a mentee cannot find his or her own mentor, the Commission on Continuing Legal Education and Specialization will assign one. Mentors must be qualified, licensed, and have no disciplinary record. The mentoring period lasts one year. There is a Uniform Mentoring Plan to complete with nine objectives.<sup>90</sup>

### **South Dakota**

1. Program name/website:
  - Hagemann – Morris Young Lawyer Mentorship Coin Program
  - <http://www.sdbar.org/new/lawyers/yls.html>
2. Structure: This is a voluntary program. Both mentors and mentees apply.<sup>91</sup> The relationship is intended to be indefinite, but either party may end it at any time. The bar will plan events and meeting and notify participants about them.

### **Tennessee**

1. Program name/website:
  - <http://www.tba.org/programs/the-tba-mentoring-program>
2. Structure<sup>92</sup>: This is a voluntary program, by application for all bar members. Mentoring relationships last one year, and require a monthly in-person meeting and two phone calls each month. Mentees must have 0-3 year's experience. There is a list of suggested (not required) activities for the pairs.

### **Texas**

1. Program name/website:
  - Transition to Practice
  - [http://www.texasbar.com/AM/Template.cfm?Section=Transition\\_to\\_Practice](http://www.texasbar.com/AM/Template.cfm?Section=Transition_to_Practice)

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<sup>89</sup> <http://www.commcle.org/Mentoringfaqs2.html#1>

<sup>90</sup> <http://www.commcle.org/MentorPDF/UniformMentoringPlan.pdf>

<sup>91</sup> <http://www.sdbar.org/new/lawyers/docs/menteeapp.pdf>,

<http://www.sdbar.org/new/lawyers/docs/mentorapp.pdf>

<sup>92</sup> <http://www.tba.org/node/60645>

2. Structure<sup>93</sup>: Participation is voluntary and on an application-basis. Judicial clerks, private firm lawyers, non-practicing lawyers, and public sector lawyers may all participate. By matching new lawyers and experienced “guides,” the program provides professional guidance to beginning lawyers who are newly admitted to the practice. Both “participate in six CLE seminars that focus on practical skills and ethical values and professionalism and meet six additional times to discuss those matters addressed during the seminars.” The guides are screened by the program committee. A new lawyer may nominate their own guide but the committee must approve the nomination. If a new lawyer cannot be matched with a guide from his or her own firm, then the committee makes a match based on other attributes such as practice area.

## Utah

1. Program name/website:
  - New Lawyer Training Program
  - <http://www.utahbar.org/members/mentor-program/>
2. Structure: This is a mandatory program for all new lawyers.<sup>94</sup> Mentors must be approved the bar committee. Mentors receive 12 CLE credits. Pairs meet two hours a month for a year “for one-on-one guidance in acquiring the practical skills, judgment, professionalism, ethics and civility to practice in a highly competent manner.”<sup>95</sup> The bar provides a model mentoring plan for pairs to base their own curriculum off.
3. How is it funded? New lawyers pay a \$150 at the beginning of the program and another \$150 at completion.<sup>96</sup>

## Vermont

1. Program name/website:
  - Vermont Lawyer Incubator
  - <https://www.vtbar.org/UserFiles/files/iNCUBATOR/VLIPprogram%20description.pdf>
2. Structure<sup>97</sup>: This is a pilot program for 2014-15 and only includes 2-3 new lawyers. They meet with advisory committee members of the Vermont bar. The program focuses on building a small or solo firm. It is highly structured and includes weekly case “rounds,” lead generation activities, skills programs, and development of a business plan.

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<sup>93</sup> Bar Transition to Practice FAQ, available at [http://www.texasbar.com/Content/NavigationMenu/AboutUs/StateBarPresident/TransitiontoPractice/T2P\\_FAQ.pdf](http://www.texasbar.com/Content/NavigationMenu/AboutUs/StateBarPresident/TransitiontoPractice/T2P_FAQ.pdf).

<sup>94</sup> <https://www.utcourts.gov/resources/rules/ucja/ch14/08%20Special%20Practice/USB14-808.html>

<sup>95</sup> [http://www.utahbar.org/members/mentor-program/nltp\\_summary/](http://www.utahbar.org/members/mentor-program/nltp_summary/)

<sup>96</sup> See *id.*

<sup>97</sup> <https://www.vtbar.org/UserFiles/files/iNCUBATOR/VLIPprogram%20description.pdf>

## B. States with court-sponsored mentor programs

### Colorado

1. Program name/website:
  - CAMP – Colorado Attorney Mentoring Program
  - <http://coloradomentoring.org/>
2. Structure: CAMP was established by the state supreme court through rule 255 CRCP.<sup>98</sup> Participation is voluntary, by application for both mentor and mentees. Though originating at a statewide level, CAMP functions by facilitating mentor relationships through local bar associations, law firms, public offices, and legal organizations.<sup>99</sup> CAMP also provides many resources, articles, and activity templates on its website. There is a year-long curriculum, with a lot of flexibility for the pairs to tailor the experience within the overarching requirements.<sup>100</sup> Both mentors and mentees receive 15 free CLE credits upon completion.<sup>101</sup> Mentees may only participate once, while mentors may participate for five years and then reapply.
3. How is it funded? Pursuant to 255 CRCP, the program, including the salary of a director, is maintained by a portion of the annual lawyer registration fees.

### Ohio

1. Program name/website:
  - Lawyer to Lawyer Mentoring Program
  - <http://www.sconet.state.oh.us/AttySvcs/mentoring/default.asp>
2. Structure<sup>102</sup>: Participation is voluntary; however, the program is one of two ways to fulfill a new lawyer training requirement. Mentees must apply. Mentors must apply and be approved by the Commission on Professionalism. They receive CLE credit for participation. Mentees nominate their top three mentors from a list of pre-approved mentors and are matched by the Commission accordingly. The program lasts about a year while participants complete activities identified on a mentor plan.<sup>103</sup> There is no fee for participation.

<sup>98</sup>[http://www.courts.state.co.us/userfiles/file/Court\\_Probation/Supreme\\_Court/Rule\\_Changes/2013/2013%2806%29%20clean.pdf](http://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2013/2013%2806%29%20clean.pdf)

<sup>99</sup> <http://coloradomentoring.org/>

<sup>100</sup> <http://coloradomentoring.org/about-camp/pro-bono-opportunities/>

<sup>101</sup> *See id.*

<sup>102</sup> <http://www.sconet.state.oh.us/AttySvcs/mentoring/faq.asp>

<sup>103</sup> <http://www.sconet.state.oh.us/AttySvcs/mentoring/implementation.asp>

**States with no current, comprehensive<sup>104</sup> state bar sponsored mentoring program:**

Alabama  
Alaska  
California  
Hawaii  
Kansas  
Maine  
Minnesota  
Mississippi  
Missouri  
Montana  
Nebraska  
New York  
North Dakota  
Oklahoma  
Rhode Island  
Virginia  
Washington  
West Virginia  
Wisconsin<sup>105</sup>  
Wyoming

**Opportunities for Minnesota lawyers to obtain mentoring and career support:**

Minnesota Women Lawyers

<http://www.mwlawyers.org/?page=Mentoring1415>

Minnesota Hispanic Bar Association

<http://www.minnhba.org/page-1493515>

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<sup>104</sup> Some of these states have mentoring programs for women lawyers or various practice groups such as bankruptcy law. These states may also have attorney mentoring programs sponsored by other organizations and not connected to their state bar association. See

[http://www.americanbar.org/groups/professional\\_responsibility/resources/professionalism/mentoring.html](http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/mentoring.html).

<sup>105</sup>  
<http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=84&Issue=11&ArticleID=2193>

Hennepin County Bar Association

<http://www.hcba.org/?page=Mentoring>

Ramsey County Bar Association Job Shadow Program

<http://www.ramseybar.org/news/volunteer-for-the-rcba-spring-job-shadow/>

Lawyers Concerned for Lawyers Mentoring

<http://www.mnlcl.org/services/mentoring-and-peer-support/>

Minnesota State Bar Association Colleague Directory (experienced MSBA members willing to briefly consult with other attorneys)

<http://www.mnbar.org/member-directory/find-a-member>

Minnesota State Bar Association's Family Law Section

<http://www.mnbar.org/members/committees-sections/msba-sections/family-law-section#.VVT4npMephU>

Minnesota CLE 5 Minute Mentor

<http://www.mnnewlawyer.org/login.aspx>

William Mitchell Mentor Program (for new alumni and students)

<http://web.wmitchell.edu/alumni/mitchell-mentors-for-recent-alumni-and-first-year-students/>

University of St. Thomas J.D. Compass (for new graduates)

<http://www.stthomas.edu/law/currentstudents/careerandprofessionaldevelopment/jdcompass/>

University of Minnesota Corporate Law Institute Mentor Program

<http://www.law.umn.edu/corporateinstitute/mentoring-program.html>

Volunteer Attorney Program of Duluth (mentoring component for pro bono cases)

[http://www.probono.net/oppsguide/organization.58760-Volunteer\\_Attorney\\_ProgramDuluth](http://www.probono.net/oppsguide/organization.58760-Volunteer_Attorney_ProgramDuluth)

Warren Burger Inn of Court

<http://home.innsofcourt.org/for-members/inns/the-warren-e-burger-american-inn-of-court.aspx>

Douglas Amdahl Inn of Court

<http://www.innsofcourt.org/Inns/Officers.aspx?InnId=30179>