

**REPORT AND RECOMMENDATIONS
MINNESOTA STATE BAR ASSOCIATION
ALTERNATIVE LEGAL MODELS TASK FORCE**

OVERVIEW

An important component of the Minnesota State Bar Association's (MSBA) vision calls for the organization to "be a leader in the state of Minnesota in achieving effective and equal justice for all." Adequate access to legal representation for all Minnesotans remains elusive, despite efforts to increase funding for legal aid programs, rally members of the bar to volunteer for pro bono service and provide resources so lawyers, both new and experienced, can offer their services at rates affordable to modest income clients. The Alternative Legal Models Task Force, created in response to a recommendation from the MSBA's Future of the Legal Education Task Force, represents an opportunity for the MSBA to lead our state in providing "equal justice for all." The report and recommendations that follow are the product of hours of discussion, research and engagement. We hope the Assembly will seize this opportunity to help move our profession and the state forward towards greater access to legal representation for all our residents.

After many months of research, discussion and debate, the Task Force considered three distinct approaches to the delivery of legal services to help fill the access to justice gap that do not necessarily involve reliance upon licensed lawyers. The Task Force recognizes that no single solution will solve the problems the legal profession faces in providing affordable legal services, but believe it is time to take some action that has the potential to provide alternative legal services to those that require or desire it. Once these three approaches were accepted by the Task Force, the Task Force Co-Chairs and MSBA representatives held seven listening sessions around the State. The Task Force's ultimate conclusion that the MSBA move forward with two of these recommendations is based upon the Task Force's work through subcommittee meetings, full Task Force deliberations and the comments and suggestions received during the listening sessions. A majority of Task Force members voted to recommend the MSBA work toward implementation of two proposals.

The first proposal is designed after a model employed in British Columbia, Canada that allows a paraprofessional (Legal Practitioner) to provide legal advice and, in some circumstances, represent a client in court and administrative proceedings under the direct supervision of an attorney. The Legal Practitioner would work under the supervising attorney's law license and the ethical responsibilities required of Minnesota lawyers. There would be no separate licensing or licensing board of the Legal Practitioner. The details of this recommendation are provided below.

The second proposal is modeled after the State of Washington's Limited License Legal Technicians model ("LLLT Model"). The proposed LLLT Model for Minnesota allows licensed paralegals/administrative assistants to acquire a certain level of education and experience to qualify for licensing through the passage of an exam. Once licensed, the LLLT would be free to practice law in a specific area of law that is limited in scope. The LLLT would not be required

to work under the supervision of an attorney, but would be required to comply with a code of ethics, similar to lawyers' ethical requirements, and to obtain legal malpractice insurance. A separate licensing board would likely be required. The details of this LLLT model are more completely described below.

PROCEDURAL BACKGROUND

The genesis of this task force comes from the work of the MSBA's Task Force on the Future of Legal Education ("Legal Education Task Force"). The Legal Education Task Force, consisting of representatives from the judiciary, legal education, and the practicing bar, examined challenges and opportunities with respect to the state's legal education system. Considerable time was spent examining ways of making legal careers more affordable, as well as addressing the existing unmet need for legal representation by low and modest income Minnesotans. Consequently, as part of its final report and recommendations, the Legal Education Task Force included the following as one of its recommendations:

Recommendation 5: In order to identify a less costly path to a career in legal services and address unmet needs for specific types of legal services, the MSBA should establish a separate task force focused on studying the viability of certifying Limited License Legal Technicians ("LLLT") with authority to provide supervised legal services in defined practice areas. This task force should consist of representatives from the state court administrative office, civil legal services and pro bono programs, private practices from diverse practice settings throughout the state, potential clients, and institutions of higher education (including, but not limited to law schools). The task force should prepare a recommendation to the MSBA Assembly on the question whether to submit a petition to the Minnesota Supreme Court to establish an LLLT practitioner rule by June 2016.

The MSBA Assembly reviewed the Legal Education Task Force's Report and Recommendations at its June 2015 meeting and approved this recommendation, among others. MSBA President (2015-16) Mike Unger then created the Alternative Legal Models Task Force with the following charge:

The Task Force's charge is to examine the advisability of supplementing traditional lawyer representation through the creation of a new type of limited-scope certified legal assistance provider to increase access to justice for those who cannot afford a lawyer. One possibility the task force will examine involves certifying Limited Legal License Technicians (LLLT) who would possess authority to provide limited legal services in particular practice areas, as the state of Washington did recently. The Task Force will develop a recommendation to the Assembly regarding viable options to increase access to justice, including possible certification of limited license legal technicians, along with necessary safeguards to assure quality of service.

After reviewing applications, President Unger appointed 24 members to the Task Force. (A list of task force members can be found in Appendix A). These members bring a wide range of backgrounds to the Task Force's work and include representation from the judicial branch, the private bar, civil legal aid and academic institutions, as well as the paralegal community and paralegal training programs. The Task Force is co-chaired by Susan Wiens of Minneapolis and Kenneth White of Mankato, both attorneys in private practice. The Task Force has met eight times as a full group from February 2016 through March 2017, in addition to numerous subcommittee meetings. (A full listing of meeting agendas and notes, as well as resources, can be found on the MSBA website at www.mnbar.org/ALM.)

The Task Force reviewed numerous resources as part of its deliberations, as well as a presentation by representatives of the Washington State Bar on the LLLT program, a presentation by several task force members involved in paralegal training regarding paralegal certification programs, and a review of law librarian/self-help assistance. The Task Force reviewed numerous articles and studies demonstrating the access to justice gap as well as many reports of projects implemented by other legal organizations attempting to bridge the access to justice gap. (A listing of reference materials can be found in Appendix B.)

The Task Force initially divided into three subcommittees to start its work, as follows:

Forms Completion – This subcommittee examined practice areas that are heavily forms driven and studied ways to license non-lawyers to help individuals with completing forms and potentially assisting in court.

Washington Model – This subcommittee examined the Washington model more thoroughly to explore whether the model was one that could work in Minnesota and should be recommended.

Business Models – This subcommittee explored potential models for serving modest means individuals and examined what it would cost to create a sustainable practice.¹

Based upon the work and recommendations of these subcommittees, the Task Force then developed a series of three options for further study and feedback. These options are more fully discussed in the next section, but can be described briefly:

Regulated non-lawyer provider for limited tasks such as forms completion as permitted by statute;

Enhanced use of paralegals in the practice of law and delivery of legal services, as recently piloted in British Columbia; and

Limited License Legal Technician program (LLLT) which provides a process for non-lawyers to be licensed to provide limited legal advice in certain narrowly-defined legal areas.

¹ The Task Force also considered a fourth subcommittee (Limited Scope), but subsequently folded its work into the remaining subcommittees.

Three new subcommittees were established to study these options. Each subcommittee met numerous times, researched and studied other legal organization's efforts and provided a recommendation to the full Task Force. After the development of these focused options, the Task Force co-chairs, along with MSBA staff, convened seven listening sessions throughout the state (St. Paul (2), Minneapolis (live and as a webinar), St. Cloud, Duluth, Rochester and Mankato) in conjunction with local or district bar organizations during October and November 2016.² In addition, the co-chairs provided an update to the MSBA Assembly at the December 2016 meeting, with five simultaneous small group listening sessions held following this presentation. In total, over 200 MSBA members attended a live listening session during the fall of 2016. Discussions regarding the Task Force's work have also been ongoing via several MSBA online communities, including the Small and Solo Law Firm Section and the New Lawyers Section (which have been the most active). Task Force members reviewed feedback from all of these sources in developing the Task Force's recommendations.

LIMITATIONS

The task force recognizes the current regulatory framework, legal education models and market conditions that frame the practice of law inherently and specifically place limitations on how broad, how specific or how effective the recommendations of the Task Force can be in providing access to justice to all Minnesotans. The Task Force, aimed at providing guidance to the Assembly on ways the state bar association can increase access to justice, recognizes it must work within certain parameters for which it has no current ability to change. The following limitations on meeting access to justice goals were expressed by Task Force members during its deliberations and by members of the bar during the listening sessions.

- If more state and federal funds were allocated to legal-aid services, we could serve more of those in need.
- If more lawyers provided pro bono services, the legal profession could better meet the unmet needs for access to justice.
- If the Supreme Court required all lawyers to provide a certain number of pro bono hours, we could provide more legal services to those who cannot afford them.
- If law schools required students to provide pro bono services before they graduate, we could help provide additional legal assistance to those that cannot afford such services.
- If we developed a mechanism to forgive a portion of new lawyer's student loan debt, new lawyers could open a law practice more economically to provide services at a lower cost.
- If a legal education were to cost less, more new lawyers could open their own practices to provide services at a lower rate that is affordable by modest means clients.

² The document distributed at the listening sessions describes the options under consideration by the Task Force. (Appendix C)

- If the UPL statute was enforced, we would have fewer unqualified individuals providing ineffective legal advice and pushing willing lawyers from this market due to cost differentials.
- Allowing lawyers to enforce non-compete agreements would encourage small firms (and perhaps others) to hire and mentor more new lawyers.

While each of these suggestions for change may also have some positive effect in providing access to justice for all Minnesotans, the Task Force has no ability to effectuate such changes. Recognizing these limitations, the Task Force makes the following recommendations.

OPTIONS CONSIDERED & RECOMMENDATIONS

Overview

Throughout the Task Force’s discussions, members focused on how to bring new resources to serve low and modest income clients. In so doing, the Task Force recognized the challenges facing practicing lawyers in reaching those potential clients. At listening sessions, members of the profession discussed how the cost of doing business as a lawyer makes it difficult to set billing rates at levels affordable to many modest income clients. Younger practitioners, while concerned about the potential for competition from non-lawyers, also recounted the impact of how student loan debt, overhead and practice development place pressures on billing rates. The options considered by the Task Force reflect a need to supplement the existing system in which lawyers exclusively can provide legal advice.

Further, recent national initiatives have begun to focus on ways of providing access to all who may need legal services. For example, Resolution 5 of the Conference of Chief Justices and the Conference of State Court Administrators, adopted in 2015, urges courts to “support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal...”³ The Resolution urges court systems and related organizations to “develop a continuum of meaningful and appropriate services” in order to implement that goal.⁴ In addition, last year, Minnesota recently applied for and received a national Justice for All grant from the National Center for State Courts and the Public Welfare Foundation, the purpose of which is to develop plans for implementing this aspirational goal and coordinating services throughout the state. The Task Force’s work fits naturally within these state and national efforts to create multiple means for enabling all to obtain affordable effective legal assistance.

³http://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx

⁴ Also, in late 2016, the ABA Commission on the Future of Legal Services released its final report. The Commission’s first recommendation aligns with Resolution 5: “The legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer.” <http://abafuturesreport.com>.

Administrative/Regulatory Model

A few states, such as Arizona, California and Nevada, permit non-lawyers to provide limited non-legal assistance to clients – most typically, document/forms completion. These services are not legal advice, although they may be incorporated into an existing legal practice. The state regulates this service by statute, not court rules, because of the limitations involved in scope. Licensees can assist clients with document preparation assistance and assistance to pro se litigants similar to lay advocates (e.g. helping self-represented parties organize the chronology of their cases for presentation to a judge).

In many respects, this model duplicates the existing services already provided in Minnesota by the Judicial Branch’s self-help centers. Considerable information is already available online to enable non-lawyers to understand the legal process and complete forms. Staff at in-person and telephone self-help centers currently assist customers by providing limited guidance on forms and proceedings, but no advice regarding legal strategy.

The Task Force subcommittee reviewing this option considered whether licensed laypeople could play a helpful role in assisting clients in legal proceedings, even if no legal advice could be provided. They reviewed the use of free lay advocates as part of order for protection (OFP) hearings. Since the 1990s, the Minnesota Supreme Court has allowed lay advocates to sit at counsel table and assist in these proceedings. Advocates may also help petitioners complete paperwork, but they cannot provide legal advice. While many advocates have been affected personally by domestic violence, they do not bring formal training or skill in legal advocacy. As such, licensed attorneys are still necessary to adequately represent the interest of both petitioners and respondents.⁵ Domestic violence advocates are most effective in helping victims by being present at counsel table and offering their experience as an adjunct to effective legal representation.

The main advantage of administratively licensed non-lawyer providers is that they can take on relatively low level tasks for clients and leave more sophisticated issues to attorneys. Less stringent licensing requirements (as opposed to lawyer admission) would make it easier for someone who wishes to provide these services to do so. However, given the nature of legal proceedings and the nuances of different areas of the law, these licensed providers will never supplant the need for direct lawyer involvement.⁶ Indeed, they offer little more than what any lay person could already do to assist an individual with a legal matter. These services may duplicate already existing self-help resources by the court system and lead to a secondary industry of

⁵ Any expansion of the responsibilities of advocates would likely necessitate more extensive training and regulation. For example, advocates would need to have baseline knowledge of court procedure and forms drafting, as well as a more sophisticated understanding of victim trauma.

⁶ Completing forms alone does not meet some of the most significant client needs, which include legal advice, discovery assistance, preparation of affidavits and certain kinds of motions, analyzing courses of action and, perhaps most importantly, representation in court to assist the client in case presentation. Family law, in particular, is a subject area most in need of assistance by clients, yet it is a complex area of law as well as one involving emotional stresses where clients need a full range of assistance to sort out child-related issues and financial issues. The statutory framework is extensive as is the case law. Mere assistance with forms would be enough in only the most routine cases, and those are likely few.

licensed, but untrained non-lawyers providing what potential clients might take to be legal advice.⁷ Further, the subcommittee concluded that the services provided by such licensed providers could more easily be incorporated into the remaining two legal services delivery options. **Given these shortcomings, the Task Force ultimately decided not to recommend further investigation of the administrative/regulatory option.**

Designated Paralegal/British Columbia (BC) Model

The designated paralegal, or BC Model, in its most basic form, allows a lawyer to employ a skilled “designated paralegal” into his/her legal practice to provide to the extent the lawyer deems proper, legal advice as well as representation of the client in court. The lawyer remains responsible for the activities of the designated paralegal in the same way Minnesota lawyers remain legally and ethically responsible for those that work for them and their law firms. The expansion of services that a “paralegal” may provide to clients under the supervision of an attorney was envisioned in British Columbia as a partial solution to the access to justice gap found prevalent in the community.

Background

It bears noting that, in developing this model, British Columbia lawyers struggled with the very same issues the Minnesota State Bar Association grapples with in how to serve the unmet legal needs of those in poverty as well as those that may not be considered below the poverty line but nonetheless cannot afford typical lawyer fees. They wrestled with the same issues surrounding the fear of inferior legal services, the prediction that such non-lawyers would take work away from new law school graduates, and that the lower fees charged by non-lawyers would prevent new lawyers from staying competitive (because of higher law school debt). Recognizing the government-funded legal aid system provided needed assistance to the poor, it also found the system was severely underfunded and incapable of meeting the needs the lawyers recognized as a systemic problem.

In reviewing possible avenues for improving access to justice, the BC Law Society (the equivalent of our State Bar, although it is mandatory) determined that granting paralegals the ability to provide legal advice was at least a partial solution to the access to justice problem. The BC law society looked to the Ontario law society for guidance as Ontario, in 2007, became a leader in licensing and regulating paralegals. A five-year report to the Ontario Attorney General on the licensing program found “by an objective measure . . . it has been a remarkable success.”⁸ The BC Model,

⁷ The court’s self-help center staff will review completed forms for self-represented litigants using the I-CAN system. See <http://www.mncourts.gov/Help-Topics/Divorce/i-can-help.aspx>. I-CAN is available for divorce and fee waiver forms. Law libraries that have professional staff (Hennepin, Ramsey, Anoka, Dakota, Olmsted, Stearns, St. Louis, and Wright) can assist self-represented litigants in locating court forms, and also sample forms when fill-in-the-blank forms do not exist.

⁸ David Morris, Report to the Attorney General of Ontario: Report of Five-Year Review of Paralegal Regulation in Ontario (2012, Queens Printer for Ontario), which can be found at: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/. In February 2017, a former justice of the Ontario Supreme Court issued her report on improving access to legal services for low income people in the province and concluded there should be expanded use of paralegals in family law proceedings. See

unlike the Ontario program, requires the assessment by a lawyer of the skills of the paralegal to be made before a paralegal can become a designated paralegal. The BC Model does not require a minimum level of education as it relies entirely upon the judgment of the lawyer who has determined if a paralegal qualifies as a designated paralegal.

In British Columbia, the practice of law is defined by the Legal Profession Act. Like Minnesota, the “Practice of Law” was defined to include most services traditionally provided by lawyers such as appearing on behalf of clients in court or administrative hearings, giving legal advice, drafting legal documents, and negotiating and representing clients in mediations and arbitrations. The law allows a person acting under the supervision of a lawyer (i.e. a paralegal) to provide certain services to clients without violating the Act.

In June 2012, the BC law society approved a change in their Code of Profession Conduct, adopting the concept of a “designated paralegal” who would have the necessary skills and experience such that under a lawyer’s supervision, could perform tasks not previously permitted for paralegals including,

- Giving legal advice to clients
- Giving and receiving undertakings; and
- Representing clients before a court or tribunal (administrative court) as permitted by the court or tribunal

In this program, designated paralegals could manage a file, provide advice to a client and otherwise provide the similar service to the client that a lawyer may provide, with the supervising attorney monitoring the work and the advice provided. The BC courts were slow to accept paralegals in the court room causing some confusion as to when and where a designated paralegal may appear. Very few courts allowed designated paralegals to appear in their court rooms but very few designated paralegals attempted to appear in court. According to conversations with the staff attorney for the BC Law Society, the tribunal judges (administrative forum) have indicated recently a willingness to allow designated paralegals to appear in their courtrooms. As such access to tribunals is relatively new, there is no data on how this is working. Given the success of the program with lawyers and law firms, the law society’s next step is to change the Legal Profession Act to allow designated paralegals to practice law in limited areas of law and in a limited scope, patterned after the Washington State model (see the following section).

Explanation of BC Model

The BC Model restricts a lawyer to the supervision of just two designated paralegals. It does not require a certain level of education or experience but requires a lawyer to implement “Best Practices for Supervising Paralegals” and “Best Practices for Training Paralegals.” Best practices for supervising designated paralegals, set forth in Appendix E of the BC Code of Professional Conduct, include the following:

<https://www.thestar.com/news/gta/2017/03/06/judges-report-urges-ontario-to-let-paralegals-appear-in-family-court.html>.

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

- (a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?
- (b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?
- (c) How complex is the matter being delegated?
- (d) What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

- (a) Train the paralegal as if he or she were training an articulated student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;
- (b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;
- (c) Gradually increasing the paralegal's responsibilities;
- (d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:
 - (i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;
 - (ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;
 - (iii) ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training designated paralegals include the following:

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articulated students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.
3. Facilitate continuing legal education for the paralegal.
4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.
5. Have their paralegals “junior” the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal’s training.
6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

Recommendations

A majority of the Task Force recommends adoption of a model based significantly upon the British Columbia Model where specifically trained or experienced paralegals are provided additional responsibilities, including some traditional legal responsibilities, to serve clients at a reduced cost. The subcommittee recommended changing the “designated paralegal” name to “Legal Practitioner.” The model we propose would continue to require that an attorney supervise all activities performed by the Legal Practitioner, but the level of supervision would be tailored to the level of experience. We suggest the following framework:

Education Qualifications and/or Years of Experience

Because lawyers would remain responsible for all activities of the Legal Practitioner, Task Force members believe the Legal Practitioner must possess sufficient education and experience to meet the lawyer’s legal and ethical requirements.⁹ Allowing experienced paralegals and legal assistants to assume the role of a Legal Practitioner would likely provide hundreds of individuals that could immediately begin service. However, to protect the public and to ensure this new legal position has credibility with the public and within the legal profession, the Task Force recommends at least a two-year college degree be required that would include a certain number of credits to be applied to a specific focus area in a paralegal-like training program. The Task Force found it particularly important that some amount of educational training should be required in the particular area of law that the designated paralegal proposes to practice within.¹⁰ The Legal Practitioner designation would apply to specific areas of law.

Number of Designated Paralegals a Lawyer May Supervise & Malpractice Insurance

The BC Model limits attorneys to two designated paralegals for each lawyer. The Task Force believes this may be too restrictive and recommends increasing that number to three. In addition,

⁹ Certain individuals who have many years of experience as a legal assistant or paralegal, who many not otherwise meet the educational qualifications, could also apply for the designation.

¹⁰ No new programming is deemed necessary as there are many options for obtaining paralegal/legal assistant training in Minnesota. Programs have been certified by the American Bar Association and/or the American Association for Paralegal Education.

the Task Force recommends that only currently licensed lawyers with malpractice insurance should be able to employ, engage or otherwise use Legal Practitioners within their law practice.¹¹

Areas of Practice & Court Approval

The Task Force recommends that court approval be obtained before any Legal Practitioner may appear in court in a legal proceeding. In addition, the Task Force discussed the following areas of law that may present opportunities for including Legal Practitioners within their practice. (These could be the subject of a limited time pilot if desired by the court.):

- Administrative Hearings (Unemployment Compensation, Medical Assistance and perhaps others)
 - Surveys from earlier subcommittees identified unemployment compensation issues as a frequent issue and one that may be ripe for a non-lawyer to assist.
- Landlord/Tenant Issues – Housing Court
 - Housing Court matters routinely entered Task Force meetings as an area that may properly be managed by a non-lawyer. This proposal would keep a lawyer in the mix but allow for much more front-end form driven issues to be advanced by a Legal Practitioner.
 - Non-lawyers are already permitted in Housing Court so this is not a big change.
- Debtor/Creditor Law – Civil Court
 - Individuals in low income groups are likely to have debt collection issues. This issue was identified often in the earlier subcommittee questionnaire results as an area of law often in need of legal assistance.
- Family Law – Civil Court
 - Surveys from the earlier subcommittees identified family law as an area of highest unmet needs of those unable to afford legal services.
 - Attorneys who practice family law indicate that it is too complicated to turn over decision making to a non-lawyer but such concerns may be alleviated in this particular model by requiring that a lawyer remain involved and ethically and legally responsible for all results.

¹¹ Some members were concerned that the BC Model would not significantly increase legal services to the poor. Some legal services programs already use legal assistants to provide services under attorney supervision. Given the below-market compensation for legal services attorneys, some members thought there would not be much incentive for programs to hire legal assistants for a little less than attorneys who could be used more broadly. In addition, some members also were concerned that, without restrictions on the income levels of clients served by legal assistants, law firms with high volume practices might hire more legal assistants at the expense of new attorneys. Examples could include plaintiffs in housing court matters and debt collection actions.

- Immigration Law
 - Non-lawyers are already permitted to appear in certain immigration matters so this is not a big change.
 - Certain routine tasks can be delegated from a supervising attorney to a Legal Practitioner, opening the doors for lawyers to serve more clients.
- Estate Planning and Corporate Work
 - Routine estate planning is already very form driven. This is an area where a seasoned Legal Practitioner could provide valuable legal services.

Scope of Legal Practice

The Task Force recommends that the scope of legal practice for a Legal Practitioner should, at a minimum, include the ability to provide legal advice to clients, meet with them independently, assist with legal forms and legal documents and otherwise manage an entire file/case. In addition to those responsibilities, with court permission, a Legal Practitioner may represent clients in court. Such a scope of practice would likely require a change to the UPL statute and approval by the Minnesota Supreme Court.

Limited License Legal Technicians (LLLT) (Washington Model)

In 2012, the Washington Supreme Court created a new category of licensed practitioners to meet what it believed to be continuing concerns about access to legal services for low and modest income people. Since the program was created, a number of states have studied the Washington experience in an effort to determine whether their courts should institute such a program.¹² The Task Force reviewed these reports, as well as feedback from the various statewide listening sessions, as part of its work.

Washington Model Details

The Washington LLT was discussed in extensive detail by members of the MSBA's Task Force on the Future of the Legal Profession. *See* Appendix F to the Report and Recommendations of the

¹² California Bar Civil Justice Strategies Task Force Report & Recommendations, <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000013003.pdf>; Colorado Subcommittee Formed By State Supreme Court, <http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>; Florida State Bar's Vision 2016 Commission, <http://www.floridabar.org/vision2016>; Report and Recommendation of Vision 2016 Access to Justice Subcommittee, [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/\\$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement); Illinois Task Force, <http://www.isba.org/ibj/2015/09/abcsllts>; Final Report of OSBA Legal Technicians Task Force (January 2015), http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf; Utah Report & Recommendations of Supreme Court Task Force to Examine Limited Legal Licensing (November 2015), http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf.

MSBA’s Task Force on the Future of the Legal Profession. The relevant portions of that document are excerpted below:

In June 2012, the Supreme Court of Washington issued an order for a new Admission to Practice Rule (APR) 28 entitled “Limited Practice Rule for Limited License Legal Technicians.” The Court’s twelve page order states, “Our adversarial civil legal system is complex. It is unaffordable not only to low income people but...moderate income people as well.”¹³

In setting forth the rationale for its groundbreaking order, the Washington Supreme Court detailed how that state court system had attempted to fashion a number of strategies that are not dissimilar to Minnesota’s system: courthouse facilitators, court self-help centers, neighborhood legal clinics, pro bono programs and a statewide legal aid self-help center.¹⁴ The Court noted, however, these resources have limitations, including that “many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.”¹⁵

The Court recognized that many self-represented litigants are “at a substantial legal disadvantage and, for increasing numbers, force(d) to seek help from unregulated, untrained, unsupervised ‘practitioners.’ We have a duty to ensure that the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.”¹⁶

Importantly, the Court noted that establishing a new category of limited legal provider would not aid family law litigants with complex, contested matters. On the other hand, “the authorization for limited license legal technicians to engage in certain limited legal and law related activities holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems...”¹⁷

The Court also addressed concerns that creating a new class of licensed professionals would threaten the practicing family law bar, stating, “(I)t is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule.” In particular, the new class would be limited to simple family law matters where “few private attorneys make a living.”¹⁸

¹³ In re the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, Wash. No. 25700-A-1005, 4 (Jun. 14, 2012), available at http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/LLLT%20Board/Legal%20Technician%20Rule.ashx.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *Id.* at 5–6.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 6–7.

While admitting that adopting APR 28 “will not close the Justice Gap,” including that for moderate income persons, the Court reasoned the new rule was a “limited, narrowly tailored strategy designed to expand the provision of legal and law related services to (persons) in need of individualized legal assistance with non-complex legal problems.”¹⁹

Subpart (A) of APR 28 states in part: “The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law.”

The Rule establishes a Limited License Legal Technician Board comprised of lawyers and non-lawyers which will recommend practice areas and license requirements on a go-forward basis and which will oversee administration of a licensing examination. In particular, the Rule requires that applicants:

- Be 18 years or older.
- “Be of good moral character and demonstrate fitness to practice as a...(LLLT)”
- Have an associate level degree or higher.
- Have earned 45 credit hours in a core curriculum of paralegal studies with the curriculum also being developed in conjunction with an ABA-approved law school.
- Each applicant must take an oath similar to an attorney’s oath.

Licensing requirements for Rule 28 include that successful applicants must:

- Pass a written examination.
- Acquire 3,000 hours of “substantive law-related work experience supervised by a licensed lawyer.” These 3,000 hours can precede the licensure (in other words, it appears that an experienced paralegal can apply to be a LLLT and be licensed upon passing the written examination).
- Carry malpractice insurance.

Attend annual CLE courses.

Rule 28 is very specific in terms of the scope of practice in which a Limited License Legal Technician can engage. In particular, under the rule, a LLT can:

- Perform usual paralegal duties.

¹⁹ *Id.* at 11.

- “Perform legal research and draft letters and pleadings documents beyond (customary paralegal duties), if the work is reviewed and approved by a Washington lawyer.”
- “Advise a client as to other documents that may be necessary to the client’s case and explain how such documents or pleadings may affect the client’s case.”
- All LLLTs are required to enter into a written contract “prior to the performance of the services for a fee...”
- LLLTs cannot appear in court or at administrative proceedings or engage in mediations or other forms of alternative dispute resolution (including negotiating settlements or agreements) on behalf of a client.

Under the Rule, an LLLT’s practice is restricted to “Domestic Relations” which is defined narrowly and confined to child support modification; divorces; parenting plans and other less complicated family law matters. Rule 28 specifically prohibits LLLTs from advising on the division of real estate or retirement assets or on bankruptcy or anti-harassment orders.

Other notable features of Rule 28 include that LLLTs are to be “held to the standard of care of a Washington lawyer.” Additionally, the Rule mandates creating a LLLT IOLTA program “for the proper handling of funds coming into the possession of the Limited License Legal Technician.” Moreover, Washington state law relative to the attorney-client privilege and law of a lawyer’s fiduciary responsibility to the client “shall apply to the Limited License Legal Technician-client relationship to the same extent as (they) would apply to an attorney-client relationship.”

Representatives of the Washington State Bar Association and Washington Supreme Court LLLT board presented to the Task Force at its first meeting in February 2016. At that time, there were nine LLLTs who were practicing, four independently of a law practice. (Approximately 100-200 people are currently taking the educational prerequisites.) The total cost for completion of the educational components of the program was approximately \$15,000 and LLLTs were charging between \$60-90/hour for their services. The Washington State Bar is paying for the expenses of the licensing and oversight process for the first five years of the program with the goal for the program to be self-supporting by licensing and exam fees.

Recommendations

A majority of the Task Force recommends the MSBA refine a proposal to be submitted to the Minnesota Supreme Court for the creation of an LLLT-type practitioner to expand access to legal assistance, particularly to low and modest income clients across the state with a focus in rural areas. Task Force members are aware of concerns about the LLLT model – the costs involved in setting up a separate regulatory structure, the expense (albeit less than for a JD) of satisfying the requirements for licensure, the potential for competition with lawyers (in particular, younger lawyers and lawyers in some rural communities) and the belief that clients who work with LLLT-type practitioners will receive second-class service. All of these concerns,

however significant, must be balanced against the reality that significant segments of the community lack access to any legal assistance, particularly in poor and rural communities.²⁰ Moreover, by providing a pathway for licensure, an LLLT-type program can begin to mitigate the appeal of non-regulated providers who engage in the unauthorized practice of law.²¹

The Task Force suggests the following parameters for an LLLT-type program:

Education/Experience Requirements

The Task Force suggests a minimum associate level degree with a paralegal certificate and a minimum of 2 years' paralegal experience. Paralegals lacking an associate degree could substitute a certain number of years of service. Education cost is a critical factor in creating the new class of legal professional; if it is too expensive, the program will falter and the population we seek to serve will continue to be without legal assistance. Additionally, given that many paralegals have specialized knowledge in a given legal field (and often know as much, if not more, than their supervising attorney), the associate degree requirement could be waived or relaxed.

Suggested Testing and Licensing Requirements

The Task Force suggests that all candidates should be required to pass a character/fitness test and background investigation. Additionally, they would sit for an examination covering the legal basics in the areas in which practitioners seek to practice (see below). Following exam passage, practitioners would take an oath similar to an attorney's oath and complete continuing legal education classes in the subject area of practice, including an ethics component. For practitioners who open independent offices (see below), they would be required to carry malpractice insurance and comply with IOLTA rules.²²

Since these practitioners will be considered legal professionals, they should be subject to various professionalism requirements. Additionally, these requirements will act to assure competency and reassure the public that they can confidently rely on the work of this new class of practitioners.²³

²⁰ This model would also allow social service agencies to provide legal services to some of their clients on-site without having to refer them to already overburdened legal services and volunteer attorney programs.

²¹ The Committee notes that there are reports of current illegal advocate practices representing landlords in eviction cases and parties in family law matters. The Committee hopes that by regulating stand-alone practice, illegal practitioners might be prosecuted or sanctioned.

²² It bears noting that current Minnesota rules do not require licensed attorneys to carry malpractice insurance, although they must disclose whether or not they do as part of the annual attorney registration process.

²³ Some members believed that the administrative costs of the Washington LLLT system weighed against supporting the recommendation. In the first two years since the Washington program has been operational, nineteen LLLT licenses have been issued. It is unknown how many years it would take for the LLLT system to be self-supported through license fees in the same way that the attorney license system is funded. That means that the resources necessary to create a new regulatory structure for LLLTs would have to come from somewhere else. In Washington, the resources to fund LLLT administration have come from their attorney licensing body itself. Some ALM task force members felt that in Minnesota any increase in access to justice spending would be better directed to civil legal aid rather than to the creation of an LLLT infrastructure and to ongoing regulation.

Independent Practitioners

Practitioners may be able to practice independent of attorney supervision and operate “stand alone” businesses/practices. In certain cases, usually based upon practice areas, some form of attorney oversight might be helpful. Nevertheless, to enable practitioners to serve marginalized or more remote geographic communities, the Task Force determined that allowing these practitioners to work independently would best serve the goal of providing access to justice to the targeted population. Questions about competency or experience levels (a primary reason for “tethering” to attorneys) could be dealt with through the education/credentialing/examination process and requirements.²⁴

Legal Advice and Practice Areas

Practitioners would be able to give legal advice in specific areas of law where the unmet legal needs is most prevalent, such as estate planning, family law, corporate representation, conciliation court matters, unemployment insurance, domestic abuse issues, landlord-tenant, social security benefits and immigration. As with Washington State, there should be an effort to approve the program with one or two legal areas before expanding to additional areas of practice. This would allow the effectiveness of the program to be assessed before program expansion.²⁵

Court Appearance

Practitioners could be permitted to appear in court on a limited basis relative to clearly defined legal matters or controversies with court approval and only for clients who meet certain income thresholds similar to Legal Aid eligibility.

CONCLUSION

The Bench and Bar continue to struggle with the need to provide legal services to low and moderate income residents of Minnesota. History has demonstrated those needs will not dissipate over time and with the increasing economic challenges facing lawyers, it seems unlikely that lawyers alone can meet this need. The Bar should suggest changes the Court and Legislature to meet this need.

The two alternatives suggested in this report – LLLTs and Legal Practitioners – offer two approaches toward meeting that need. Each has its strengths and challenges. But, the failure to act ensures that people of low and moderate income continue to confront a challenging and often difficult legal system that is necessary to resolve the legal issues and disputes in their lives. While some additional work is necessary to flesh out details, draft statutory and rule changes, each of

²⁴ Stand-alone advocate practices have existed in the past in Minnesota. The City of Minneapolis had such a practice, with the Minneapolis Housing Service. At first, several housing advocates were supervised by an on-site attorney. Later, on-site supervision ended, and the City contracted with a legal services program to provide training to the advocates and take calls from them for advice. The service could have been improved by the education and certification requirements of the Washington Model.

²⁵ If the practice areas were limited in scope to underserved areas, LLLTs would not compete with attorneys, new or old. Some members commented that an additional protection against competition with attorneys would be to put limitations on the income levels of clients served by practitioners.

these proposals presents an opportunity for Minnesota lawyers to take a significant step towards fulfilling one of their core missions – “achieving effective and equal justice for all.”

Appendix A

MSBA Alternative Legal Models Task Force Roster

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MSBA Staff:

Steve Marchese

Nancy Mischel

Appendix B

Selected Resources

Reports and Studies

ABA Future of the Legal Profession Task Force (and related resources)

http://www.americanbar.org/groups/bar_services/resources/resourcepages/future.html

Supporting Justice III: A Report on the Pro Bono Work of American Lawyers (2013)

http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf

MSBA Civil Gideon Task Force Report (2011)

<http://www.mnbar.org/docs/default-source/default-document-library/access-to-justice-assessing-implementation-of-civil-gideon-in-minnesota.pdf?sfvrsn=0>

Minnesota Client Access and Barriers Study (2011)

http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf

The Importance of Representation in Eviction Cases and Homelessness Prevention (Boston Bar Association, 2012)

<http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>

British Columbia Designated Paralegal Materials

Designated Paralegal Survey (2016)

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/DesignatedParalegalSurvey.pdf>

Report of the Legal Services Regulatory Framework Task Force, The Law Society of British Columbia (December 2014)

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesRegulatoryFrameworkTF.pdf>

Final Report of the Legal Service Providers Task Force, The Law Society of British Columbia (December 2013)

https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesProvidersTF_final_2013.pdf

Report of the Specialized Legal Assistants Study Committee (February 1994)

<http://www.mncourts.gov/mncourtsgov/media/AdministrativeFileArchive/Spec%20Legal%20Assistants%20Study%20Cmte%20C2-92-667/1994-03-08-Spec-Legal-Assist-Cmte-Rpt.pdf>

Report to Benchers on Delegation and Qualifications of Paralegals (April 2006)
https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Paralegal-delegation_06-04.pdf

Washington State LLLT Program Materials

Limited License Legal Technician Program: The History and the Future of the Program (February 2016)
<http://www.mnbar.org/docs/default-source/policy/lllt-program-mn-task-force-february-2016-pdf.pdf?sfvrsn=0>

In re the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, Wash. No. 25700-A-1005, 4 (June 2012)
http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/LLLT%20Board/Legal%20Technician%20Rule.ashx.

Task Force Reports from Other States Reviewing Washington State LLLT Program

California

California Bar Civil Justice Strategies Task Force Report & Recommendations
<http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000013003.pdf>

Colorado

Subcommittee formed by state supreme court
<http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>

Florida

State Bar's Vision 2016 commission
<http://www.floridabar.org/vision2016>

Report and recommendation of Vision 2016 Access to Justice Subcommittee –
[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/\\$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement)

Illinois

Task force appointed
<http://www.isba.org/ibj/2015/09/abcsllts>

Oregon

Final report of OSBA Legal Technicians Task Force (January 2015)

http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf

Utah

Report & Recommendations of Supreme Court Task Force to Examine Limited Legal Licensing (November 2015)

http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf

Administrative/Regulatory State Initiatives

Arizona

Legal Document Preparers (licensed by Arizona Supreme Court)

<https://www.azcourts.gov/cld/Legal-Document-Preparers>

California

Legal Document Assistants (created by statute – formerly independent paralegals)

<http://calda.org/>

New York

Court Navigator program established in NYC Housing Court in the Bronx and Brooklyn

<http://www.nycourts.gov/COURTS/nyc/housing/rap.shtml>

Appendix C

Handout for Fall 2016 Listening Sessions

The Alternative Legal Models Task Force is co-chaired by Susan Wiens of Minneapolis and Ken White of Mankato and consists of 22 members, appointed by the MSBA President.

The Task Force's charge is to examine the advisability of supplementing traditional lawyer representation to increase access to justice for those who cannot afford a lawyer. The task force has been reviewing a select number of potential models for increasing access through the use of non-lawyers, including enhanced use of paralegals and an alternative non-lawyer licensure model.

Since February of this year, the Task Force has reviewed an extensive amount of information from other jurisdictions, as well as recent report on the future of the legal profession from the ABA. The Task Force has identified the pros and cons of various options such as:

- Washington State Limited License Legal Technician program (LLLT) (the first of its kind in the US) which provides a process for non-lawyers to be licensed to provide limited legal advice in certain narrowly-defined legal areas (currently only family law). LLLTs must meet specific educational, training and testing requirements and are individually subject to the jurisdiction and oversight of the Washington state bar.
- Enhanced use of paralegals in the practice of law and delivery of legal services, as recently piloted in British Columbia. This model, in its most basic form, allows a lawyer to employ a skilled "designated paralegal" in his/her legal practice to provide, to the extent the lawyer deems proper, legal advice and representation of the client in court. The lawyer remains responsible for the activities of the designated paralegal in the same way Minnesota lawyers remain legally and ethically responsible for those that work for them and their law firms. There is no separate licensure for the paralegal beyond the supervising attorney.
- Regulated non-lawyer provider for limited tasks, as permitted by statute. This would include registered document preparers, as permitted in Arizona, California and Nevada, who may assist with the completion of forms without providing legal advice.

The Task Force co-chairs are presenting information about these options to solicit feedback from the legal profession in listening sessions throughout Minnesota. The Task Force plans a more detailed report on its work for the December 2016 Assembly meeting with the goal of presenting any formal recommendations at the April 2017 Assembly meeting

	<i>Limited Scope Legal Practitioner</i>	<i>Designated Paralegal</i>	<i>Regulated Provider</i>
<i>Requirements?</i>	Yes - AA degree, paralegal certificate, 2 years exp.	Suggested – AA degree, paralegal certificate, experience	Depending on statute
<i>Licensure/Oversight?</i>	Yes. State court license, character & fitness, examination, direct PR oversight	None. Oversight by attorney.	Registration with SOS office or state bar
<i>Practice Areas?</i>	Limited areas w/demonstrated legal need (e.g., conciliation court, landlord/tenant, domestic violence, family)	Limited. Requires exception to unauthorized practice of law statute (e.g., admin hearings, landlord /tenant, family law, debtor/creditor)	Limited by statute (e.g., document preparation only)
<i>Court Representation?</i>	Yes, limited by areas of specific service	Yes, by designation of supervising attorney	No
<i>Supervision by Attorney?</i>	Not required	Yes, up to a maximum number of paralegals	Yes, depending on statute
<i>Stand Alone?</i>	Yes, may affiliate with law practice or operate independently. Malpractice for stand alone.	No	Maybe, depending on statute
<i>Jurisdictions?</i>	Washington State (LLLT)	British Columbia (designated paralegal), Ontario (licensed paralegal)	Arizona, California, Nevada (licensed document preparer)