



ENVISIONING A NEW FUTURE TODAY

STATE BAR OF MICHIGAN
21st CENTURY
PRACTICE
TASK FORCE

At the State Bar of Michigan 2014 Annual Meeting I challenged participants to tackle the hardest problems facing the legal profession. The work of the 21st Century Practice Task Force is an ambitious and thought-provoking response to that challenge. I urge members of the bar to review the findings and recommendations with a sense of urgency because the long term health of our profession is at stake.

Engineering a comprehensive vision for the future of the legal profession is not an easy enterprise. With the benefit of hindsight, future generations may not appreciate what we perceive as bold, creative, or visionary ideas. Our successors in the legal profession might even think we stated the obvious, but if that is the result of our work, we shall have succeeded. Indeed, to the extent that the vision gets it right about what is possible and creates a path to make those possibilities a reality, having stated the obvious will be a badge of honor.

While I cannot pass judgment on any particular element of this work, I do note that several themes: client focus, collaboration, cost-savings, and convenience – reflect what the Supreme Court is applying in our own efforts within the court system to increase access, improve efficiency, and re-engineer our courts – all so we can be the best possible stewards of public resources.

I am so pleased that the 21st Century Practice Task Force has been inquisitive and open-minded. If its work product sparks a broad conversation about where the legal profession is headed and leads to wider acceptance of the need for change, then the best is certainly yet to come.

Robert P. Young, Jr.
Chief Justice
Michigan Supreme Court

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Letter from the Co-chairs



Bruce A. Courtade



Julie I. Fershtman

When the 21st Century Practice Task Force met for the first time in April, 2015, it faced a daunting challenge: to take an in-depth look at a precedent-based system, steeped in tradition and reliant on a model that, while possessing many redeeming virtues, in many ways did not reflect the modern world in which lawyers operate today. We were encouraged and challenged to “color outside the lines,” if necessary, to reinvent the manner in which justice is administered by and within our profession, and to get it all done in less than 11 months.

Our Task Force included the leaders of all the major agencies involved in legal services regulation in Michigan, the leaders of Michigan’s five law schools, and key policymakers. To our knowledge, no other legal futures initiative has started with such comprehensive, committed engagement. Over the course of the year, more than 150 lawyers and judges contributed thousands of hours of thoughtful work to the task at hand. As well as being visionary, their work, covering all facets of legal service delivery and the full range of a legal career, generated practical, immediate steps, that can (and we believe should) offer a clearer road map to our ultimate goal — assuring that our profession will continue to serve as protectors of the Rule of Law and equal access to our system of justice, thereby guarding the liberty of all members of the public.

Ultimately, the Task Force identified five overarching issues facing our profession. In response to each issue, Task Force members

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proffered a wide-ranging set of recommendations, some of which can be implemented with little difficulty or fanfare, and some of which will require systemic change that may take years of additional study and regulatory or statutory changes prior to adoption. While it may be tempting to view these changes in isolation, we urge readers to resist that impulse, since we believe that many of these ideas are dependent on other recommendations to reach their full potential. The selective adoption of isolated recommendations without addressing ideas and issues raised in separate portions of these materials could undermine the ability to make the systemic changes required of our profession to serve its members and the public in the 21st century.

The Task Force has embraced the innovation underway in the legal profession as an opportunity for breaking through the barriers that for too long have denied access to legal services to too many. We believe that technology and new analytical tools offer the chance to deliver affordable, quality legal services on an unprecedented scale. But we recognize a darker possibility -- that the failure of the legal profession and its regulators to embrace change could rapidly undermine the relevance of the profession and erode the quality of legal services available to the public.

This work product is just the beginning.

Groundbreaking, sustainable progress in the quality of justice in Michigan requires shedding comfortable but antiquated habits and customs, embracing technology, and adopting rigorous business process thinking to legal practice and court operations. With a healthy mix of immediate, practical ideas within a visionary framework grounded in data, we believe that this work is an important step in that process of positive change. But sustainable progress also requires building and maintaining the engagement of a broad coalition beyond the legal community. Lawyers and judges bear the primary responsibility for the state of justice in Michigan, but we must acknowledge that we do not have all the answers. Success will require the active and ongoing participation of the public, the business community, and executive and legislative policymakers.

It is with honor, pride and a great deal of humility that we offer the innovative recommendations set forth in the p.s to follow. We welcome everyone's participation on this crucial journey toward access to justice for all.



Figure 1: Directional Guidance

The expectations and needs of clients, potential clients and others who use the legal system should be at the center of the delivery of legal services and its regulation.

To meet client needs and facilitate access to justice, innovation should be encouraged in how legal services are ethically delivered and by whom.

The legal services delivery system should help clients find the kind of legal help and information they need when they need it.

Optimal access to justice for all requires that those who provide legal services reflect the diversity of the population they serve.

Mechanisms should be developed to assure ongoing identification of and effective responses to changes.

The rules upon which regulation of legal services rest should continue to be based on enduring principles of professional ethics and protection of the public but should provide practical guidance responsive to the changing environment and the emergence of nontraditional delivery methods and providers.

Legal education for lawyers and others authorized to provide legal assistance should include future-oriented skills, knowledge and experiential learning, and continue during the full career.

Overview of Recommendations

Development of Comprehensive Public Platform linked to Full Range of Legal Services and Information

- User-friendly, reliable, ethical consumer information
- Triage system to guide those in need of legal services, assisted by technology and other navigation assistance, including from trained lay navigators and links to find a lawyer, help centers, related resources
- Collaboration across Michigan's three leading platforms
- Legal Self Help Centers in all judicial circuits

Nurturing of New Service Delivery Options

- Unbundling system (limited scope representation) to expand access
- Billable hour alternatives
- Limited multidisciplinary practice (MDP)
- Support for innovative law firm models
- Online pro bono opportunities
- Limited pilot projects to test expanded availability to counsel in certain civil cases and reporting of pro bono hours
- Coordination with Michigan Indigent Defense Commission innovations

Court Innovation, Simplification, Standardization

- Emphasis on mediation (early, automatic, draft pleadings)
- Civil process innovations to tailor pre-trial practice on case-by-case basis
- Expanded video conferencing
- Streamlined probate and research to identify types of cases appropriate to remove from judicial process
- Statewide specialty court venue; access through e-filing portal
- Promote appropriate application of problem-solving court principles to all courts
- Use business process analysis
- Expanded online dispute resolution

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Dynamic, Data-driven New Lawyer Support

- Ongoing SBM assistance to variety of practice-readiness assistance options (incubators, internships, clinics, New Lawyer Institute, mentorship programs) to test effectiveness; collect data and do analysis, provide tools to lawyers/firms

New Model for Continuing Legal Education and Professional Development

- Emphasis on tech competency and ethics training, baseline competency training, and support as part of SBM membership benefit
- Innovative, customizable delivery methods for specific legal training
- Specialty certification
- Convenient self-testing, self-assessment tools for continuing legal education

Modernized Regulation

- Malpractice insurance disclosure; easy consumer access to that information
- Voluntary, innovative CLE, plus continuing professional development support for every practicing lawyer
- More transparency and uniformity
- Development of consensus on regulatory objectives, incorporating inclusion, diversity, and cultural competency
- Regulate non-J.D. legal service providers (e.g., paralegals and lay navigators)

Innovative Changes to Bar Admissions

- Sequential bar admissions testing
- Practice criteria for lawyers without Michigan licensure

Strategies for Persistent, Value-Driven Change

- Judicial Innovation Center
- Justice Innovations Guidelines

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THE PROBLEM

a dysfunctional legal marketplace

Although lawyers are ethically committed to access to justice for all and support legal aid programs for the poor, quality legal services have never been available to all those who need them. Today, legal services delivered in traditional ways are becoming more unaffordable for large segments of the population. Even people who can afford legal services are often afraid of the cost and confused about whether they need legal help, what kind of legal help they might need, and how to find it. Despite a significant percentage of lawyers who are unemployed or underemployed, we are falling further behind in our goal of access to justice for all.

THE VISION

Transparent, accessible, and user-friendly Internet access to reliable legal information that encourages confidence in the value of legal services and provides connection to high quality, affordable legal services, plus on-the-ground resources that help those in need, extending a continuum of legal help to all who need it.

BASIC ELEMENTS OF THE PLAN

- Build a user-friendly online legal platform with multiple access points and a legal “triage” module to direct users to the kind of legal services or information they need when they need it. Build the platform through collaboration among the State Bar of Michigan (SBM) and its sections, the Michigan Supreme Court (MSC), the State Court Administrative Office (SCAO), the Michigan State Bar Foundation (MSBF), Michigan Legal Help (MLH), the legal aid community, local bar associations, businesses, and faith-based and civic organizations. Anchor the platform to the pioneering platforms already underway – MLH, SBM’s enhanced online directory, and the Michigan judicial branch’s upcoming e-filing portal. Present basic information about the court system, legal problems, and possible solutions in clear, easily readable form in English and other major languages spoken in Michigan.
- Operate a Legal Self Help Center (LSHC) in every judicial circuit, working in collaboration with the legal aid community, MLH, and with social service entities offering resources, such as housing, family counseling, government assistance, and other programs for qualifying individuals. Explore supplementing this resource in collaboration with law schools and bar-based programs for new lawyers.
- Develop an engaging, user-friendly “legal health check-up” tool to educate the public about legal problems, and link to assistance including online pro bono resources and remote legal advice from Michigan lawyers.
- Standardize and simplify all court forms and practices, while preserving the ability for lawyers to provide supplemental information as needed to address particular clients’ needs.
- Use lay navigators trained in finding and providing appropriate legal resources, but not legal

advice. In both the online platform and judicial circuit-based legal LSHC, lay navigators can connect the public to appropriate professional assistance, including other professions and the government.

- Design pilot projects to test the need and capacity for expanding the availability of counsel for indigent litigants in certain civil cases, especially those involving basic human needs, such as housing and safety.
- Assure consistent treatment of requests for fee waivers for indigency under Michigan Court Rule (MCR) 2.002.
- Explore the feasibility and possible benefit of reporting pro bono activities on the dues statements of active members.
- Work with and support the Michigan Indigent Criminal Defense Commission on innovations in the delivery of indigent criminal defense services.
- Develop specialty certification guiding principles that will advance ethical, quality legal representation in specialty areas of practice and help consumers choose a lawyer.
- Disclose to the public whether a Michigan lawyer in private practice carries malpractice insurance as reported on the dues statement of active members.

FIRST STEPS

- Establish a technical development team and work plan for a comprehensive online legal platform.
- Develop lay explanations of court systems and legal services in collaboration with SCAO. Establish consensus on common explanations of legal problems and solutions through SBM and its sections, MSBF, and MLH. Use on all entry points to the platform.
- Create SBM special committee to develop lay navigator standards and training.
- Convene SBM sections and the Institute for Continuing Legal Education (ICLE) to develop proposed specialty certification guiding principles, and utilize specialty certification to help consumers choose a lawyer.
- Develop and test pilot programs to evaluate the features and standards for innovative approaches to specialty certification.
- Prepare a draft rule on public disclosure of malpractice insurance coverage for consideration by the Representative Assembly.

KEY INNOVATIONS

- Unified online legal platform with triage module
- Legal Self Help Centers in all judicial circuits
- Lay navigator standards and training

THINKING THROUGH THE PROBLEM

There is a glaring anomaly in the legal services market. Recent research confirms a widening “justice gap” in the United States, with studies consistently estimating that 80% or more of the legal needs of the poor go unmet. Some of this gap is attributable to the cost of legal services, a false perception about the unaffordability of legal services, and consumers not realizing that their problems have a legal solution. While the need for legal services is enormous, surveys show that since 2008, at least 20% of new law school graduates are unable to find full-time gainful work as lawyers.

Meanwhile, a different supply and demand dynamic is developing. Since 2013, there has been a sharp drop in the number of students entering law school. At the same time, the baby boomer generation of lawyers, who have swelled the ranks of the profession for four decades, are beginning to exit the full-time practice of law.

Michigan’s justice gap reality is consistent with these national trends. Every county in Michigan is struggling to meet the legal needs of the poor. Many people whose income is above the federal government’s poverty threshold cannot (or do not believe that they can) afford legal representation. The number of litigants going to court without a lawyer has exploded, creating logjams in court dockets.

The graduates of all five law schools in Michigan face a dramatically different job market than their counterparts a decade ago. Whether the projected downturn in the lawyer population will increase the availability of gainful employment for lawyers, but worsen access to justice, is an open question.

This Task Force did not attempt to take sides in the ongoing debate about whether the flattening of legal services as a percentage of GDP and the decline in lawyer income is a cyclical or structural phenomenon. It looked for solutions that will simultaneously help to close the justice gap and engage the skills and talents of our struggling, underemployed lawyers today.

The large percentage of people with legal problems who do not seek legal assistance from a lawyer tells us that there are two things the legal profession must do urgently:

- Provide trusted, easy-to-find and easy-to-use online resources.
- Build trust about the profession’s ethical standards and value.

Closing the justice gap requires a variety of strategies, including the following: make legal practice training less costly, apply smarter business processes to law practice, ensure nonlawyers delivering legal services adhere to ethical standards of the profession, and adapt

creative technology in the delivery of legal services. However, the answers do not lie simply in connecting people with more lawyers in a more cost-effective manner to help them with their legal problems and navigate court processes. Closing the justice gap also requires educating and helping people avoid legal problems.

Michigan has a head start in closing the justice gap. The Internet offers a powerful new tool to connect wary and cost-conscious consumers with appropriate, quality legal services. Michigan already has three dynamic and innovative points of entry from which to build a credible, and resource-rich platform: courts.mi.gov, MLH, and SBM’s searchable, enhanced profile directory.

VISUALIZING THE PROBLEM

True Employment Percentage vs. NALP Percentages

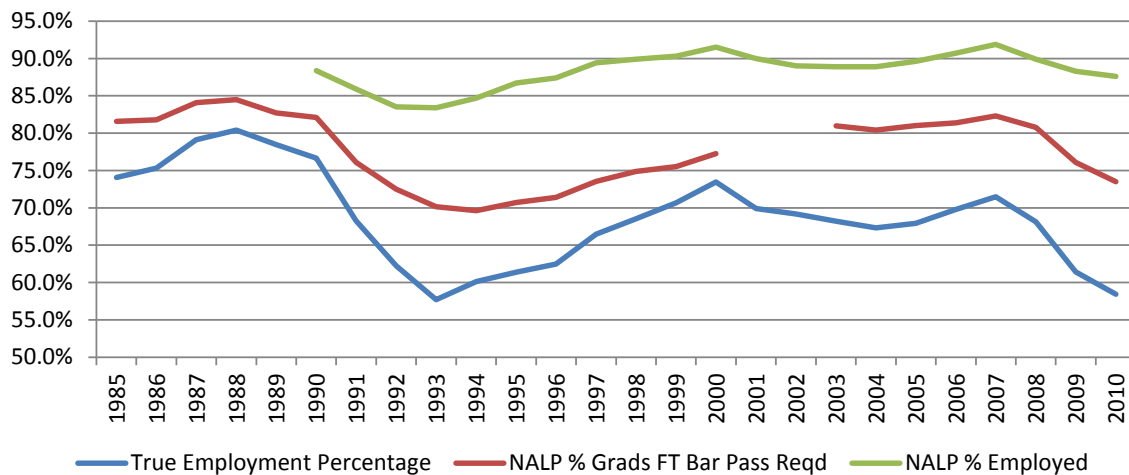


Figure 2: True Employment Percentage vs. NALP Percentages



Figure 3: Michigan Legal Help at [www. http://michiganlegalhelp.org](http://michiganlegalhelp.org) and SBM Member Directory at <http://www.michbar.org>

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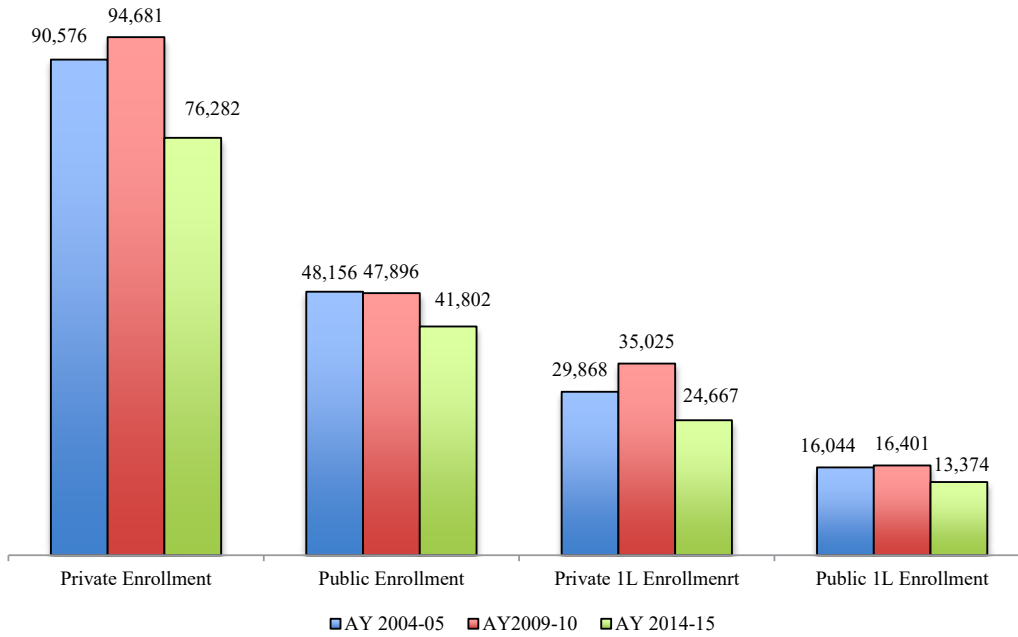


Figure 4: Decline in Law School Enrollment

Active Michigan Residents by Generation, 2015		
	Frequency	Percent
Traditionalists Pre-1944	2909	8.3
Boomers 1944-1960	13284	38.0
Gen X 1961-1980	13907	39.8
Millennials 1981 +	4886	14.0
Total	34986	100.0

Figure 5: Active Michigan Residents by Generation, 2015

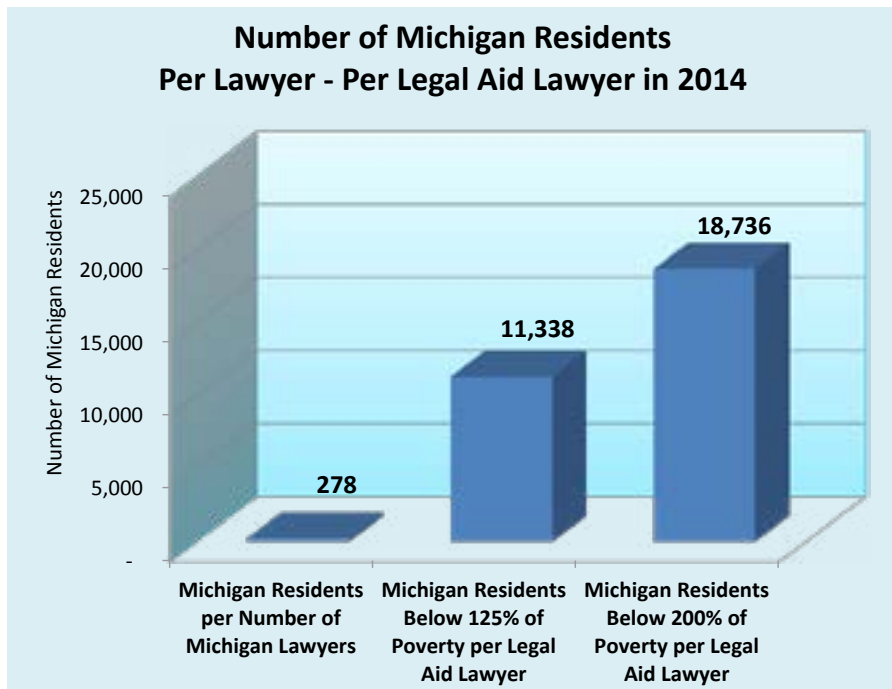


Figure 6: Number of Michigan Residents Per Lawyer—Per Legal Aid Lawyer in 2014



HOW CAN WE BUILD A JUSTICE SYSTEM THAT SERVES PEOPLE? AND THAT 100% OF PEOPLE CAN USE ACCESSIBLY EFFECTIVELY, TO THEIR BEST OUTCOME.

Figure 7: 100% Justice

GDP and Legal Services Industry Value Added (Billions Chained 2009 \$)



Figure 8: GDP and Legal Services Industry Value Added (Billions Chained 2009 \$)

LISTENING TO VOICES OF CHANGE



Figure 9: SBM Townhall Panel 1: Moderator Bruce A. Courtade
Panelists (L-R.) Hon. Cynthia D. Stephens, Angela Tripp, Lynn P. Chard, Christopher G. Hastings

VIDEO AT WWW.MICHBAR.ORG/FUTURE

SBM Townhall Meeting

Lynn P. Chard. Dysfunction explained. (0:3:12)
Lynn P. Chard. Underemployed lawyers. (0:0:10)
Angela Tripp. Triage. (0:1:59)
Angela Tripp. Self-help centers. (0:1:11)
Hon. Cynthia D. Stephens. Unbundling. (0:2:21)
Christopher G. Hastings. LLLTs. (0:1:23).
Lynn P. Chard. Specialty certification. (0:4:16)
Angela Tripp. Legal health check-up tool. (0:0:35)

Josh Blackman. Assisted decision making big data & the law (Nov 2012). (1:03:53)

What 21st Century Task Force and Committee Members Had to Say

“We have a very significant underserved legal marketplace – people who want legal services and can’t afford them, and others who are willing to pay for legal services but not at the rate or in the style that traditional lawyers and the hourly fee are providing to them. When that happens you have disruptive innovation. That’s what’s happening in the legal marketplace now.”

—Lynn P. Chard, 21st Century Practice Task Force; Practice Committee

“The reality is that hourly fee billing encourages long work and not necessarily diligent work, which is clearly not in the best interest of the client and ripe for abuse for some. I see that as the problem that needs to be reconciled, addressed and remedied.”

—Matthew R. Newburg, Regulatory Committee

“The Task Force is recommending we create a triage portal available online and accessed by individuals or advocates and using expert systems and logic trees to guide them through questions and direct them to a point along a continuum where they can best be served. One of the ways we are trying to achieve 100% access is to consider legal needs on that continuum, where on one end a person gets nothing, on the other end they have full representation for all aspects of their case. There are many resources between like Michigan Legal Help, legal advice from an attorney, help from a lay navigator or a legal assistance center, and representation by a legal aid or pro bono lawyer to get everyone to the right place along the continuum, given their needs and their available resources.”

—Angela Tripp, Access and Affordability Committee

“The Task Force’s recommendation to create a more open and objective standard for achieving specialty certification is important to maintaining a high quality of legal services. Its design will also serve another critical role as it is more likely to lead to greater diversity in the lawyers obtaining specialty certification in practice areas. This diversity in turn will lead to greater access for the underserved.”

—Judge Cynthia D. Stephens, 21st Century Practice Task Force; Regulatory Committee

“The legal profession is going through a cultural shock similar to that of the medical profession. The practice of both medicine and law is directly impacted by the internet. Lawyers who do not want to adapt to this ubiquitous reality need to be challenged and assisted to adapt.”

—Carl E. Ver Beek, Regulatory Committee

THE PROBLEM

significant issues for new lawyers, new challenges for experienced lawyers

Too many new lawyers are saddled with substantial debt, face employment challenges, and may lack the crucial “practice-ready” skills they need to serve clients competently in the absence of effective mentoring. Many veteran lawyers lack familiarity with the technology needed to take advantage of case management tools and systems for delivering legal services more affordably. Current Michigan lawyer regulation does not stress the need for practice skills at the beginning of a legal career, nor effectively incentivize updating skills and knowledge throughout a legal career.

THE VISION

More affordable and practice-oriented legal training that gives graduates the skills they need to begin to earn a living and serve the public upon admission to the bar. More opportunities for new lawyers to initiate their practices through service to low-income and “modest means” clients. More training and resources for all lawyers on the ethical, appropriate application of technology to the delivery and marketing of legal services. A post-admission continuing education system that encourages professional development throughout each lawyer’s career through innovative delivery and incentives.

BASIC ELEMENTS OF THE PLAN

- Support law schools’ efforts to expand clinical and skills-based training opportunities, exploring opportunities to locate law schools’ incubator law firms near Legal Self Help Centers (LSHC).
- Revamp admissions testing to better and more fully test relevant Michigan legal knowledge and practice-readiness, starting earlier in the law school education process.
- Couple new lawyer skills training with service to indigent and lower income populations.
- Evaluate the relative effectiveness of the various support program models (clinics, mentorships, internships) for new lawyers through analysis of existing training programs and pilot programs.
- Support, encourage, and develop programs that connect new lawyers with low-income clients, under the supervision of experienced lawyers.
- Implement a robust package of high quality continuing legal education (CLE) innovations and incentives.
- Promote and support technology competence as an important element of legal practice.
- Enhance training for judges and lawyers on the ethical use of technology.
- Develop specialty certification standards that will advance ethical, quality legal representation in specialty law practices and help consumers in choosing a lawyer.

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FIRST STEPS

- Develop State Bar resources to promote and support each active member's professional competence and maintenance of a continuing professional development plan.
- Prepare a position paper on a phased-in or sequential bar admissions process for consideration by the Representative Assembly. Among the elements to be considered, in the position paper:
 - Offer the Multistate Professional Responsibility Exam (MPRE) as soon as the first year of law school.
 - Offer a multi-state test (MBE) earlier after the core doctrinal courses are completed.
 - Create practice-ready and Michigan law testing after the J.D. as the final admissions test.
 - Require the completion of a certain number of hours of supervised experience in law practice activities through law schools or through a separate BLE-approved program as a condition of admission.
- Develop guidelines for individualized law school financial planning, advising law students prior to the beginning of the first year, and after the first and second years.
- Amend rules to expand opportunities for law students to represent low income clients in court with lawyer supervision.
- Support law school curricular reform to expand training, including experiential learning, and evaluate granting academic credit for compensated field placement.
- Convene SBM sections, in collaboration with the Institute for Continuing Legal Education (ICLE), to develop proposed specialty certification guiding principles and utilize specialty certification to help consumers in choosing a lawyer.
- Test pilot certification programs to evaluate the features and standards for innovative approaches to certification.

KEY INNOVATIONS

- Modernized admissions testing
- Pro bono culture within the law student community through the use of SBM social media and member directory platforms
- Individualized professional development and specialty certification in lieu of mandatory continuing legal education (MCLE)

THINKING THROUGH THE PROBLEM

The Challenge of Practice-Readiness. Very few veteran lawyers will claim to have been “practice-ready” on the day they were admitted to the bar. Except for the few who clerked while in law school, most learned their trade after law school within the structure of a law firm, legal aid office, prosecutor's office, or, by being taken under the wing of an experienced lawyer through bar association or family connections. The economic downturn in legal services has made these traditional pathways to proficiency less available to many of today's graduates. In response, law schools have been expanding their clinical practice options and designing a variety of new

approaches to develop practical legal skills training as part of law school education. Bar associations have been exploring ways to make mentoring a more reliable and effective source of skills development. Law schools are also expanding law school education to facilitate non-traditional career paths for licensed lawyers and build the skill sets needed to foster collaboration across professions to address the demands of legal consumers. These efforts can be enhanced through more strategic collaboration between law schools and state and local bar associations.



Figure 10: Wayne State University Transnational Law Clinic

There are promising new efforts already underway. Law school incubators in Michigan and around the country are getting good reviews for developing practice and business skills, often while bringing legal help to underserved populations. Law firm incubator and residency programs are emerging as models that enable newly-admitted lawyers to acquire the range of skills necessary to launch successful practices. The alpha incubator was established at the City University of New York over a decade ago. Recent changes in the economy have led to the creation of similar models by both law schools and bar associations. This site provides a directory of current and planned incubators and residencies, profiles of the programs, and information about the latest developments.

Coordination of these efforts with legal self help centers could further the “continuum of assistance” and triage system envisioned as a remedy for the dysfunctional legal market. Another promising way to expand law student and new lawyer “boots on the ground” training while bringing new resources to bear on the “justice gap” is to amend MCR 8.120. The court rule currently permits law students and recent grads, who have not yet passed the bar, to provide supervised legal work in legal training programs organized in the offices of prosecuting attorneys, county corporation counsel, city attorneys, the Attorney Grievance Commission, the Attorney General, and in legal aid clinics and defender offices. Amending the rule to cover legal work supervised by specially trained lawyers in other settings targeted to underserved populations could further spread



Figure 11: UDM law students at Project Salute clinic

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the benefit of the rule. An added advantage of such efforts is that they will help the participants internalize the ethical obligation of pro bono legal service, a process that bar associations can further promote through their online tools, including social media.

Advancing “practice-ready” new lawyers also requires re-envisioning the bar admission process. Presently, the Michigan bar exam consists of the multistate bar exam (MBE) and the Michigan-specific essay portion. Like most other jurisdictions, Michigan’s two-day bar exam does not test a law student’s acquisition of practical skills. The most direct and consequential way to encourage the acquisition of such skills is to test for them as part of the admissions process.

Moving toward the goal of practice-ready new lawyers will involve building consensus on what basic skills all lawyers need and how best to measure entry-level competency. Drawing on the experience of the jurisdictions that have already instituted practical skills testing as part of their admissions process will help achieve this objective. The shift toward more practice-ready testing reflects fundamental changes in the way legal services are delivered in the 21st century. As technology offers more powerful ways for lawyers to research the breadth and depth of the law, the traditional bar exam likely overemphasizes the importance of rote memorization to the exclusion of the demonstration of more relevant knowledge and skills.

A More Meaningful Entry into the Profession. In considering the changing demands of the practice of law in the 21st century and recent research on testing, and on economic stresses on law students, the Task Force recommends a novel restructuring of Michigan’s admissions process. Under the new approach, law students could complete the black letter law portion of the bar exam as soon as they had successfully passed the relevant courses in law school, typically at the end of the first year. Provisional character and fitness clearance could also be accomplished at this early stage. This restructuring would allow law students to be able to concentrate on



Figure 12: The Pediatric Advocacy Clinic is a medical-legal partnership that provides free legal services to low-income families who have children with short- and long-term medical issues complicated by social and legal problems. A medical-legal partnership at U of M.



Figure 13: WMU Cooley Law School Innocence Project students with client after his exoneration.

practice-ready knowledge and skills in the second and third years of law school. Testing on Michigan law and practice skills testing would take place after law school graduation.



Figure 14: Law School Classroom

The proposed change would not reduce the rigor of the bar examination process. Instead, it would add elements that are crucial to success as a lawyer in the 21st century. The change is also responsive to the problem of law school debt. Through this change, applicants who encountered

serious difficulties with the black letter law test or character and fitness could evaluate earlier in the law school process whether to continue with the expense of law school.

More Effective Post-Admission Education. Law students and new lawyers are not alone in suffering from the forces roiling the legal services industry. Every lawyer faces the challenge of rapidly adapting to changes in the legal marketplace and the disruption created by technology. There is no dispute that lawyers in active practice require regular updating of their skills and knowledge. The modern 20th century way for lawyers to keep current was through continuing legal education (CLE) administered in classroom-type lecture or seminar settings. This model became institutionalized in 1986 when the American Bar Association adopted a resolution encouraging states to adopt mandatory continuing legal education (MCLE) as a condition of annual licensure, spurring a multi-million dollar industry that now delivers legal education content in a variety of formats.

Michigan is one of only four states that does not have some form of mandatory MCLE. Massachusetts, Maryland, and South Dakota are the others. Nevertheless, or perhaps as a result, ICLE has maintained a strong national reputation as a leader in the quality of its educational content and in pedagogical innovation.

There are two salient reasons to stick with a non-mandatory approach in the 21st century. First, there is a conspicuous absence of empirical data to support the proposition that the current MCLE model enhances attorney competence. Indeed, no jurisdiction predicates satisfying MCLE requirements upon a showing of mastery of the material. Second, a large percentage of the practicing bar in Michigan engages in voluntary CLE. In fact, many go well beyond the typical MCLE hours-based requirements.

It is not good enough to simply maintain our voluntary ICLE model as is. The need for lawyers to stay abreast of changes in the law in their areas of practice and in the application of ethical rules in a technological environment is more urgent than ever given the accelerating pace of change

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in the 21st century. The mandatory model has bureaucratized CLE but there is no evidence that it has advanced its acculturation. By the same token, although a large percentage of Michigan's practicing bar voluntarily engages in CLE, there is no evidence that the voluntary model has successfully nurtured a profession-wide ethic of individual accountability for keeping one's skills and knowledge current. The Task Force's vision is for the State Bar to collaborate with ICLE to embed that ethic in everyday practice to promote and provide effective, convenient online tools for assessing and maintaining competence.



Figure 15: Celebrating Professional Achievement

Michigan is in a unique position to develop a new 21st century model of continuing professional education that recognizes that each practicing lawyer's learning needs and goals are unique and takes advantage of the role of State Bar in collaboration with local bars in supporting members' professional development, as well as advances in awareness of the most effective forms of adult learning. Without charge, every active member of State Bar can be provided with a basic package of professional development tools, including access to quick, up-to-the-minute online self-testing and assessment in the areas the member has identified as relevant to his or her practice and career goals.

Recognizing Specialization. The development of a new model for voluntary CLE and professional development works in concert with the recommendation for the development of voluntary specialty certification in Michigan. A specialty certification infrastructure developed collaboratively by practitioners within the specialty (bar sections are expected to play a central role), legal education experts, and regulators will provide a valuable framework for the professional development. This will provide guidance and support to the practicing legal community. Not only would specialty certification serve the public by elevating and advancing the quality of legal practice, it would also provide an important consumer service. Along with information about a lawyer's recommendations and experience, specialty certification gives prospective clients one more piece of relevant information to use in choosing a lawyer.

The Task Force recognizes that there must be more than one path to achieving specialty certification for lawyers who choose to seek it. Completion of a specialty certification program would give new lawyers seeking entry into a specialty market a way to validate readiness to practice in that area. Further, the development of specialty certification need not pose a threat to Michigan's general practitioners. Indeed, like primary care medical practice, a general legal practice is its own type of specialized work, with its own particularized set of best practices and standards, for which expertise could be demonstrated.

LISTENING TO VOICES OF CHANGE



Figure 16: SBM Townhall Panel 2: Moderator Julie I. Fershtman
Panelists (L.-R.) Joan Howarth, Mwanaisha A. Sims, Patrick M. Ellis, Don LeDuc

Videos at www.michbar.org/future

SBM Townhall Meeting

Joan Howarth. Clinical training. (0:0:27)

Joan Howarth. Practice ready. (0:0:20)

Mwanaisha A. Sims. Five top soft skills. (0:1:02)

Don LeDuc. Need new testing method. (0:1:50)

Wayne State University Transnational Law Clinic. (0:0:46)

VISUALIZING THE PROBLEM



2014 LAW GRADUATE EMPLOYMENT DATA

	CLASS OF 2014	CLASS OF 2013	Change
Total Graduates	43,832	46,776	-2,944 (-6.50%)

	CLASS OF 2014		CLASS OF 2013		Change in %age point
	Total	%age of Total Grads	Total	%age of Total Grads	
Employment Status Known	42,931	97.9%	45,695	97.7%	+0.2

EMPLOYMENT STATUS, EMPLOYMENT TYPE <i>definitions on next page</i>	CLASS OF 2014		CLASS OF 2013		Change in %age point
	Total	%age of Total Grads	Total	%age of Total Grads	
Bar Passage Required	28,113	64.1%	29,109	62.2%	+1.9
Long-Term/Full-Time	26,248	59.9%	26,653	57.0%	+2.9
Long-Term/Part-Time	620	1.4	732	1.6%	-0.2
Short-Term/Full-Time	822	1.9%	1,082	2.3%	-0.4
Short-Term/Part-Time	423	1.0%	642	1.4%	-0.4
JD Advantage	6,360	14.5%	6,348	13.6%	+0.9
Long-Term/Full-Time	4,912	11.2%	4,715	10.1%	+1.1
Long-Term/Part-Time	515	1.2%	544	1.2%	No Change
Short-Term/Full-Time	546	1.2%	554	1.2%	No Change
Short-Term/Part-Time	387	0.9%	535	1.1%	-0.2
Unemployed/Seeking	4,295	9.8%	5,229	11.2%	-1.4
Law School Funded Positions	1,583	3.6%	1,884	4.0%	-0.4
Solo Practitioners	936	2.1%	1,068	2.3%	-0.2
Law Firm Positions (2-500+ Lawyers)	17,856	40.7%	18,545	39.6%	+1.1
Business & Industry	6,723	15.3%	7,130	15.2%	+0.1
Government	5,102	11.6%	4,953	10.6%	+1.0
Public Interest	2,170	5.0%	2,227	4.8%	+0.2
Clerkships (Federal, State, Other)	3,379	7.7%	3,447	7.4%	+0.3
Education	784	1.8%	973	2.1%	-0.3

This data sheet was compiled on April 28th, 2015 from school reports of the class of 2014 employment as of March 15th, 2015, and class of 2013 employment statistics as of February 15th, 2014

Figure 17: 2014 Law Graduate Employment Data

BLS projected job openings systematically under-predict the percent of recent law graduates finding jobs as lawyers

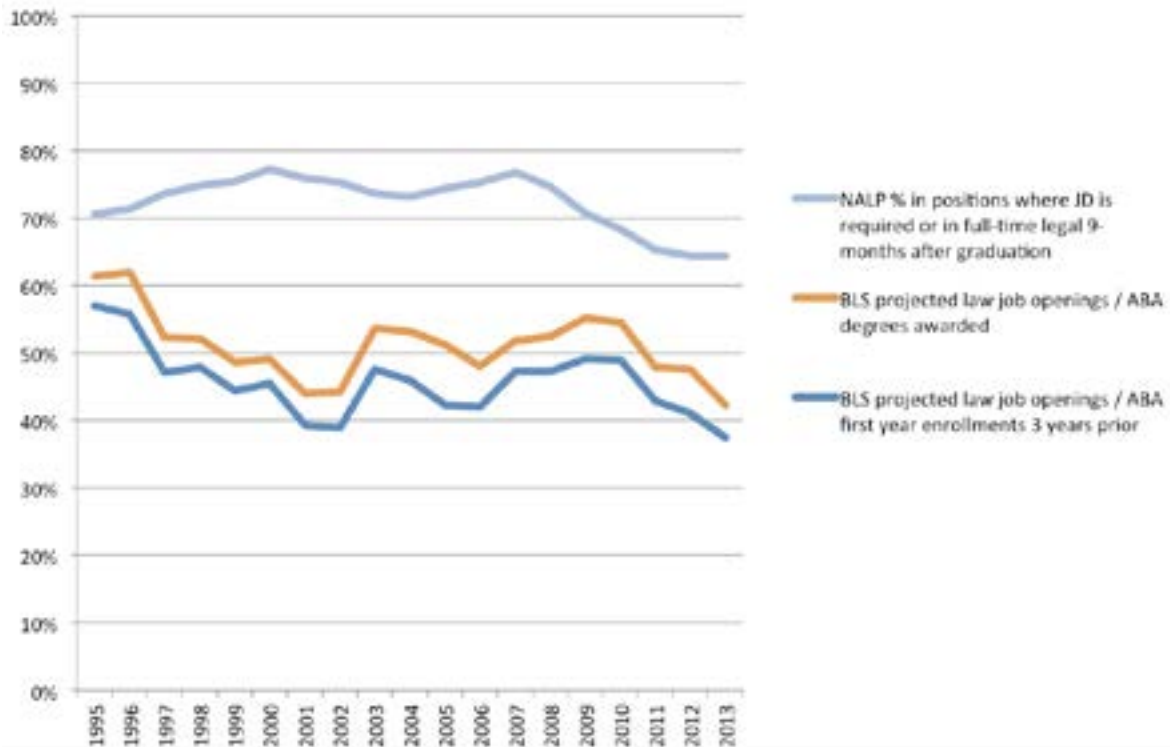


Figure 18: BLS Projected Job Openings Systemically Under-Predict the Percent of Recent Law Graduates Finding Jobs as Lawyers

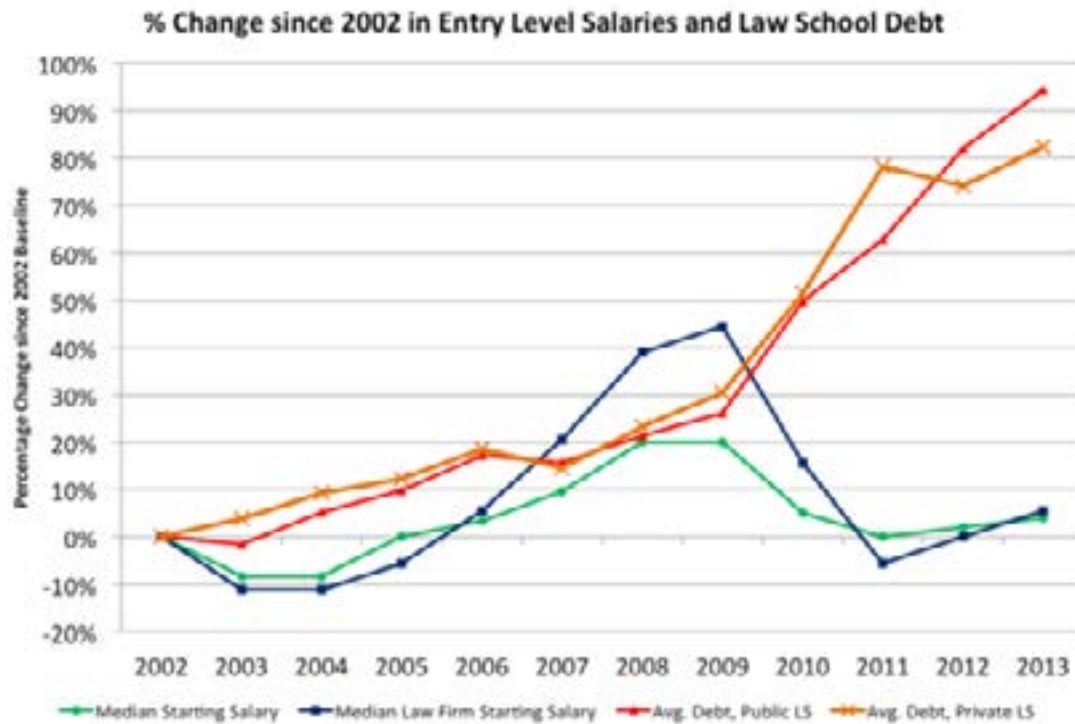


Figure 19: Bill Henderson, What is More Important for Lawyers: Where You Go to Law School or What You Learned? (Part II) (Legal Whiteboard Blog, July 22, 2015).

ENVISIONING A NEW FUTURE TODAY



Figure 20: DO LAW DIFFERENTLY: FUTURES FOR YOUNG LAWYERS. “It started out as a question asked by the CBA Futures Initiative to young lawyers: what can we do for you that will be helpful to you in your career? The answer came back: tell me what I need to know about – and how I can prepare for – key trends facing prospective and young lawyers.”

What 21st Century Task Force and Committee Members Had to Say

“I am most excited about the proposals pertaining to the sequential admission process. Limiting the multistate to first year courses could get that part of the bar exam done early. The rest of law school would focus on the skills needed to practice law well, with practical testing before admission. This simple but bold change in sequence could transform legal education at no additional cost to the student. No wonder I’m excited.”

—Dean Joan Howarth, 21st Century Practice Task Force; Regulatory Committee

“The innovations recommended by the Task Force of licensing practice ready lawyers track the needs being expressed by legal employers in a nationwide survey that Michigan lawyers participated in the summer of 2015. The soft skills most valued by legal employers for new lawyers entering the legal marketplace are the need to maintain client confidences, punctuality, an ability to honor professional commitments, treat others with courtesy and respect, respond promptly, and maintain a strong work ethic.”

—Mwanaisha A. Sims, 21st Century Practice Task Force

“The shifting needs of legal consumers are opening up opportunities in the legal marketplace for members of our profession that require understanding and competencies in an array of areas, such as technology, the business of law, process improvements, managerial skills, computer science, mathematics, and economics. This blend of skills has been described as the 21st Century T-shaped lawyer with deep legal expertise and a breadth of knowledge to collaborate across many disciplines, such as technology, business, analytics, and data security.”

—Patrick M. Ellis, Regulatory Committee

“I am thrilled about the enhanced use of technology to deliver fabulous systems which allow the public, lawyers, and other types of legal professionals to gain access to legal information and high quality “just-in-time” training and education. Many of the innovations presented in the Task Force’s work product open us up to really looking at what’s going on in the field of education and developing models that will permit lawyers to continue to deliver high quality legal services, and legal consumers to find legal information, and lawyers to meet their legal needs.”

—Lynn P. Chard, 21st Century Practice Task Force; Practice Committee

“For new lawyers, there is a steep learning curve towards the business of lawyering. Professional development for new attorneys should be experiential and meaningful towards gaining that knowledge.”

—Aaron P. Sohaski, 21st Century Practice Task Force

THE PROBLEM

inefficient and overly complex legal processes

The legal profession has been reticent to modify litigation processes, court rules, and business practices in ways that may deliver more efficient and inexpensive solutions to legal problems. The organized bar and regulators have not taken up the challenge of creating, evaluating, testing, or implementing significant changes that utilize existing business process tools and technologies to create a more efficacious system.

THE VISION

Simplify unnecessarily complex legal processes and court procedures, adopt appropriate cost-saving technology, and apply business process analysis. Provide efficient, effective, customer service in an accessible technological environment that will ensure convenient, timely, appropriate access to courts and other legal processes and information. Engage in constant innovation and evaluation.

BASIC ELEMENTS OF THE PLAN

- Modify court rules to reduce the expense and burden of civil discovery.
- Research whether pretrial discovery and practice should be tailored on a case-by-case basis, taking into consideration the parties' financial resources and other relevant factors.
- Modify court rules and administrative procedures to better utilize mediation and alternative dispute resolution (ADR).
- Promote business process analysis, problem-solving court principles, and best practices to courts, law firms, legal aid programs, and other justice system entities.
- Make problem-solving courts and specially trained judges available to all litigants through statewide venue provisions and flexible case assignments. Apply problem-solving principles and best practices to conventional legal processes.
- Streamline probate and the entry of consent divorce cases; identify types of cases that may be successfully removed from the judicial process.
- Standardize and simplify all court forms and practices, while preserving the ability for lawyers to provide supplemental information as needed to address the needs of particular clients.

FIRST STEPS

- Develop a strategy to promote an expectation and culture of routine business process analysis for ongoing improvements in legal services delivery and court processes.
- Create a State Bar of Michigan special committee to make recommendations on pretrial

ENVISIONING A NEW FUTURE TODAY

practice innovations and to identify types of cases that may be removed from the judicial process.

- Establish a special committee to develop comprehensive amendments to court rules concerning mediation and ADR. Promote the use of properly trained mediators or special masters to expedite the discovery process.
- Educate State Bar members regarding new and proven innovative law practice business models, such as primary care, sliding scale, and not-for-profit law firm models to improve the economic viability of solo and small firm practices, while expanding service to underserved geographic areas and populations.

KEY INNOVATIONS

- Culture of routine business process analysis for ongoing improvement in legal services delivery and court processes
- Civil process innovations, focusing on pretrial reform and removing appropriate types of cases from the judicial process
- Online dispute resolution pilot programs
- Statewide venue specialty courts
- Tech-assisted remote legal services delivery

THINKING THROUGH THE PROBLEM

Technology offers intriguing opportunities to make the justice system and legal services less costly, more convenient, less mystifying, and more accessible. However, technology alone does not guarantee improvement and can complicate service delivery and increase costs. Without thoughtful process analysis, automation can be the equivalent of paving a cow path rather than building an efficient superhighway.

Michigan is well-positioned to realize the vision of a more efficient, accessible, and affordable justice system through the smart application of technology, standardization, and business process analysis. With the strong support of the State Bar, Michigan's judiciary is already taking innovative, data-driven steps to make the court system more accountable and effective. Thoughtful implementation of technology increases efficiency and convenience, improves access, reduces costs, streamlines operations, and utilizes scarce resources more effectively. The Michigan Supreme Court, working with the State Bar and Michigan Legal Help, has simplified and standardized a wide variety of court forms. These changes have begun to pay dividends. Every Michigan court now uniformly and regularly surveys public satisfaction with the legal process. In the 2015 survey, 87 percent of respondents said they were able to get their business done in a reasonable amount of time, 93 percent said they were treated with courtesy and respect by court staff, and 83 percent said the way the case was handled was fair.

Problem-solving courts have dramatically improved outcomes in many Michigan courts and should be replicated throughout the judicial system as expeditiously as possible. Business pro-

cess and project management analysis are used to provide value to individual clients and included in the law school curriculum. The State Bar can play a role in facilitating better understanding and dissemination of these successful techniques.

Continued and expanded collaboration among all components of the legal system will establish a culture of continuous improvement based on business process analysis, reliable data, and creative innovation. The 21st Century Practice Task Force process is an example of the needed collaboration. The three Task Force committees identified several specific areas that are ripe for reform based on business process analysis and court rule amendment: pretrial processes, civil discovery, mediation, ADR, probate procedures, and uncontested domestic relations matters.

VISUALIZING THE PROBLEM

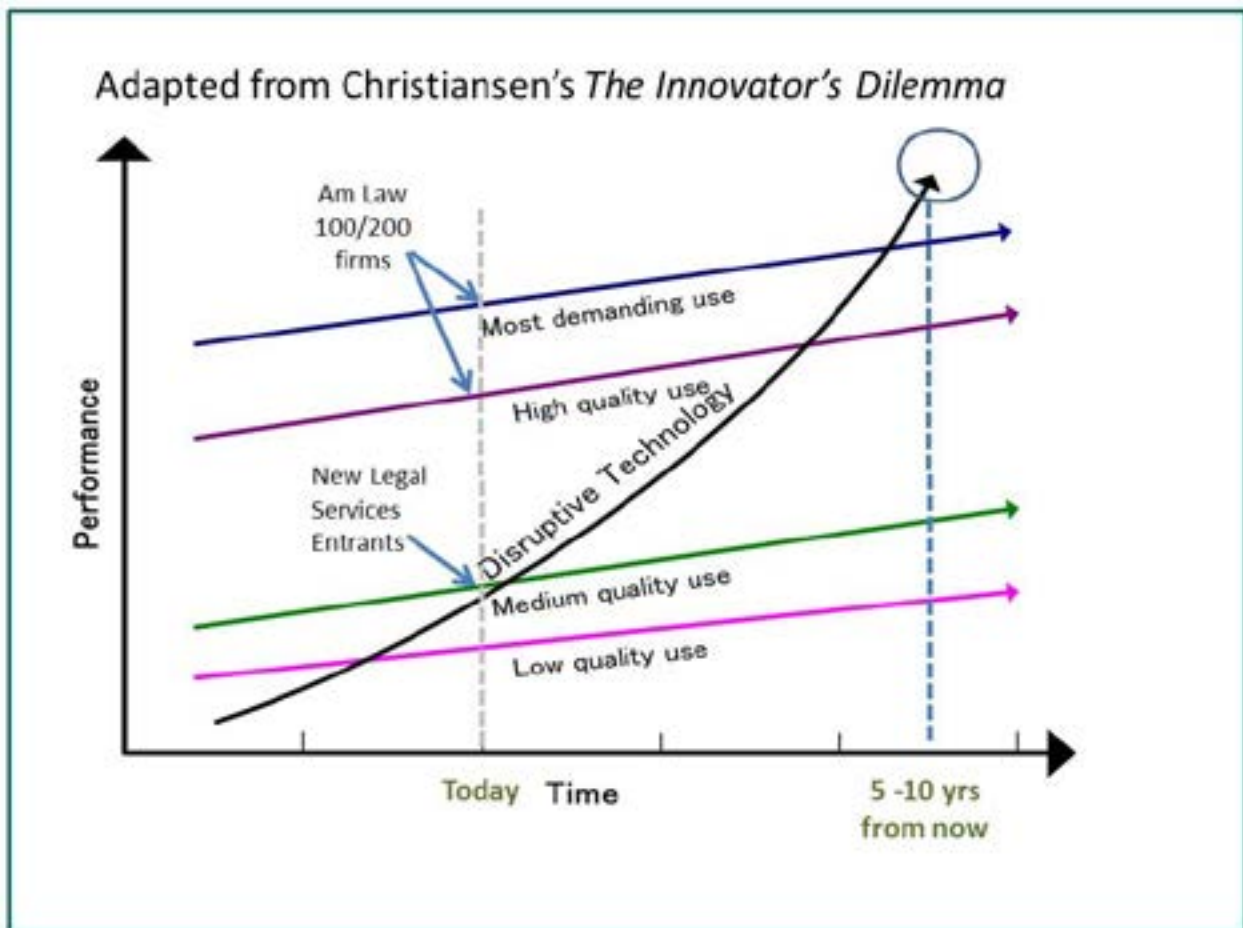


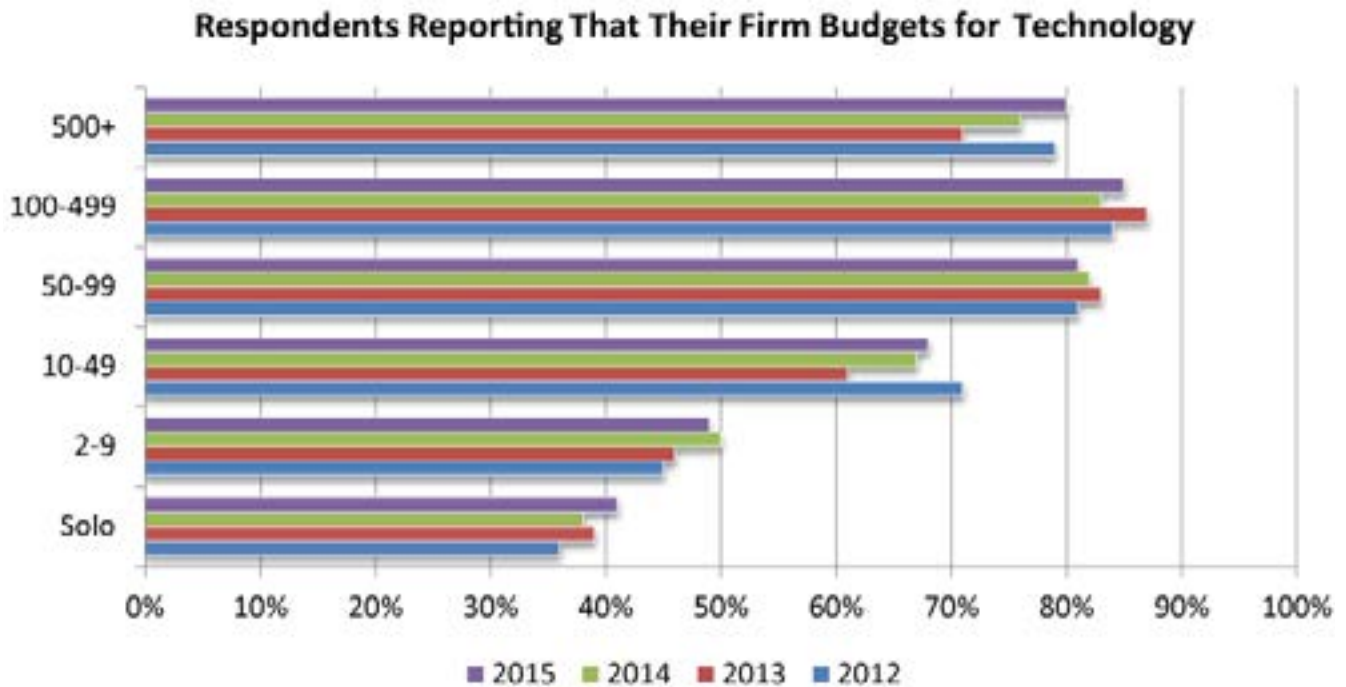
Figure 21: Adapted from Christiansen's *The Innovator's Dilemma*

Examples of Lean in Action

1

- Borden Ladner Gervais has mapped 30 processes (from litigation to M&A) and now uses its maps for training, KM and marketing
- A Virginia firm saved 30 hours and \$21,000 by reducing set-up time in one afternoon, in the very first process they looked at
- The Hunoval Law Firm reduced its timeline on foreclosure filings by a whopping 94% and landed a huge new mandate as a result

Figure 22: Examples of Lean in Action



www.ambar.org/abatechreport

ABA TECHREPORT 2015

Figure 23: Respondents Reporting That Their Firm Budgets for Technology

LISTENING TO VOICES OF CHANGE



Figure 24: SBM Townhall Panel 3: Moderator Bruce A. Courtade
Panelists (L.-R.): William B. Dunn, Elizabeth A. Silverman, Mark A. Armitage, Jeffrey F. Paulsen

VIDEOS AT WWW.MICHBAR.ORG/FUTURE

SBM Townhall Meeting

- Daniel W. Linna, Jr.. Law practice analysis. (0:2:15)
- Hon. Cynthia D. Stephens. Speciality courts. (0:1:40)
- Daniel W. Linna, Jr.. Court business process. (0:1:24)

Daniel W. Linna, Jr.. Improving access to legal services through education, RnD, & innovation (Aug 2015). (0:15:50)

ENVISIONING A NEW FUTURE TODAY

What 21st Century Task Force and Committee Members Had to Say

“Everything we do as lawyers takes too long. Huge inefficiencies are built into the timetables for court and administrative procedures, including the discipline system for our lawyers. People outside the profession cannot grasp why legal procedures take so long. The obvious conclusion they draw is that the timetable is designed to benefit lawyers, not the public. That is becoming the fatal flaw in our legal profession.”

—Carl E. Ver Beek, Regulatory Committee

“I’m hoping the Task Force recommendations will help increase the use of alternative dispute resolution, and explore online dispute resolution more seriously. These are highly effective but underutilized problem solving tools.”

—Antoinette R. Raheem, Access and Affordability Committee

“There’s been a lot of talk about technology but I think we should talk about process first, and ask where we as practitioners can improve legal services. The public does not understand what lawyers do to add value. We lawyers have done a poor job of delivering value and communicating how we deliver value. We need to work to develop best practices and standards so that we can improve the value and quality of legal services. We must embrace process improvement disciplines like lean continuous improvement. We must create systems that are simpler, better, faster, and less expensive. We must first improve how we deliver legal services and then leverage technology to better serve everyone.”

—Daniel W. Linna, Jr., Access and Affordability Committee

“I am so pleased that the State Bar provided an opportunity to have this conversation. In 2016 every profession and industry is looking at the world around us. Similarly, the Task Force considered the bigger picture in making its recommendation. There are non-lawyers practicing law every day, and legal consumers are uninformed and unsuspecting, so the potential for harm is great. This is why I am such a proponent of alternative legal services models, such as multidisciplinary business practice, which offer one stop shopping to consumers to fully serve their legal and non-legal professional needs in an ethically regulated environment.”

—Jeffrey F. Paulsen, Practice Committee

“From my statewide work, I hear about court processes that are extremely inefficient and frustrating to clients and lawyers. Even small changes, like staggering the starting time for motion dockets, would help. Technological solutions are available too, though it’s stunning to me to talk with attorneys around the state who don’t have email addresses, or say their secretary takes care of that. This is 2016. E-mail and low-cost scanners are very efficient ways for business to get done.”

—Marla R. McCowan, Practice Committee

“My work with the Task Force caused me to envision a 21st Century justice system with many more paths to legal problem solving, dispute resolution, and decision making than our current system allows. We should move ahead swiftly to establish justice innovation guidelines to protect fundamental rights, find new efficiencies, and create a more sensible system.”

—Deborah J. Hughes, Access and Affordability Committee

THE PROBLEM

regulatory hurdles

In part due to the global marketplace and developing technologies, many legal problems are intertwined with issues beyond a lawyer's or law firm's expertise. In such circumstances, legal problems are best addressed in collaboration with non-law professionals. Non-lawyers are currently providing services addressing legal problems, most notably via the online marketplace, without any regulation. The traditional law firm business model and current regulatory systems and rules are ineffective in fostering collaboration while protecting the public.

THE VISION

Modernized, more transparent, adaptable, and accountable regulation of the legal profession that is responsive to both the risks and benefits of the use of existing and emerging technology and new business models for legal service delivery. Modernized rules of professional conduct that apply to the use of technology and the evolving marketplace, and are clear, coherent, and consistent. A state bar association that members can count on to help them navigate the rapidly-changing legal marketplace and deliver services to their clients most cost-effectively, consistent with long-standing ethical standards that protect the public.

BASIC ELEMENTS OF THE PLAN

- Create a more responsive system for ethical guidance as technology poses new questions about the application of the rules of professional conduct.
- Continuous review of the rules of professional conduct and regulations to eliminate unnecessary barriers to innovation, consistent with the highest standards of ethical obligations to clients and the public.
- Redistribute State Bar of Michigan resources from traditional bar association service delivery toward a greater focus on technological expertise.
- Develop proactive, preventative, and client-focused policies and strategies aimed at the promotion of ethical conduct, practice management skills, prevention of misconduct, and improvement in client satisfaction, using state and national disciplinary data.
- Encourage and support interpretations of the current rules of professional conduct and the development of rules that promote new models of service delivery (e.g., limited scope representation) and improve accountability (e.g., guidance on fee agreements).

FIRST STEPS

- Implement a high-quality, comprehensive limited scope representation system, including guidelines, attorney and client education, rules and commentary, and court forms focusing on civil cases.

ENVISIONING A NEW FUTURE TODAY

- Incorporate certified limited scope representation (LSR) training component into both the SBM online directory and MLH, and ultimately into the unified online legal services platform.
- Create an efficient, responsive SBM system for advisory, prospective review of fee arrangements, in collaboration with the attorney discipline system; enhance education of members regarding existing ethics opinions about fee arrangements and options.
- Draft amendments to Michigan Rule of Professional Conduct (MRPC) 1.5 to include a definitional section on alternative fee arrangements and to clarify obligations for fee explanations in engagement letters, for consideration by the Representative Assembly.
- Develop clearer ethical guidance concerning online marketing.
- Amend commentary to MRPC 1.1 to promote tech competence in legal practice for consideration by the Representative Assembly.
- Develop and evaluate multidisciplinary (MDP) business models for family, probate, real property for consideration by the Representative Assembly.
- Evaluate whether to amend applicable rules, statutes, and regulations and standards governing lawyers without Michigan licensure who are practicing without examination in ADR and representing organizational clients and handling federal law matters.
- Develop proactive management-based regulatory measures to help lawyers avoid ethical misconduct.
- Create an arbitration program to resolve attorney-client fee disputes.
- Create a client fee dispute mediation program, except for MRPC 8.3 violations.
- Develop SBM Tech advisor or SBM department to assist lawyers in complying with MRPC 1.1.
- Identify essential technological competencies by practice type, develop and update curricula, including cybersecurity, cloud computing, e-discovery, internet-based investigations and marketing, and “new law” technology, and encourage ongoing training on the use of existing and emerging technologies and court systems.
- Determine the practicality of a rule-based definition of the practice of law.
- Determine the feasibility and usefulness of regulating the entire spectrum of legal service providers (from registration to full licensing).
- Use formally-adopted regulatory objectives as a tool to rigorously evaluate the effectiveness of current and proposed regulatory measures.

KEY INNOVATIONS

- Comprehensive LSR system with LSR standards, coordinated with referral network
- Better technology-based support for members by reallocating SBM resources
- Proactive, preventive focused disciplinary system

THINKING THROUGH THE PROBLEM

The modern era of lawyer regulation began about a century ago, at a time when most lawyers were solo general practitioners and advertisement primarily consisted of hanging out a shingle. The telephone was the latest technology, and most lawyers practiced law in just one jurisdiction -- typically the same jurisdiction in which they were born, raised, and studied law. The raw materials of legal practice – court opinions, statutes, and court rules – were locked up inside law offices and law libraries. Most significantly, there was little question in the profession and in the public’s mind about what constituted the practice of law and who was entitled to engage in it.

The basic elements of lawyer regulation today remain the same as a century ago: state-jurisdiction locus, an admissions process requiring passage of an examination of character and fitness and a single post-graduate bar exam primarily testing knowledge of black letter law, a disciplinary system based on prosecuting and adjudicating violations of the rules of professional conduct, and the enforcement of a prohibition on the unauthorized practice of law. This system has weathered disrepute (the ABA’s 1970 Clark Committee called the state of professional attorney discipline “scandalous”), the massive infusion of obstreperous baby boomers into the professional bloodstream, the expansion of lawyer advertising to billboards, television, and the Internet, and decades of enfeeblement of the enforcement of the unauthorized practice of law by court rulings. There is good reason to wonder whether the challenges presented by a 21st century proliferation of nonlawyers offering various forms of legal services online, coupled with the lack of consensus about what constitutes the practice of law, will be the straw that breaks the 20th century regulatory model’s back.

Regulatory Objectives. In discussions about regulatory objectives, Task Force participants agreed that regulatory objectives are beneficial and should address inclusion, diversity, and cultural competency, but debated the value of advocating for specific regulatory objectives, such as those recently adopted by the American Bar Association (ABA), in advance of the full package of Task Force recommendations. In the end, the importance of developing a broad consensus on objectives led to the recommendation for the development of regulatory objectives consistent with the overall recommendations of the Task Force, rather than the endorsement of specific objectives.

The trend lines on the proliferation of online purveyors of legal services suggest the need for urgency. Hundreds of millions of dollars in venture capital are being invested in unlocking the “latent legal market” of potential modest and moderate means consumers who currently avoid lawyers because they are unaware of their own legal needs or fear the cost of hiring a lawyer. This market has been estimated at \$45 billion or higher. There are promising models addressing the latent legal market in ways that do not compromise quality or ethics. Unfortunately, one way to lure potential consumers into the legal marketplace is to offer fixed-cost, cut-rate “services” that may or may not meet professional standards and may even exacerbate legal

ENVISIONING A NEW FUTURE TODAY

problems. To date, the regulatory structure has not figured out how to respond effectively to that challenge. Where the boundaries lie between the authorized and unauthorized practice of law is unclear, and timely ethical guidance about emerging market developments and new technology has not been a focus or priority of the regulatory system.

Without consensus on objectives, decisions about whether and how to regulate nonlawyer service providers (e.g., paralegals, lay navigators, project managers, etc.) would be premature. While that consensus is being developed, there are immediate areas that are ripe for action, such as limited scope representation, fee agreements, and admissions changes concerning foreign lawyers, to better position Michigan within global business markets. Providing guidance for lawyers about the competent, ethical use of technology can also begin immediately.

Ethical Guidance in the Face of Rapid Change. Market research confirms that consumers want a clear understanding of the value and as much certainty as possible regarding the cost of legal services. The traditional billable hour pricing model and many standard fee agreements provide neither. Other jurisdictions have used limited scope representation effectively to expand service to underserved populations. Its use in Michigan is ripe for advancement and offers an opportunity for all parts of the regulatory structure – the Michigan Supreme Court, the disciplinary system, and the State Bar – to develop coordinated strategies for making the regulatory structure more responsive to innovative service delivery initiatives. A suite of ideas to improve clarity concerning fee arrangements and engagement letters and boost consumer confidence can also be quickly readied for consideration.

The rules of professional conduct, traditional legal practice, the conventional regulatory scheme, and new technologies have not made for a comfortable fit. The paces clash and new questions proliferate. Does email pose a particular threat to preserving client confidentiality? Are there new risks to ethical behavior created by particular technologies? What is a lawyer's liability for a particular technology's failure? What constitutes technological competency in the practice of law and how does competency relate to professional ethics? The Task Force proposes a proactive response by the State Bar in response to these questions.

Although the Task Force does not make a general recommendation concerning the ban on nonlawyer ownership interests in law firms, it recommends moving forward on a limited basis to test such models. For example, consideration of the value of fee-sharing in any area where evidence shows that consumer needs are best met by a team of professionals working together, such as service to elderly clients in need of legal and social services.

In the end, the goal of regulation in the 21st century is the same as it was in the twentieth: preserving, protecting, and, as much as possible, perfecting the operation of the justice system. Achieving that goal requires new tools and a new, persistent focus on change.

VISUALIZING THE PROBLEM

AWARD WINNING MODELS

“THE LOUIS M. BROWN AWARD FOR LEGAL ACCESS HONORS PROGRAMS AND PROJECTS DEDICATED TO MATCHING THE UNMET LEGAL NEEDS OF THE MIDDLE CLASS AND THOSE OF MODERATE INCOMES WITH LAWYERS WHO PROVIDE AFFORDABLE LEGAL INFORMATION, SERVICES AND REPRESENTATION. THE AWARD IS PRESENTED ANNUALLY TO THOSE WHO HAVE MADE INNOVATIVE CONTRIBUTIONS TO THE DELIVERY OF LEGAL SERVICES IN WAYS THAT ARE EXEMPLARY AND REPLICABLE.”



Figure 25: Award Winning Models



Figure 26: Access Legal Care, PLLC is an award-winning Michigan law firm providing free legal consultations and affordable legal help at 40-60% savings for your most common legal needs.

ENVISIONING A NEW FUTURE TODAY

Steps Taken by Firms in connection with the First Completion of the Self-Assessment Process	
Reviewed firm policies/procedures relating to the delivery of legal services	84%
Revised firm systems, policies, or procedures	71%
Adopted new systems, policies, or procedures	47%
Strengthened firm management	42%
Devoted more attention to ethics initiatives	29%
Implemented more training for firm personnel	27%
Sought guidance from the Legal Services Commissioner/another person/organization	13%
Hired consultant to assist in developing policies and procedures	6%

Figure 27: Steps Taken by Firms in Connection with the First Completion of the Self-Assessment Process—Susan Saab Fortney, “Promoting Public Protection through an “Attorney Integrity” System: Lessons from the Australian Experience with Proactive Regulation of Lawyers. “Quite simply, these findings point to the positive impact that the self-assessment process has in encouraging firms to examine and improve the firms’ management systems, training, and ethical infrastructure. . . . Interestingly, with respect to most steps taken by the firms, there was no significant difference related to firm size and steps taken.”



Figure 28: Multidisciplinary Practice Puzzle

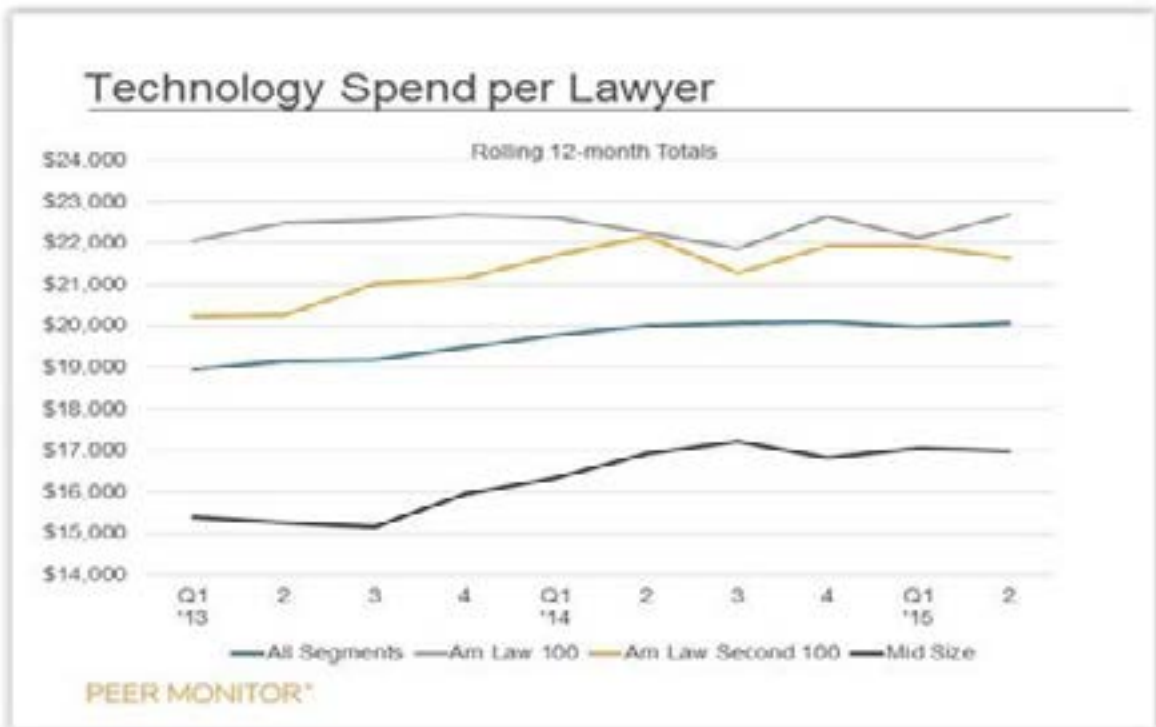


Figure 29, p. 29 – Technology Spend per Lawyer: Charlotte Rushton, Legal Demand Up, but Poor Productivity Hampers Law Firms, PMI Report Shows (2015). “Technology makes up about 8% of overhead expenses for the typical large law firm, or around \$20,000 on an annual per-lawyer basis. So far in 2015, technology spending is increasing about 2.2%, although that is less than the nearly 5% growth seen in 2014.”



Figure 30: Technology Used by Lawyers

LISTENING TO VOICES OF CHANGE



Figure 31: SBM Townhall Panel 4: Moderator: Julie I. Fershtman
Panelists (L-R.): Bert Whitehead IV, Hon. Cynthia D. Stephens, Marla R. McCowan, Daniel W. Linna, Jr.

VIDEOS AT WWW.MICHBAR.ORG/FUTURE

SBM Townhall Meeting

Daniel W. Linna, Jr. Law practice analysis. (0:2:15)

Hon. Cynthia D. Stephens. Speciality courts. (0:1:40)

Daniel W. Linna, Jr. Court business process. (0:1:24)

Legal spend management software for law firms (Jan 2015). (0:2:05)

Stephanie Kimbro. Leverage the Internet to serve your clients & grow your practice. (0:7:07)

Susan Saab Fortney. Proactive regulation of lawyers (Mar 2014). (1:00:04)

Michael Frost. Multidisciplinary practice (Nov 2015). (0:1:06)

What is legal tech assessment? (0:3:01)

Shay Jacobson & Ben Neiburger. A multidisciplinary approach to elder law (Oct 2014). (0:2:23)

Brian Chase. Law office technology (Dec 2013). (0:52:25)

What 21st Century Task Force and Committee Members Had to Say

“The ongoing discussions fostered by the Task Force for which I am particularly encouraged are the recommendations regarding proactive or preventative measures that help lawyers avoid ethical missteps and serve a consumer protection function, the Justice Innovations Center, and other initiatives that will position the profession to respond to changes in the marketplace and give lawyers assistance and guidance in navigating the challenges and opportunities they face.”

—Mark A. Armitage, Task Force; Regulatory Committee

“Alternative fee agreements do not spell doom for the profitability of lawyers, and we should be open to exploring them. It is very important to educate our members about ways of billing for our services that recognize the value we bring to the table, because Legal Zoom and other marketplace disruptors do not replace our judgment and skills as individual lawyers. We may need to look at our regulatory framework because a real concern is that we think an alternative fee is reasonable, and our client may think it is, but our regulatory bodies may not agree.”

—Erika L. Davis, Practice Committee

“Limited scope representation, or unbundling, comports with the overarching goals of the Task Force because it creates opportunities for greater access to legal services. Lawyers engaged in this type of client-lawyer relationship can pare their services to meet very specific legal needs of the consumer. Although the scope of the representation is limited, the legal consumer receives affordable legal services that must be provided competently.

—Elizabeth A. Silverman, Task Force

“We need greater recognition and acceptance of technology and how it enables solo and small firm practice, including virtual practices, to provide efficient client services. We need to make it clear that no bricks and mortar office is required, cloud storage of data is authorized, cloud-based applications are OK to use, and an entirely paperless practice presents no ethical issues if data is properly backed up. I support the Task Force’s call for amending MRPC 1.1 to add a comment regarding technology as part of a lawyer’s duty to provide competent representation to a client.”

—Scott G. Bassett, Practice Committee, Regulatory Committee

THE PROBLEM

cultural resistance to innovation

The legal system does not have an innovative orientation. In a time when technological innovations are transforming the marketplace, the absence of an innovative culture puts the legal profession and the ability to deliver quality legal services at risk. The 21st Century Practice Task Force was created to address that problem by developing a comprehensive set of changes, from the practical and immediately achievable to cutting edge initiatives. Staying ahead of externally driven changes to create the best possible future requires an ongoing, permanent commitment. The changes on the horizon are profound, particularly with the advent of artificial intelligence applications to legal processes. The rules and processes of the legal system will need to adapt at a much faster pace to take advantage of the new efficiencies while preserving quality. Jurisdictions that embrace the need for change and are most adept at adapting their rules and processes will not only be leaders in enhancing access to justice for their citizens but will also provide advantages to their business community and the jurisdiction's economic competitiveness.

THE VISION

Take advantage of the momentum for innovation already underway in Michigan, expanding the ongoing transformation of the court system through increased use of technology, triage, mediation, alternative dispute resolution, and the initiation of online dispute resolution. Accelerate changes in court rules and the rules of professional conduct to ensure continuous public protection and system improvement, taking advantage of service-enhancing technological developments. Establish Michigan as a leader in the ethical modernization of the delivery of legal services.

BASIC ELEMENTS OF THE PLAN

- Develop Justice Innovations Guidelines for adoption by the State Bar of Michigan and other interested stakeholders for use in identifying and promoting justice system efficiencies and innovations. The guidelines will help all stakeholders, including private vendors, communicate through a common vocabulary and shared goals, such as preserving fundamental rights, due process, procedural fairness, transparency, adequate oversight, and appropriate application of human judgment.
- Create a non-profit Justice Innovations Center housed and staffed within the State Bar with an advisory board drawn from the State Bar, the Michigan State Bar Foundation, Michigan Legal Help, the disciplinary system, the legal aid community, law schools, practice management experts, relevant state executive branch agencies, and the business and academic communities. The advisory board's composition should include a legal futurist, and an economist. The Center would help advance the Task Force recommendations beyond the First Steps, evaluate the most innovative ideas from other jurisdictions, develop ideas

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and applications for consideration by stakeholders, design pilots, identify redundancies and obsolescence in the court system and practice of law, and seek grant funding

FIRST STEPS

- Monitor and evaluate other regulatory models on an ongoing basis, including entity and outcomes-based regulation and licensing/regulation of paraprofessionals, and advise on the desirability of adapting elements of those models to the regulation of legal services in Michigan.
- Evaluate the feasibility and desirability of adopting a rule-based definition of the practice of law in light of recent U.S. Supreme Court decisions.
- Create a taxonomy of legal services and delivery service models. Determine the practicality and value of creating standards for those services, and of regulating the individuals and entities that provide them (from simple registration to full licensing).
- Develop performance measures for delivery of legal services by lawyers and methods for self-evaluation.
- Develop standards for online dispute resolution.
- Develop a blueprint for an online dispute resolution system for migrating low-level, non-jail offense negotiation to an online process, and for small claims and low-level commercial cases provided there are no collateral consequences.
- Explore partnerships in the development and evaluation of ethics-based alternative business structure models.
- Research the feasibility of using non-judicial officers to enter consent divorce decrees based on signed notarized forms.

KEY INNOVATIONS

- Justice Innovations Guidelines
- Justice Innovations Center

THINKING THROUGH THE PROBLEM

Positive change requires persistence. The Justice Innovations Center can be the critical engine for persistent innovation.

Among the ideas generated by the Task Force are dozens that need further vetting, incubation, socializing, mapping, testing, refinement, or development before they are ready for the decision-makers. A prime example is the creation of a New Lawyer Institute. There are several models in operation today, with varying degrees of success and cost. The Justice Innovations Center would be the ideal place to evaluate the various models and how they fit into Michigan's needs and requirements and the Task Force's other recommendations.

The Task Force notably did not come to a definitive conclusion about a big question under intense debate in the legal community—is it necessary to loosen or lift the rule banning non-lawyer ownership of law in order to compete with the new legal market “disrupters” and promote desirable, ethical innovation in legal services? The evidence on the answer is mixed, but it is accumulating rapidly, particularly from Australia and the United Kingdom, and suggests that the answer must take into consideration the entire regulatory structure and support for access to justice. Meanwhile, market forces or legal challenges may quickly call the question. States whose regulators fail to carefully consider the pros and cons of this issue and develop a well thought out evidence-based ready-to-implement action plan risk missing opportunities for greater access to quality legal services, as well as potential competitive advantages to the state’s business climate. The Justice Innovations Center can be an important resource for developing such a plan.

VISUALIZING THE PROBLEM



Figure 32: Notes on Access to Justice Innovation

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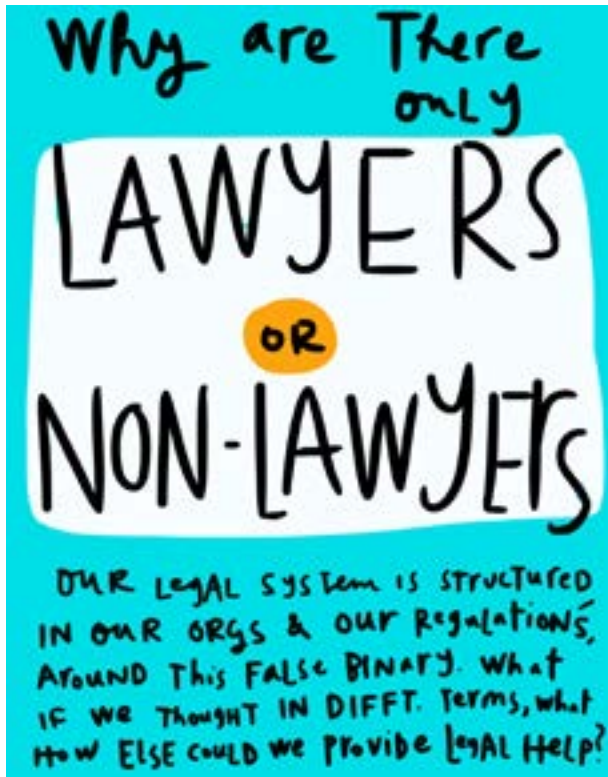


Figure 33: Why are There only Lawyers or Non-Lawyers



Figure 34: Next Generation Legal Services (An Agenda)

LISTENING TO VOICES OF CHANGE



Figure 35:SBM Townhall Panel 5: Moderators: Bruce A. Courtade and Julie I. Fershtman
Panelists (L-R.): William B. Dunn, Elizabeth A. Silverman, Jerome Crawford, Christopher G. Hastings, Erika Lorraine Davis

VIDEOS AT WWW.MICHBAR.ORG/FUTURE

Julio César Betancourt & Elina Zlatanska. Online dispute resolution (Dec 2015). (0:2:16)

Colin Rule. Online dispute resolution (July 2015). (0:6:00)

Uncontested divorce in Mecklenburg County (Dec 2014). (0:2:30)

What 21st Century Task Force and Committee Members Had to Say

“Change is coming to the legal profession. We can either embrace that change and attempt to harness it for the good of the profession and the public, or we can let it happen around us. The latter course will let nonprofessionals lead the charge--not a good idea! The Bar needs to quickly stake out a leadership position with regard to change.”

—Christopher G. Hastings, Access and Affordability Committee

“The public and our clients are getting savvier. If we had a definition of the practice of law we could help people evaluate better what they need and whether a lawyer or non-lawyer can adequately address the service they need. Let’s help meet them where they are. I’m excited for our next steps – there is more change to come.”

—Jerome Crawford, Practice Committee

“The work of the Task Force is excellent, extraordinary and should be commended. The legal profession is not the only profession that is restructuring - the music industry, the taxi cab industry and the hotel industry all have had their business models disruptively challenged by the Internet. We are not alone in our discomfort, and we should be the voice of perspective, hope and support in a time of uncertainty and discomfort. “

—Victoria A. Vuletich, Task Force’ Regulatory Committee

“Law firms and the licensed legal industry must think like other businesses. My law practice identifies low and moderate income people as our target market. We have a statewide model and although the tradition of a local practice is a challenge, it is also an opportunity. We are the primary care attorneys and handle the whole case from the Detroit area. We use “litigation attorneys” in other areas for court representation. Serving the whole state allows us to get much more volume. A lawyer can go online to establish presence, use practice management solutions like Clio, Rocket Matter, and My Case, communicate online with clients, go paperless, scan everything in and avoid paper files for clients by using box.com or Dropbox to share with clients and your other attorneys.”

—Bert Whitehead, IV, Practice Committee

WHAT COMES NEXT

Unlike many task force assignments, our Task Force was not charged with completing or perfecting the work of our predecessors. Instead, we were asked to help our profession step out into the unknown. And predicting what comes next when your work is an attempt to write on the clouds of the future can be a fool's errand.

We acknowledge up front that many of the ideas generated by this Task Force are unlikely to take hold exactly as we have described them. The more ambitious and promising they are the more they will be tumbled and shaped by new ideas and information and forces we cannot envision today.

But we send these ideas into the future with this hope and blessing: that they will not fail because the work is too hard. We are confident in the commitment of our profession to access to justice. If our ideas fail to come to fruition, may it be because they have yielded to better data and better ideas.

For today, these are the primary authorities to which we send our ideas out into the world:

The State Bar of Michigan has created this Task Force and has ownership of its work product. The State Bar has two distinct decision-making bodies: the **Board of Commissioners** and the **Representative Assembly**. As the final policy-making body of State Bar, the Representative Assembly has authority to make the broad policy recommendations of the Task Force, in particular those concerning rule and statutory changes, the policy recommendations of the State Bar. In its role overseeing the operation of the State Bar and its budget, the Board of Commissioners will determine whether and how to use the committee infrastructure of the organization and its staff to advance Task Force recommendations.

The Michigan Supreme Court has ultimate authority over changes to the Michigan Rules of Professional Conduct, the Michigan Court Rules (including the rules governing Professional Disciplinary Proceedings), and the Rules for the Board of Law Examiners, as well as appointment authority and oversight over the **Board of Law Examiners** and the two bodies of the attorney discipline system, the **Attorney Grievance Commission** and the **Attorney Discipline Board**.

The **Michigan Legislature** created the Board of Law Examiners and has established some of the conditions of admission, as well as the prohibition of the unauthorized practice of law.

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ACKNOWLEDGEMENTS

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President, American Bar Association 2014-15
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Future of the Profession in Alabama
Commission on the Financing of Legal Education
Access to Justice Task Force
Task Force on the Future of the Profession
Task Force on Admissions Regulation Reform
CBA Legal Futures Initiative
Report on the Impact of Law School Debt
on Delivery of Legal Services
Consultation on Compliance-Based Entity Regulation
Legal Service Providers Task Force Final Report
Task Force on the Future of Legal Education
Rural Practice Initiative
Report on the Future of the Legal Profession
Regulatory Objectives
Future of the Profession Study
Vision 2016
On the Future of Legal Services in Utah

Alabama State Bar
American Bar Association
Arizona State Bar Association
Boston Bar Association
California Bar Association
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Minnesota State Bar Association
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TIMELINE

	Work of the Task Force
March 5, 2015	Appointment
April 27, 2015	First Meeting
November 12, 2015	Second Meeting
March 1, 2016	Final Meeting
	Work of Committees
	Access and Affordability
May 18, 2015	First Meeting
June 15, 2015	Second Meeting
September 15, 2015	Third Meeting
October 13, 2015	Final Meeting
	Practice
June 25, 2015	First Meeting
July 22, 2015	Second Meeting
August 20, 2015	Third Meeting
September 21, 2015	Fourth Meeting
October 21, 2015	Final Meeting
	Regulatory
July 13, 2015	First Meeting
August 25, 2015	Second Meeting
September 22, 2015	Third Meeting
October 6, 2015	Final Meeting
January 29, 2016	Townhall

ONLINE RESOURCES AT WWW.MICHBAR.ORG/FUTURE

Future of Legal Services Forum Summary Report

Glossary of Future Law Terms

Bibliography

Committee and Committee Work Group Reports

- Access and Affordability
- Practice
- Regulatory

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TEMPLATE FOR USE BY OTHER BARS

Groundwork

- Create consciousness of issues with leadership and membership
- Present as much information as possible to key audiences
- Present more information and engage dialogue
- Emphasize opportunity and urgency

Preparation

- Identify key staff team
- Research and gather materials (e.g., bibliography of resources, glossary)
- Familiarize leadership, staff with basic legal futures ideas
- Formulate task force goals
- Identify key stakeholders
- Set timeline, steps toward endpoint

Creation

- Identify and solicit leadership of task force
- Finalize structure, composition, process and timeline in consultation with task force leaders
- Solicit leaders of committees
- Finalize committee composition, process and timeline in consultation with committee leaders
- Announce task force

The Work

- Orientation of task force members
- Keynote by futures leader
- Encourage widespread brainstorming and innovation in committees and work groups
- Identify issues that might be too contentious to pursue and move as appropriate
- Synthesize the ideas into a package that resonates with decision makers
- Development of consensus on
 - Principles
 - Key Problems
 - Solutions
 - Strategy
- Outreach to membership and beyond
 - Email, blogs
 - Townhall

The Ending and New Beginning

- Final task force meeting
- Celebration
- Media outreach
- Relentless stakeholder outreach
- Implementation
- Justice Innovations Center
- Rinse, Repeat

Note:

Throughout our Task Force work, we have borrowed heavily from the impressive work of other bars and law societies (see acknowledgements). As is true with bespoke work, we were unable to locate a basic template to use as our starting point. This template is an attempt to help more bars and law societies move even more quickly toward the future. It is based on what we did but is improved to reflect what we learned we should have done.

IMAGE CREDITS

Figure 2, page 4 – True Employment Percentage vs. NALP Percentages

Table courtesy of Marc Gans. It appeared in a paper authored by Mr. Gans, “Not a New Problem: How the State of the Legal Profession Has Been Secretly in Decline for Quite Some Time,” at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2173144.

Figure 4, page 5 – Decline in Law School Enrollment

Table courtesy of ABA Task Force on Financing Legal Education, 2015 at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf. ©2015 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Figure 7, page 6 – 100% Justice

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Figure 8, page 6 – GDP and Legal Services Industry Value Added (Billions Chained 2009 \$)

Table courtesy of Matt Leichter. His blog, The Last Gen X American, is found at <https://lawschooltuitionbubble.wordpress.com/original-research-updated/a-profession-in-decline/>.

Figure 17, page 15 – 2014 Law Graduate Employment Data

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Figure 18, page 16 – BLS Projected Job Openings Systemically Under-Predict the Percent of Recent Law Graduates Finding Jobs as Lawyers

Table courtesy of Brian Leiter and Michael Simkovic. Published in Brian Leiter’s Law School Reports blog at <http://leiterlawschool.typepad.com/leiter/guest-blogger-michael-simkovic/>, dated February 9, 2016, “Law School Bloggers’ Latest Unscientific Fad: BLS Job Openings Projections” by guest blogger Michael Simkovic.

Figure 19, page 16 – % Change Since 2002 in Entry Level Salaries and Law School Debt

Table courtesy of Bill Henderson. Published in Mr. Henderson’s blog, The Legal Whiteboard at <http://lawprofessors.typepad.com/legalwhiteboard/2015/07/what-is-more-important-for-lawyers-where-you-go-to-law-school-or-what-you-learned-part-ii.html>, dated July 22, 2015, “What is More Important for Lawyers: Where You Go to Law School or What You Learned? (Part II).”

Figure 20, page 17 – Do Law Differently: Futures for Young Lawyers

Graphic courtesy of Margaret Hagan/The Canadian Bar Association.

Figure 21, page 20 – Adapted from Christiansen’s The Innovator’s Dilemma

Diagram courtesy of Bill Henderson. Published in Mr. Henderson’s research paper, From Big Law to Lean Law, Research Paper Number 271, 3 INT’L REV L & ECON (2013), at http://www.americanbar.org/content/dam/aba/events/professional_responsibility/2015/May/Conference/Materials/henderson_big_law_to_lean_law.authcheckdam.pdf.

Figure 23, page 21 – Respondents Reporting That Their Firm Budgets for Technology

Data courtesy of ABA TECHREPORT 2015. Published in article “Planning and Budgeting” at <http://www.americanbar.org/publications/techreport/2015/PlanningandBudgeting.html> by Dave Bilinsky and Laura Calloway. ©2015 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form

or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Figure 25, page 28 – Award Winning Models

Louis M. Brown Award for Legal Access presented by the American Bar Association at http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/louis_m_brown_award_for_legal_access.html.

Figure 27, page 29 – Steps Taken by Firms in Connection with the First Completion of the Self-Assessment Process

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Figure 29, page 29 – Technology Spend per Lawyer

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Figure 32, page 34 – Notes on Access to Justice Innovation

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Figure 33, page 35 – Why are There only Lawyers or Non-Lawyers

Graphic courtesy of Margaret Hagen of Open Law Lab at <http://creativecommons.org/licenses/by-nc-sa/4.0/>.

Figure 34, page 35 – Next Generation Legal Services (An Agenda)

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