

# Agenda

## Supreme Court Task Force to Examine Limited Legal Licensing

August 6, 2015  
8:00 to 10:00 a.m.

Scott M. Matheson Courthouse  
450 South State Street, Salt Lake City  
Judicial Council Room  
Administrative Office of the Courts, Suite N31

Welcome and approval of minutes	Tab 1	Deno Himonas
Washington and Utah rules	Tab 2	Tim Shea
Work group report: Limited Legal License Technician		Robert Adler
Work group report: Other Emerging Strategies		Mary Jane Ciccarello
Futures Commission of the Utah State Bar	Tab 3	Nate Alder John Lund
Affordable Attorneys for All Task Force of the Utah State Bar	Tab 4	Angelina Tsu
Participation by the National Center for State Courts		Deno Himonas
Assignments		Deno Himonas

**Task Force Webpage:** [http://www.utcourts.gov/committees/limited\\_legal/](http://www.utcourts.gov/committees/limited_legal/)

**Meeting Schedule:**

June 18, 2015	September 10, 2015
July 9, 2015	October 1, 2015
August 6, 2015	October 22, 2015
August 20, 2015	November 12, 2015

All meetings are from 8:00 to 10:00 a.m. in the Judicial Council Room at the Matheson Courthouse, 450 S State St // Suite N31 // Salt Lake City

# Tab 1

**SUPREME COURT TASK FORCE TO  
EXAMINE LIMITED LEGAL LICENSING  
MEETING**

**Minutes  
Thursday, July 9, 2015  
Judicial Council Room  
Matheson Courthouse  
Salt Lake City, Utah**

**JUSTICE DENO HIMONAS, Presiding**

**ATTENDEES:**

Justice Deno Himonas, Chair  
Dean Robert W. Adler  
Nathan D. Alder  
Elena Bensor-Slyter  
Hon. James Brady (by phone)  
Mary Jane Ciccarello  
Carol Sue Crismon  
Dixie A. Jackson  
John Lund  
Lori W. Nelson  
Comm. Joanna B. Sagers  
Angelina Tsu  
Senator Stephen H. Urquhart

**STAFF PRESENT:**

Tim Shea  
Jody Gonzales  
Rick Schwermer

**GUESTS:**

Katie Nichols, Supreme Court  
Lenora Babb Plimpton  
Tom Clarke, NCSC

**EXCUSED:**

Rep. Brian King  
Jacey Skinner

**1. WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)**

Justice Deno Himonas welcomed everyone to the meeting.

**Motion:** Mr. Nate Alder moved to approve the minutes from the June 18, 2015 meeting. Ms. Lori Nelson seconded the motion, and it passed unanimously.

**2. WORK GROUP REPORT – LIMITED LEGAL LICENSE TECHNICIAN: (Dean Robert Adler)**

Dean Adler noted that a draft of the report outline prepared by Work Group 1 of the Task Force was sent in a separate email to all task force members.

The two focus areas include: 1) what are the principle potential benefits of establishing a limited legal licensing program, and 2) what are the main problems with or challenges in establishing a program.

Dean Adler highlighted the following relative to discussion that took place by workgroup members: 1) the viability of such a program, 2) is it our role to protect the consumer(s), address the problem, and let the market take hold; 3) what are the appropriate lines to draw to what a limited licensed professional means, 4) how to train the limited licensed professional to know the difference in what they can manage and when to know to send the client to a lawyer.

Discussion took place.

Ms. Ciccarello referenced a survey of litigants, by the Self-Help Center where 33% responded that they would be interested in legal services.

### **3. WORK GROUP REPORT – OTHER EMERGING STRATEGIES: (Mary Jane Ciccarello)**

Ms. Ciccarello reported that the Work Group 2 of the Task Force met on June 25.

She highlighted the following issues related to the study of other emerging strategies:

1) need for an overview of strategies currently available; 2) need to develop strategies that address workable market solutions; 3) need to keep in mind the effect of existing unregulated services provided by notaries and other community entities for free or for fees; 4) need to address concerns of unrepresented individuals, including LEP issues; 5) need to understand and include all stakeholders—courts, lawyers, other professionals, non-lawyer advocates, and consumers; and 6) need to understand and embrace technological tools that enhance emerging strategies.

Additional strategies identified include the following: 1) develop and maintain Court Navigators/Justice Corps in Utah; 2) develop and maintain a viable Utah State bar lawyer directory/legal resources clearinghouse; 3) promote and support discreet legal services; 4) develop and maintain court-based case management and early resolution programs, especially in family law and consumer law matters; and 5) develop and support ways for the public to access legal information and complete court-approved forms.

Discussion took place.

Ms. Ciccarello mentioned that it may be helpful, at a future meeting, to get paralegal input.

### **4. PERSPECTIVES FROM THE NATIONAL CENTER FOR STATE COURTS: (Tom Clarke)**

Justice Himonas introduced Mr. Tom Clarke, Director of Research and Technology for the National Center for State Courts.

Mr. Clarke provided background information on the National Center for State Courts and the work he does on their behalf.

Mr. Clarke is currently involved in a formal evaluation of New York City's Navigator Program, and Washington State's Limited Legal Licensing Technician Program.

A preliminary report of New York's Navigator Program is anticipated in October 2015. A preliminary formal report of Washington State's Limited Legal Licensing Technician Program is anticipated in April/May of 2016.

Mr. Clarke highlighted the following relative to the Navigator Program: 1) a letter was drafted and sent to Navigator Program staff with suggested tweaks to the program; 2) three to four different versions of the program are operating in two types of court; 3) concerns were expressed with the program regarding a lack of adequate supervision of the court-supervised volunteers; 4) the program run by legal services was well supervised; 5) the program does not allow for the navigator to offer advice and aid in negotiations; 6) it may be difficult to recruit, track and train adequate staff in a larger scale program, statewide; 7) preliminary survey results of litigants being helped by the Navigator Program showed that 8-10% of the people surveyed thought they needed help and did not have a good experience; 8) preliminary survey results of

litigants being helped by the Navigator Program showed that 90% of the people surveyed felt that the process was okay; and 9) the Navigator Program is a pro bono service, completely subsidized and voluntary.

Questions were asked and discussion took place relative to the Navigator Program. Mr. Clarke provided responses to questions asked of him.

Mr. Clarke highlighted the following relative to the Limited Legal Licensing Technician Program: 1) the program has gone too far in what the training and experience requirements should include; 2) a unique curriculum was developed for the program; 3) for each new practice area, an additional year of law school participation is required; 4) the core curriculum is essentially the paralegal curriculum; 5) the licensed technician is unable to give advice or represent the litigant in court; and 6) Washington State is interested in expanding the practice of the licensed technician to allow for them to give advice and represent the litigant in court.

In summary, a bundle of strategies need to be developed to manage the unmet civil needs, and access to justice matters faced by self-represented litigants in current court matters. Consideration of the following should take place when addressing these matters further: 1) process simplification, 2) an offering of online services, and 3) unbundling of legal services.

Questions were asked and discussion took place relative to the Limited Licensing Technician Program. Mr. Clarke provided responses to questions asked of him.

Other areas to consider when evaluating ways non-lawyers can provide services in areas in which only lawyers traditionally have been able to practice include: 1) evaluate the policies in place in European countries, and the manner by which court and litigation matters are being addressed; 2) internal ways by which lawyers can aid in addressing access to justice needs—unbundling, caseload management, and new forms of management; 3) mediation completed at the beginning of the legal process; 4) a project is underway to look at development of a litigant portal, taking the litigant’s point of view; and 5) included in the evaluation of New York City’s Navigator Program, and Washington State’s Limited Legal Licensing Technician Program, an evaluation of non-lawyer legal services and design of such program(s) is taking place.

Questions were asked and discussion took place.

Justice Himonas thanked Mr. Clarke for his input.

**5. WASHINGTON AND UTAH RULES: (Tim Shea)**

This item was deferred to the August 6 meeting.

**6. ASSIGNMENTS: (Justice Deno Himonas)**

No new assignments were made.

**7. ADJOURN**

The meeting was adjourned.

# Tab 2

## WASHINGTON

---

### (1) GENERAL RULE 24. DEFINITION OF THE PRACTICE OF LAW.

**(a) General Definition:** The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

- (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
- (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
- (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
- (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

**(b) Exceptions and Exclusions:** Whether or not they constitute the practice of law, the following are permitted:

- (1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).
- (2) Serving as a courthouse facilitator pursuant to court rule.
- (3) Acting as a lay representative authorized by administrative agencies or tribunals.
- (4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.
- (5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.
- (6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.
- (7) Acting as a legislative lobbyist.
- (8) Sale of legal forms in any format.
- (9) Activities which are preempted by Federal law.
- (10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.
- (11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

**(c) Non-lawyer Assistants:** Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

**(d) General Information:** Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

**(e) Governmental agencies:** Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

**(f) Professional Standards:** Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

**(2) APR 28. LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS. (EXCERPT)**

....

**F. Scope of Practice Authorized by Limited Practice Rule.** The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

- (1) Obtain relevant facts, and explain the relevancy of such information to the client;
- (2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- (3) Inform the client of applicable procedures for proper service of process and filing of legal documents;
- (4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board that contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;
- (5) Review documents or exhibits that the client has received from the opposing party, and explain them to the client;
- (6) Select, complete, file, and effect service of forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;
- (7) Perform legal research;
- (8) Draft legal letters and documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;
- (9) Advise a client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;
- (10) Assist the client in obtaining necessary documents or records, such as birth, death, or marriage certificates.

**G. Conditions Under Which A Limited License Legal Technician May Provide Services**

- (1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;
- (2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a nonlicensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;
- (3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician, that includes the following provisions:
  - (a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the Board.

(4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(5) A document prepared by an LLLT shall include the LLLT's name, signature, and license number beneath the signature of the client.

**H. Prohibited Acts.** In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

(2) Retain any fees or costs for services not performed;

(3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client;

(4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

(5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

(6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party, unless permitted by GR 24(b);

(7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;

(8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

(9) Otherwise violate the Limited License Legal Technician Rules of Professional Conduct.

....

**(3) RULE 14-802. AUTHORIZATION TO PRACTICE LAW.**

(a) Except as set forth in subsection (c) of this rule, only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this rule:

(b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

(b)(2) The “law” is the collective body of declarations by governmental authorities that establish a person’s rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person’s rights, duties, constraints and freedoms.

(b)(3) “Person” includes the plural as well as the singular and legal entities as well as natural persons.

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(c)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(c)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person’s facts or circumstances.

(c)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(c)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one’s minor child or ward in a juvenile court proceeding.

(c)(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.

(c)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(c)(7) Representing a party in any mediation proceeding.

(c)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(c)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(c)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(c)(11) Lobbying governmental bodies as an agent or representative of others.

(c)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(c)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(c)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(c)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(c)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(c)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(c)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

### **Advisory Committee Notes**

Subsection (a).

"Active" in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve another person, it is not technically the "practice of law." Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: "Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee."

Similarly, an employee of a business entity is not engaged in "the representation of the interest of another person" when activities involving the law are a part of the employee's duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in subparagraph (b)(2), "the law" is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(A).

Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies. Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person's interests.

Subsection (c).

To the extent not already addressed by the requirement that the practice of law involves the representation of others, subparagraph (c)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Subparagraph (c)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (c)(7) applies only to the procedures directly related to parties' involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under subparagraph (c)(5)).

#### **(4) RULE 14-113. CREATION OF PARALEGAL DIVISION.**

**(a) Paralegal defined.** A paralegal is a person qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity of function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform. A paralegal includes a paralegal on a contract or free-lance basis who works under the supervision of a lawyer or who produces work directly for a lawyer for which a lawyer is accountable.

**(b) Membership and structure of paralegal division.** Qualified individuals can become "paralegal affiliates" of the Bar upon submitting an application to the paralegal division of the Bar and fulfilling the following:

(b)(1) an initial and annual certification of continuous sponsorship of a paralegal affiliate by an employer who is a member of the Bar;

(b)(2) a certification by the attorney and paralegal affiliate that the paralegal undertakes no legal work outside the attorney's supervision or supervision of attorney members of the firm, wherein joint sponsorship by joint employers would be permitted;

(b)(3) an assumption of responsibility by the attorney for the compliance of the paralegal with all applicable rules of the Bar;

(b)(4) the paralegal affiliate's parallel commitment that the attorney and paralegal affiliate will notify the Bar of any change of employment of the paralegal affiliate; The paralegal affiliate's authority to function as a paralegal affiliate will terminate concurrent with employment by the sponsor unless sponsorship is accepted by another employer-member of the Bar; and

(b)(5) an appropriate fee.

**(c) Officers of paralegal division and ex officio membership on the Board.** The paralegal division may appoint officers (president, vice-president, treasurer, secretary) on an annual basis. The division may also appoint an ex officio, non-voting member of the Board who shall report regularly to the division's membership regarding the overall activities of the Bar.

(c)(1) Paralegal affiliates are eligible to receive the Utah Bar Journal, notices of Bar functions and bar-member rates at seminars and meetings. Paralegal affiliates are not eligible for office within the Bar.

(c)(2) Paralegal affiliates shall not be directly subject to discipline by the Bar. However, supervising or responsible attorneys are responsible for all work undertaken by paralegal affiliates for or on their behalf.

# Tab 3

# Report and Recommendations

## ON THE FUTURE OF LEGAL SERVICES IN UTAH

by the Futures Commission of the Utah State Bar

July 29, 2015



# CONTENTS

<b>INTRODUCTION . . . . .</b>	<b>4</b>
-------------------------------	----------

<b>RECOMMENDATIONS . . . . .</b>	<b>5</b>
----------------------------------	----------

Make Lawyers More Available and Much More Accessible . . . . .	5
--	---

Better Educate and Train Lawyers and Law Students about Their Business . . . . .	6
--	---

Keep Improving Judicial Case Management. . . . .	7
--	---

Take Control of Technology . . . . .	8
--------------------------------------	---

Support Reestablishment of the Court’s Access to Justice Commission . . . . .	8
---	---

<b>THE REASONS FOR THESE RECOMMENDATIONS . . . . .</b>	<b>9</b>
--	----------

There is an unmet need for legal services . . . . .	9
---	---

Enough lawyers are being educated and licensed in Utah to meet the needs . . . . .	10
--	----

People need a much better way to find lawyers who will help them . . . . .	11
--	----

Technology is constantly changing things . . . . .	12
--	----

The marketplace for legal services is evolving. . . . .	13
---	----

Law schools and traditional legal education model face specific challenges . . . . .	14
--	----

Geographic barriers to the practice of law are fading . . . . .	15
---	----

<b>CONCLUSION . . . . .</b>	<b>16</b>
-----------------------------	-----------

<b>FUTURES COMMISSION MEMBERS. . . . .</b>	<b>17</b>
--	-----------

<b>RESOURCES, SOURCES, MATERIALS &amp; FURTHER INFORMATION . . . . .</b>	<b>18</b>
--	-----------

# INTRODUCTION

**G**eorge Bernard Shaw<sup>1</sup> said: “Progress is impossible without change, and those who cannot change their minds cannot change anything.”

Fundamentally – to better meet the legal needs of individuals and small businesses in Utah – people are going to have to change their minds. The Utah State Bar will have to change its mind about how it connects lawyers with the people who need them. Lawyers will have to change their minds about how they package, price, and deliver their services. Legal educators and trainers will need to refocus their efforts on equipping their students with the basic business skills to successfully practice. And last, but certainly not least, people with legal needs will need to change their minds. They need to be shown much more convincingly that lawyers and other legal service providers are “worth it.”

By any measure, progress is needed. The number of self-represented litigants in the courts is burgeoning, even as the number of case filings is dropping. People think they can and should handle a court case on their own and sometimes even think it’s better to try to address their problem without taking their case to court at all. This Do-It-Yourself mentality can and often does lead to the legal equivalent of a slapdash basement remodel: It is done but it is not done well; there might be safety issues; and it probably won’t stand up to the test of time. Of course whether to do it yourself or hire it out is an individual’s choice. However, in no small number, lawyers and the courts are being called upon to come in after such attempts to make repairs, often at greater expense than if they had been involved in the first place.

This Commission was charged by the Utah State Bar to “gather input, study, and consider the ways current and future lawyers can provide better legal and law-related services to the public, especially to individuals and small

businesses in Utah.” A broad spectrum of well-qualified community and thought leaders, practicing lawyers, and Bar leaders have devoted substantial time and energy to meeting this charge. Details of how the Commission conducted its work, what it has done and who has served on the Commission can be found below. We have concluded that to assure access to quality affordable legal services for all there needs to be transformational change in the legal profession.<sup>2</sup>

The profession must adapt to the changed expectations of consumers of legal services and must meet the changing economic realities. If the profession does not adapt, lawyers will become less relevant to the day-to-day lives of ordinary citizens struggling with family issues, financial problems, routine disputes, and basic needs such as housing. If the profession does not adapt, lawyers will continue to drift away from the middle and find themselves relegated to either acting as the elite counselors of the wealthy and well-funded corporations or serving as the underpaid and underappreciated advocates of the poor and the accused, to the extent that such work is funded by government or provided by charity.

The United States of America proudly and properly proclaims itself to be a nation of laws. Lawyers are valuable and indeed critical to making that a reality for all. This Commission firmly believes that lawyers should continue to play a central role in our nation’s legal system and do so for all segments of society, so that every individual truly has access to the protections and benefits of the rule of law. Towards that end, we respectfully submit our report to Utah’s practicing lawyers, to Utah’s law schools, to the Utah judiciary, to the Utah legislature and Governor Herbert and, most importantly, to all the people of Utah, who have every right to expect and to obtain affordable legal assistance from Utah’s lawyers.

- 
1. Irish playwright, noted essayist, co-founder of the London School of Economics and ardent advocate for the working class.
  2. This Report reflects the collective views and recommendations of the majority of the Commission members. Not every Commission member necessarily agrees with everything in the Report.

# RECOMMENDATIONS

1

## Make Lawyers More Available and Much More Accessible

The Bar should proactively use its resources to make lawyers more accessible to the middle class and small businesses, to connect lawyers with those who need legal help and to communicate with the public about the availability of affordable lawyers and their value. Specific action items for the Bar include:

**A. Develop and maintain a robust online lawyer referral directory that is easily available to the public.** The directory should provide information about the lawyer's contact information, geographical location and availability, the lawyer's practice areas, the lawyer's willingness to provide unbundled legal services, work on some basis other than hourly rate, or discount rates for lower income clients, and the languages in which the lawyer is competent to provide legal services. If the lawyer will help with cases involving domestic violence or debt collection, then that should be shown in the directory. The online directory should be mobile friendly and use plain English. This should be done as soon as possible.

**B. Build and promote a consumer-focused website which, building on the online directory of lawyers, will become the key clearinghouse for clients in need of legal assistance.** The website should function as a marketplace for those who need legal services to find appropriate and affordable help and for lawyers to present and promote the particular services they offer, pricing and payment options and other specifics. See [www.justiserv.com](http://www.justiserv.com) for such a website now serving clients in the Boston area. This website should also, in plain English, educate the public about how lawyers can help them and how to select and retain a lawyer, but also what they can do to keep the costs under control. To make the website succeed the Bar should engage in "guerrilla marketing"<sup>3</sup> through mass advertising and reach out proactively to community and civic organizations, employers, and faith-based and other organizations. This should be done as soon as possible. It might work best to combine this marketplace project with the online referral directory described in Paragraph A.

**C. Increase the use of discrete task representation and fixed fee pricing** by (1) marketing the availability of "unbundling," (2) educating lawyers and courts on best practices for implementing these approaches and (3) establishing an "unbundled" section for the Bar with lawyers who are willing to help clients on a fee-per-task, limited scope basis.

**D. Promote fee-per-task delivery models in locations where lawyers can meet with clients for advice in public access points,** like courthouses, public libraries, and community centers. The Bar should address, internally and with the Courts, adjustments to the rules of practice, administration, and professional responsibility to facilitate such models.

**E. Better promote, with both lawyers and those needing lawyers, the numerous *pro bono* and modest means offerings and programs** already in place throughout Utah. Strengthen and expand the Bar's Modest Means Lawyer Referral Program, the statewide program already in place to serve middle class clientele.

**F. Investigate and promote providing incubators or other support for new lawyers** who wish to establish practices, especially in the rural areas of Utah, to provide basic legal services to underserved clients. This should include seeking grants and other private funding, as well as exploring federal and state funding, for the specific purpose of helping lawyers establish viable practices.

**G. Investigate and promote changes to licensing requirements** to reflect the economic realities of multistate practices and to accommodate lawyers who live in Utah but do legal work for clients outside of Utah.

**H. Investigate and consider the impact of changes to Rule 5.4 of the Rules of Professional Conduct** to allow non-lawyers to share fees and partner with lawyers in order to increase innovation and encourage lawyers to be more client focused.

3. This is not meant to imply combative, just creative. [https://en.wikipedia.org/wiki/Guerrilla\\_marketing](https://en.wikipedia.org/wiki/Guerrilla_marketing)

## 2

## Better Educate and Train Lawyers and Law Students about Their Business

Utah's law schools do a good job of teaching legal principles while also offering robust practical training and clinical experience for students. Yet many new lawyers feel poorly prepared for the marketplace and for the economic realities of practicing law. And many practicing lawyers have shown little aptitude or appetite for marketplace innovation.

### A. The Bar and the law schools should provide more business and entrepreneurial training.

The majority of Utah lawyers are running their own small businesses. They need to become more efficient in their delivery models and more effective in their marketing. Such training is especially needed for those who want to practice in solo or small firm settings, particularly in small towns, rural areas, and linguistically and culturally isolated communities where underserved populations exist.

### B. The "Third-Year Practice Rule" should be expanded and enhanced.

This is to permit more law students to provide limited advice and counsel in specific and innovative ways like issue spotting at legal clinics or courthouse consultations.

C. We considered whether to recommend administration of the Bar exam before graduation from law school, but the input was equivocal and the question requires more study of both the costs and benefits. While it might make the entry into practice more expedient, having students preparing for the Bar exam while still engaged in course work creates concerns. We recommend additional study and evaluation of this issue in the near future. **We considered and do not recommend creating a "diploma privilege" by waiving the Bar exam for graduates of Utah law schools.**

*"This has been a tremendous process, and it has been a true pleasure to work with some of the most creative thinkers in the state on the most important issues facing the legal community today. Utah Law is deeply committed to providing our students with the best possible preparation for practicing law. Working with the Futures Commission has only inspired further innovation in how we train law students."*



**LINCOLN DAVIES,**  
Associate Dean  
for Academic Affairs  
College of Law,  
University of Utah

### 3 Keep Improving Judicial Case Management

Utah enjoys one of the finest run judiciaries in the nation. This is partly due to the effective leadership of the judiciary and to the unified court system created by Utah's Constitution. It is also due to positive collaboration among Utah's legislative, executive and judicial branches in finding ways to make Utah courts part of the solution to problems experienced by people in Utah.

**A.** Since a major portion of the unmet legal need is in cases being processed by the courts, **we recommend that the Bar Commission endorse and promote increased judicial case management oversight of dockets**, especially in family law and debt collection cases. Such efforts are already underway by the Court's Standing Committee on Family Law, the Court's Standing Committee on Resources for Self-Represented Parties, the Legal Aid Society of Salt Lake, and the Bar's Family Law Section. Putting increased emphasis on active judge and commissioner case management, rather than attorney-driven case management, offers the potential for improved use of litigant, attorney, and court time, more productive calendars, greater predictability, and potentially reduced costs.

**B.** We recommend that the Bar Commission endorse and promote simplification of court processes and redesign of court rules and procedures to better enable attorneys and clients to use limited scope representation. The bulk of the need is in family, housing and debt collection matters so that is where such efforts should focus.

**C.** We recommend legislation to increase the jurisdictional limit for small claims court. This change will facilitate greater access for many individuals and businesses to an efficient and low-cost dispute resolution process. We also recommend considering legislation to increase support for a companion piece to small claims – mediators. Presently, Utah Dispute Resolution, a nonprofit organization, is conducting numerous free mediations at small claims courts and could conduct more of them with additional resources and volunteers.

**D.** The Supreme Court's Task Force on limited legal license technicians is currently examining the potential for people other than lawyers to meet these needs. **We recommend that the Bar Commission follow that effort and assist however it can to facilitate the provision of affordable legal services to the people of Utah.**

*"As we consider challenges to the delivery of legal services, it's important that the perspectives of both the profession and the courts be considered, but even more important, is the litigant's perspective."*



**DAN BECKER,**  
Court Administrator  
Utah State Courts

## 4

# Take Control of Technology

As with almost every other facet of life in 2015, technology continues to drive changes and to create both risk and opportunities for lawyers. Now and on an ongoing basis the Bar should help lawyers use technology to enhance the delivery of legal services and adapt its rules, practices, and policies to permit lawyers and clients to take the fullest possible benefit of new technologies. If lawyers don't take control of the technologies affecting the practice of law, those technologies could very well control what happens to lawyers. The list below is simply what is front and center today:

**A. Promote and maintain online CLE sessions** on the business of practicing of law, best uses of technology, unbundling legal services, effectively promoting services to prospective middle class and small business clients, and managing a virtual law practice.

**B. Encourage lawyers to participate in established *pro bono* efforts that utilize remote services**

**delivery systems so that clients in geographically isolated areas can be helped.**

**C. Make all of the Bar's CLE offerings available for remote attendance and participation.**

**D. Promote the State's "One Stop" shop for small business registration.** The State provides a "one stop" online site for registering small businesses. The Bar should link to and promote this website on its own website. The Bar should partner with the Utah Division of Corporations to determine other ways to promote the use of this website, and whether there are additional services to promote. The Bar should also study ways to refer the site's users to potential lawyers if they need additional assistance.

**E. Clarify who with the Bar, among both staff and lawyers, has the charge of leading and training Utah lawyers in the area of law practice technologies.**

## 5

# Support Reestablishment of the Court's Access to Justice Commission

The Bar should discuss with the Utah Supreme Court the history of the Utah Supreme Court's leadership of the prior decade's Access to Justice Commission (which disbanded in 2008). For a time, the Utah Supreme Court led an impressive and active stakeholder's roundtable organization, and could again engage in that effort, as many state supreme courts choose to do. The Court's leadership in this area is essential to achieving results

across a broad spectrum of concerns, not only judicial and court-related, but also administrative, educational, market-based, and consumer-oriented, and for an array of legal service providers as well. The Court's leadership of a community-wide, broad-based Access to Justice Commission could adapt best practices and solutions from other states and regions, as well as craft unique solutions for our State.

# THE REASONS FOR THESE RECOMMENDATIONS

The Futures Commission studied and discussed the legal profession and its service to individuals and small businesses from three different perspectives. One sub-group considered the perspective of clients and market dynamics. A second sub-group focused on the lawyers and the delivery of legal services. The third group focused on the education and training of lawyers, both in law school and thereafter. These groups worked independently but the entire Commission also met regularly in plenary sessions to hear and discuss reports from the sub-groups. Through this collaboration the Commission found common themes and ultimately reached consensus about recommendations to make. What follows is a summary of the reasoning developed by the Commission's three sub-groups and the Commission as a whole for its recommendations.

## 1 There is an unmet need for legal services.

In 2014, there were 66,717 debt collection cases filed in the Utah courts. In 98% of those cases, the defendant was not represented by counsel and in 96% of the cases the plaintiff had an attorney. That means more than 60,000 Utahns fended for themselves in court. In the 7,770 eviction cases filed that year, 97% of the people defended themselves. In the family law arena, out of the 14,088 divorce cases filed in 2014, there were attorneys for both parties in only 12% of the cases. In 29% of the cases just one party had an attorney and in 60% of the cases, neither party had counsel. The number of people trying to represent themselves in the Utah courts is not only large, it is steadily increasing. The 2014 data mentioned above is generally higher than similar data for 2005. See Strategic Plan of the Committee on Resources for Self Represented Parties (see link in Resources section below).

We heard many reports from members of the bench and bar about how this not only impacts the litigants but also the courts and the lawyers opposing unrepresented parties. The litigants are in an unfamiliar system without an advocate, without a trained professional, and without someone they can trust. They use the forms that are available from the court's website, [www.utcourts.gov/selfhelp](http://www.utcourts.gov/selfhelp), as well as its Online Court Assistance Program, <https://www.utcourts.gov/ocap/>,

but they often don't know how to use the forms or have complications that require special treatment. The judges and court staff must remain impartial and cannot provide legal advice to a party. Maintaining that impartiality can be difficult when it is clear one of the parties has a lot of questions and really needs legal advice. This often results in many patient efforts to explain the process and try to guide the party towards legal counsel who can advise them.

We learned that the price of legal services is not necessarily the determining factor in whether or not an individual or small business will engage a lawyer. While some may perceive legal services as too expensive or unaffordable, many individuals and businesses simply do not sense the need to involve a lawyer, or do not understand that using lawyers early in their problem solving would benefit them. This increase in self-representation comes as legal issues are becoming more, not less, complex. The forms required to complete a divorce can be a challenge when there are children, real property, retirement plans, or foreign citizenship to consider.

Many potential clients do not know how to access lawyers, are not sure the lawyer will help matters or make matters worse, and are concerned about the cost, especially when quoted as an open-ended hourly rate. While some potential

clients perceive lawyers as inaccessible, they know information online is immediately accessible and turn to it. Doing so is the legal equivalent of diagnosing one's medical condition based on a review of the WebMD website or other online information. <http://www.webmd.com/>. Often, these individuals will perceive lawyers as unnecessary and, thus, will attempt to "go it alone." Or they will be convinced that a form for a will, deed or contract that can be purchased or even accessed for free online will be adequate.

There are also language barriers for the growing number of Utahns who have limited proficiency in the English

language. While the Courts provide interpreters for court hearings and processes, that service does not extend to the private consultations that clients need to have with their counsel. There is an increasing need for lawyers who can offer services in Spanish and other languages.

For victims of domestic violence in particular there continues to be an acute need for legal services in these areas: family law (especially divorce and child custody issues), criminal law, and immigration. Also, in Utah's rural areas there are overloaded attorneys, few *pro bono* services, and frequent conflicts of interest.

## 2

## Enough lawyers are being educated and licensed in Utah to meet the needs.

One of the more confounding aspects of this issue is that at the same time there are clearly unmet legal needs, and people who can and would pay something for some legal help, there is also a large number of under-employed lawyers, especially new lawyers. Utah currently has 9,148 active licensed lawyers, over 35% of who are in private practice on their own or in a firm with five or fewer lawyers. With a population approaching three million, that means there are about 30 lawyers for every 10,000 Utahns, placing Utah in the middle of the pack and slightly below average compared to other states. [http://www.americanbar.org/resources\\_for\\_lawyers/profession\\_statistics.html](http://www.americanbar.org/resources_for_lawyers/profession_statistics.html).

Roughly 350 new lawyers are admitted to the Bar each year. These bright, ambitious people are coming out of law school with somewhat compromised dreams of working full-time in the legal profession in what has turned out to be a very difficult employment market (and at the same time being saddled with large amounts of student loan debt). This particular group can help solve the unmet legal needs in our communities. Indeed, we hope they

will remain engaged in finding solutions. One example of this is Open Legal Services, an innovative non-profit law firm founded by two 2013 graduates of the University of Utah S.J. Quinney College of Law: Shantelle Argyle and Dan Spencer. <http://openlegalservices.org/>

If there are many underemployed lawyers and much unmet legal need, then why doesn't the market work to bring them together? Basic economic theory teaches that, in a competitive market, price should move to the point where the demand equals supply. But that theory also assumes the participants in the market have perfect information about the price as well as perfect information about the usefulness and quality of the service in question. That is not a valid assumption in the legal market. The total price is not often provided, just the hourly rate for an indeterminate number of hours. And the value proposition is not well understood by consumers. Our recommendations for making lawyers more accessible and creating an online marketplace are intended to address these issues.

## 3

## People need a much better way to find lawyers who will help them.

People expect to find useful information quickly and easily on their mobile devices and computers. If information about finding lawyers, what they do and what they cost, is not readily available through the Bar's website, then people will search elsewhere. Their searches might find lawyers who pay for more advertising on Google or other search engines. Or people may simply decide to forego lawyers completely. The Bar can and should be a reliable source for the information people need about lawyers.

Little is currently known about how people try to find information about lawyers and how they try to connect with them. However, we do know the following: Two major focal points of information and referral in our state's legal landscape are Utah Legal Services (ULS) and the Self-Help Center of the Utah State Courts. In their 2014 fiscal year, Utah Legal Services provided legal advice and representation to 8,658 clients who met their income and other eligibility criteria. In free legal clinics staffed by ULS and based on the agency's eligibility criteria, another 145 people received brief advice. Pro bono lawyers handled 596 cases. While these numbers demonstrate the wide reach of services ULS provides, the agency also had to refer 6,498 people to other legal resources (including private attorneys) because they did not meet ULS's eligibility criteria for any number of reasons including they were over income, or financially eligible but not within ULS case priorities, or they were non-citizens.

The Self-Help Center (SHC) provides legal and procedural

information and help with forms, but not advice, in all Utah state courts. Services are virtual, provided by telephone, email, text, and the Court's website. In fiscal year 2014–2015 (July 2014 through June 2015), the SHC responded to 18,173 contacts. A staff survey is completed for each contact and, since November 2014, that survey has tracked whether the person contacting the SHC was referred to other legal resources. Such referrals are made after SHC staff assesses the person's situation and determines that the person needs legal advice or representation. Referrals to other legal resources are made in around 33% of all contacts. In only eight months of tracking referrals, the SHC made 3,883 referrals. Projecting for a full year, the SHC expects to make at least 6,000 referrals. So, from just ULS and the SHC, we can safely say that at least 12,000 referrals to legal resources are made each year. Many other non-profit agencies and government agencies, as well as libraries, schools, senior centers, churches, unions, and community centers need to have good referral sources available as well. Additionally, the courts and other agencies cannot make referrals to individual lawyers; they can only point to a list of potential lawyers or to a lawyer directory.

For all these thousands of potential referrals each year, there is not a good referral source or a simple source of contact information to connect a potential client with a lawyer. A reliable source – the Utah State Bar – can be that point of contact to the benefit of the public and lawyers alike.

*“Our goal is to make sure no one in Utah is left behind when it comes to meeting their legal needs.”*



**ERIC. G. MAXFIELD,**  
Partner, Holland & Hart

## 4

## Technology is constantly changing things.

A thread running through all of our discussions was technology. Whether it is using social media for referrals, video-conferencing for court hearings, or online legal forms and services, the internet and other technologies are integral to the discussion. In this respect, it is important to realize that a consumer's decision process for purchasing legal services is not altogether different from how they might select an accountant or make a major purchase.

Further, people are increasingly comfortable with searching for and getting answers – for better or worse – to legal questions online. Individuals are willing to pay online vendors discrete sums if they perceive it might resolve their legal needs. This is the LegalZoom model. Social media is also providing access to information as people share their experiences and own advice, further reducing the perceived need to consult with lawyers. For example, Avvo offers clients both the opportunity to review and rate their lawyer and the opportunity to submit a question online and get it answered by a lawyer licensed in the jurisdiction in question. Such technological tools

certainly appear to be more accessible ways for consumers to get information from and about lawyers.

Researchers, entrepreneurs, and innovators are exploring ever more creative ways to use sophisticated software to deliver legal services more cheaply and more quickly wherever there is a need. Some rely heavily on technology to sell legal forms or help customers find lawyers. There are online mediation and settlement services for simple disputes. And there are even models for using artificial intelligence to conduct legal reasoning and make rulings.

It is simply not possible to catalog all of these new technologies and the changes they bring. And by the time that catalog was finished it would be out of date. Suffice it to say that the legal profession will continue to be profoundly altered by technology and the Bar must be working to not only stay abreast of those technologies but to help Utah lawyers implement them for the benefit of their clients.

*“The biggest expense in our law firm is our people, not glass and marble. ‘Necessary’ expenses are sometimes luxuries, and innovation can mean foregoing those luxuries to serve more clients for less money.”*



**SHANTELE ARGYLE,**  
co-founder, co-director,  
and attorney with  
Open Legal Services

## 5

## The marketplace for legal services is evolving.

Due in no small measure to the technologies discussed above, the traditional ways for lawyers and clients to find each other are becoming less the norm. Certainly it is still common for people with legal problems to go to their community and religious leaders or family and friends for suggestions about a lawyer to hire. Word of mouth still counts and so does reputation. However, word of mouth now also includes what a former client is willing to say in an online client review. And reputation could include how high someone lands on a Google search for “best Utah divorce lawyer in Utah,” which likely has more to do with search algorithms and Google AdWords than with anything else.

Another aspect of the market is that lawyers in general have a perception problem. They are perceived as expensive, even by themselves. Many a lawyer has noted that he or she wouldn’t be able to afford themselves. And, instead of perceiving lawyers as the problem-solvers and peacemakers that they often are, the public worries that the lawyer will be confrontational and drag things out, possibly due to a self-interest in charging more fees. While this is certainly not accurate as to most lawyers, the perception does exist.

So if lawyers are going to be expensive and possibly not helpful, then where else might someone with a legal problem turn? The data for the Self Help Center shows that many try to do it on their own. Others will turn to commercial online services. Latinos often will turn to “notarios” or “immigration consultants” who provide services that often become the practice of law without a license and at no true saving or benefit to the client. Similarly in the bankruptcy courts, a market has developed for “bankruptcy petition preparers” who, under the guise of filling out forms, end up giving bad non-legal advice.

The Bar’s response to this should be not only to work to protect consumers from illicit services, but to recognize that this is a symptom of the substantial unmet need for those in the middle class. If lawyers do not meet the demand for help with services that clients can afford, then others will continue to seek to fill the void. With their dignity and ethics preserved, lawyers need to be available for hire online where consumers are shopping for them.

*“Even with more attorneys and newer technology, middle class families and local businesses are struggling to afford quality legal services. As a solo-practice attorney, I believe I have an obligation to my community and my clients to help make legal services more accessible to everyone. I was proud to be a part of this commission.”*



**CHRISTOPHER WHARTON,**  
Young Lawyers Division President,  
practicing attorney at  
Chris Wharton Law, LLC

## 6

# Law schools and traditional legal education model face specific challenges.

Nearly 4 out of every 10 lawyers seeking admission to practice in Utah have attended law school out of state. So, the condition of legal education across the nation affects Utah, even though the BYU and U of U law schools have remained strong and economical.

Nationally, law schools in the United States face numerous challenges. According to the American Bar Association Task Force on the Future of the Legal Profession, these include declining number of applicants, declining enrollments for minority and diverse candidates, increases in the cost of tuition and associated expenses, the high cost of clinical education, limited salary expectations post-graduation, inadequate training of lawyers in the business of law practice, including the business of client development and retention, and quite simply, too few traditional jobs for law graduates. The Task Force concluded that, at a national level, the current means of financing legal education contributes to the steadily increasing price of legal education and tends to impede the growth of diversity in legal education and in the profession.

The Task Force further concluded that the current system of pricing and funding demands serious re-engineering. It also concluded that (1) the accreditation system should seek to facilitate innovation in law schools and programs and legal education, (2) the core purpose of all law schools is to prepare individuals to provide legal and related services in a professionally reasonable fashion, and (3) that fact should lead to more attention being given to skills training, experiential learning, and the development of practice-related competencies.

The Futures Commission's sub-group on education and training surveyed Utah lawyers concerning their experiences in this regard. One survey was administered to lawyers who entered the profession within the last 10 years and the other survey targeted lawyers practicing longer than that. The combined number of responses exceeded 900. There was strong agreement that attorneys and firms need to innovate to respond to changing

markets and indeed many attorneys already have begun changing their billing and hiring practices. There was also strong agreement from lawyers practicing more than 10 years, and in a position to employ younger lawyers, that they value the clinical experiences, substantive specialization, legal employment during law school, and skills courses that prepare students for practical application of legal concepts. Lastly, there was a consensus that law students are not well trained in practical legal skills and are not prepared for the business side of the legal profession. See link to survey in Resources below.

Many law schools have expanded practice preparation opportunities for students and also now offer courses about the business of law practice. The two law schools in Utah have already made significant efforts, especially in recent years, to innovate their curricular offerings and to better train students for law practice. Both schools offer extensive clinical programs, which afford students important opportunities for practical legal training. Both schools also have begun to offer more business-oriented courses; BYU offers two very popular courses in the first year of law school in this regard, for instance, and the U of U has for the last several years offered a course to train students how to run a solo or small practice. Further, both schools have initiated mentoring programs in which experienced lawyers can advise new lawyers during and immediately following law school. Compared to national averages, the cost of legal education at both of Utah's schools also is quite affordable.

Nonetheless, given the changes in the national and local legal markets, both Utah and BYU should continue to explore innovative ways to offer practical training to students and to respond to the evolving legal industry and market. Throughout the legal education system, more can be done to prepare students to represent middle class and low-income clients in innovative and cost-effective ways and also to help students interested in that kind of career keep the cost of their education manageable.

## 7 Geographic barriers to the practice of law are fading.

Throughout the history of this country, as decisions were handed down by courts and statutes were passed by legislatures, those laws were printed in books. For decades, if information about the law of a certain state was needed, a person would invariably work with a lawyer in that state who had a library of the laws applicable in that state. And to this day lawyers often give media interviews with a backdrop of such dusty volumes of reported cases. But, that is no longer where lawyers go to find the law. They go to the internet, using online services or state-sponsored sites to access case decisions, court rules, and statutes. And there is no state boundary to such information. A lawyer, or for that matter anyone with an internet connection can instantly access the local rules of practice for the District of Guam, for example. [http://www.gud.uscourts.gov/?q=local\\_rules](http://www.gud.uscourts.gov/?q=local_rules)

Likewise lawyers now work extensively with their clients, with each other, and even with the courts via email, telephone, and videoconferencing. Substantial practices can be conducted without being physically present at the courthouse, in the office or even in the state. Transactional lawyers edit in real time or shoot redlined drafts of complex agreements back and forth across the country as readily as teenagers text selfies to each other.

The regulatory lines have become less distinct as well.

Since 2013, the Utah Supreme Court has adopted the Uniform Bar Exam for admission to the Utah State Bar. This uniform exam is now used in 16 states, including several other Western states, and scores are generally transferable from one state to the next. <https://www.ncbex.org/exams/ube/>. In other words, applicants in all of these states are being tested on the same legal concepts and may be able to gain admission to various other states based on their performance on the test in their home state.

There is also common use, in state and federal courts in Utah and throughout the nation, of *pro hac vice* admissions that allow a lawyer licensed elsewhere to be admitted for a specific case. And Utah has a reciprocity rule that generally allows lawyers from other states to be admitted to the Utah Bar if their state allows Utah-licensed lawyers to be admitted in their state. See Utah Code of Judicial Administration, Rule 14-705.

We are at a point where there are lawyers living in Utah who exclusively represent non-Utah clients and there are no doubt lawyers living and licensed elsewhere who are providing legal services to clients based in Utah. The Bar should study these dynamics and address them in a way that facilitates both good service to Utah clients and good opportunities for Utah lawyers, while not unduly regulating lawyers not actually serving Utah clients.

*“In today’s globally competitive and technologically advanced world, every industry, every occupation and every job feel the impacts of disruption. Utah’s legal services are no exception and the Futures Commission plotted a thoughtful path forward.”*



**NATALIE GOCHNOUR,**  
Associate Dean,  
David Eccles  
School of Business

# CONCLUSION

Mahatma Gandhi<sup>4</sup> said, “The future depends on what you do today.” If access to legal services in Utah for individuals and small businesses is to be improved, it depends not on this report but rather on what actions flow from it. As such, we certainly hope the Bar’s Affordable Attorneys for All (“Triple A”) Task Force, the Courts, the law schools, our legislators and governor, and practicing lawyers will find value in our recommendations and work to implement them. We would also note and acknowledge that many other bar organizations are working on these same issues. We have relied in part on those efforts in doing our work. No doubt new and better ideas will come to the fore as the discussion continues.

For now, we believe we have identified specific steps that should be pursued to assure legal services be provided more efficiently and affordably to Utahns, by better connecting those who need lawyers with lawyers to serve

them. While there is momentum toward moving some elements of the practice of law to other licensed professionals, we would note much of the work can, and should, be performed only by lawyers. The practice of law is much more than filling out forms and citing rules. A good lawyer is a problem solver who has been trained to look deeply at the facts presented and then to help the client avoid more problems later. It is critical for clients seeking legal services to have access to lawyers who are qualified, thoughtful and ethical in how they serve their clients. And it is essential for Utah lawyers to make themselves available to serve those clients. Critically, more can be done to bring them together. The Commission on the Future of Legal Services hopes its recommendations will contribute to this effort. In the words of Mother Teresa,<sup>5</sup> who accomplished more than a few things in her life, “Yesterday is gone. Tomorrow has not yet come. We have only today. Let us begin.”

---

4. Lawyer and practitioner of non-violence.

5. Missionary and servant to the poorest of the poor.

*“While the great majority of attorneys in the state practice along the Wasatch Front, the unique needs of those attorneys practicing in Utah’s rural districts and counties should not be discounted in further addressing the issues discussed in this report.”*



**MAYBELL ROMERO,**  
Harris, Preston & Chambers, LLP  
Logan, Utah

# FUTURES COMMISSION MEMBERS

## Co-Chairs of the Futures Commission:

**Nate Alder**, practicing lawyer, former president of the Bar, and current member of the ABA House of Delegates

**John Lund**, practicing lawyer, Bar commissioner, and member of the Utah Judicial Council.

## Business Representatives:

**C. Scott Brown**, retired executive, Questar Corporation

**James Clarke**, president, Clarke Capital Partners

**Don Gale**, president, Words Words Words

**Natalie Gochmour**, Salt Lake Chamber of Commerce, Eccles School of Business, University of Utah

## Non-profit Representatives:

**Anne Burkholder**, executive director, YWCA of Utah

**Stewart P. Ralphs**, executive director, attorney, Legal Aid Society of Salt Lake

**Shantelle Argyle**, co-founder, co-director, attorney, Open Legal Services, Inc.

## Government and Court Representatives:

**Jacey Skinner**, general counsel, Office of Utah's Governor

**Honorable David Nuffer**, presiding judge of the U.S. District Court for the District of Utah

**Hon. Elizabeth A. Hruby-Mills**, district court judge, Third Judicial District Court, Utah State Courts

**Daniel J. Becker**, court administrator, Utah State Courts

**Mary Jane Ciccarello**, director, Self-Help Center, Utah State Courts.

## Utah's Two Law School Representatives:

**Lincoln Davies**, associate dean, professor, S.J. Quinney College of Law, University of Utah

**D. Gordon Smith**, professor, J. Reuben Clark Law School, Brigham Young University.

## Utah's Small Firm Legal Community Representatives:

**Maybell Romero**, Harris Preston & Chambers, Logan

**T. Christopher Wharton**, Chris Warton Law, Salt Lake City

**Charles Stormont**, Stormont Billings, Salt Lake City.

## Utah's Large Firm Legal Community Representatives:

**Eric G. Maxfield**, Holland & Hart, Salt Lake City

**Scott Young**, Stoen Rives, Salt Lake City.

## Utah State Bar Leadership:

**James D. Gilson**, Callister Nebeker & McCullough, Bar president

**Angelina Tsu**, Zions Management, Bar president-elect

**Robert O. Rice**, Ray Quinney & Nebeker, Bar commissioner

**H. Dickson Burton**, TraskBritt, Bar commissioner

**Curtis M Jensen**, Snow Jensen & Reece, past Bar president

**Janise K. Macanas**, Assistant Utah Attorney General, Bar commissioner

**Heather M. Farnsworth**, Match & Farnsworth, Bar commissioner

**John C. Baldwin**, executive director, Utah State Bar

# RESOURCES, SOURCES, MATERIALS & FURTHER INFORMATION

All of the links below, as well as additional resources, can be found online at: [www.utahbar.org/futures](http://www.utahbar.org/futures). We recommend continued dialogue with community, business and thought leaders, clients and client organizations, government, judicial and legislative leaders, as well as attorneys working on these issues. To that end, the following materials, information and links may prove useful as the conversation continues.

## Utah Resources

Open Legal Services: [www.openlegalservices.org](http://www.openlegalservices.org)

State of Utah Division of Corporation's "One Stop" site for registering small businesses: [https://secure.utah.gov/account/login.html?returnToUrl=https%3A%2F%2Fsecure.utah.gov%2Fosbr-user%2Fui\\_authentication](https://secure.utah.gov/account/login.html?returnToUrl=https%3A%2F%2Fsecure.utah.gov%2Fosbr-user%2Fui_authentication)

State of Utah's Small Business Health Insurance Marketplace: <http://www.avenueh.com/>

Utah State Bar and *Utah Law Review* ONLAW September 27, 2013 Symposium papers on the *Twin Crises in the Law*: <http://epubs.utah.edu/index.php/utahonlaw/issue/view/88/showToc>

Utah State Bar survey to members regarding law students, law school issues (2015): [https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommission\\_Employers.pdf](https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommission_Employers.pdf)

Utah State Bar survey to members of Young Lawyers Division (2015): <https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommissionYoungLawyers.pdf>

## Utah State Courts

Online Court Assistance Program: [www.utcourts.gov/ocap](http://www.utcourts.gov/ocap)

Self-Help Resources: [www.utcourts.gov/selfhelp](http://www.utcourts.gov/selfhelp)

Utah Code of Judicial Administration, Rule 14-705

Utah Judicial Council's Standing Committee on Resources for Self-Represented Parties (including information about the committee, surveys, reports, related articles, the 2007 Justice Gap report, and the committee's various strategic plans): <http://www.utcourts.gov/committees/ProSe/>

Utah Supreme Court Task Force to Study Limited Legal Licensing (including information about the task force, reports, related articles, and reports from Arizona, California, Colorado, Connecticut, New York, Oregon, and Washington): [http://www.utcourts.gov/committees/limited\\_legal/](http://www.utcourts.gov/committees/limited_legal/)

Utah Rules of Professional Conduct

## Additional Resources

Alaska State Bar Unbundled Section (example of bar site with unbundled resources):

[https://www.alaskabar.org/servlet/content/Unbundled\\_Legal\\_Services\\_atty\\_list.html](https://www.alaskabar.org/servlet/content/Unbundled_Legal_Services_atty_list.html)

Arizona (The Judicial Branch of Arizona's mandatory arbitration program to reduce costs):

[www.superiorcourt.maricopa.gov/SuperiorCourt/CivilDepartment/Arbitration/Index.asp](http://www.superiorcourt.maricopa.gov/SuperiorCourt/CivilDepartment/Arbitration/Index.asp)

American Bar Association Legal Profession Statistics: [www.americanbar.org/resources\\_for\\_lawyers/profession\\_statistics.html](http://www.americanbar.org/resources_for_lawyers/profession_statistics.html)

American Bar Association Standing Committee on the Delivery of Legal Services Resource Center

(a rich assembly of information on innovative practice models around the country):

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

American Bar Association Standing Committee on the Delivery of Legal Services Year in Review 2014 (articles and other resources on legal services delivery models especially for unbundled practice and incubators): [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/ls\\_del\\_2014\\_year\\_in\\_review.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_2014_year_in_review.authcheckdam.pdf)

American Bar Association Task Force on the Future of Legal Education Report and Recommendations:

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf)

Susan Beck, *Emerging Technology Shapes Future of Law*, THE AMERICAN LAWYER, August 4, 2014:

<http://www.neotalogic.com/assets/resources/American-Lawyer-The-Future-of-Law-August-2014-Neota-Logic.pdf>

California Civil Justice Strategies Task Force Report and Recommendations:

<file:///C:/Documents%20and%20Settings/mary.ciccarello/My%20Documents/Downloads/California%20Task%20Force.pdf>

Canadian Bar Association Futures Initiative (including reports and other materials): <http://www.cbafutures.org/>

JustiServ (commercial site; example of lawyer directory service): [www.justiserv.com](http://www.justiserv.com)

Uniform Bar Exam: [www.ncbex.org/exams/ube](http://www.ncbex.org/exams/ube)

Cary Spivak, *Bankruptcy petition preparers running afoul of law*, JOURNAL SENTINEL, August 5, 2013: <http://www.jsonline.com/watchdog/watchdogreports/bankruptcy-petition-preparers-running-afoul-of-law-b9967467z1-218451771.html>

All of the links above, as well as additional resources, can be found online at: [www.utahbar.org/futures](http://www.utahbar.org/futures).



# Tab 4

## **AAA Steering Committee & Task Force**

### **Steering Committee**

Justice Durham – [cdurham@utcourts.gov](mailto:cdurham@utcourts.gov)  
Angelina Tsu – [angelina.tsu@zionsbancorp.com](mailto:angelina.tsu@zionsbancorp.com)  
Rob Rice – [rrice@rqn.com](mailto:rrice@rqn.com)  
Nancy Sylvester (AOC Self-Represented Committee) - [nancyjs@utcourts.gov](mailto:nancyjs@utcourts.gov)  
*Committee Co-Chairs (listed by committee below)*

### **Committee Co-Chairs**

#### **Legislature Committee**

Susanne Gustin – [defendmenow@aol.com](mailto:defendmenow@aol.com)  
Michelle Mumford – [michlmumfor@gmail.com](mailto:michlmumfor@gmail.com)

#### **Communications**

Phil Wormdahl – [phil@thesaltlakelawyers.com](mailto:phil@thesaltlakelawyers.com)  
Sammi Anderson – [sanderson@mc2b.com](mailto:sanderson@mc2b.com)

#### **Non-Profit Legal Services Committee**

Shantelle Argyle – [shantelle@openlegalservices.org](mailto:shantelle@openlegalservices.org)  
Chris Nelson – [cnelson@rqn.com](mailto:cnelson@rqn.com)

#### **Community Lawyering Committee**

Jared Hales – [jared@halesfamilylaw.com](mailto:jared@halesfamilylaw.com)  
Charles Stormont - [charles@stormontbillings.com](mailto:charles@stormontbillings.com)

#### **Law School Committee**

Jess Hofberger – [jess.hofberger@law.utah.edu](mailto:jess.hofberger@law.utah.edu)  
Jennie Garner -- [garner.jennie@dorsey.com](mailto:garner.jennie@dorsey.com)

## AFFORDABLE ATTORNEYS FOR ALL

**Purpose:** Purpose a long-term solution to bring needed legal services to the middle class with a short-term component that can be successfully implemented by January 1.

**Objective:** Find a creative solution that increases legal services for the middle class and incorporates the skills, services and needs of underemployed and unemployed lawyers

The idea is to roll the plan out in phases (by practice area). This plan starts with Family Law. The idea would be to add a new practice area each year and to implement a feedback loop that will incorporate any knowledge gained from prior years to improve existing and new programs.

1. Short Term Action Plan Outline
  - a. Co-chairs
    - i. Rob Rice
    - ii. Angelina Tsu
  - b. Judicial Liaison
    - i. Justice Durham
  - c. Committee Members
    - i. Committee Members will act as chairs for the following Committees:
      1. Open Legal Concept
      2. Community Lawyering
      3. Communications
      4. Legislative
      5. Law Schools
2. Open Legal Concept
  - a. Engage Counsel to Create Packet for Non-Profit Law Firm Model
    - i. Utilize older lawyers as mentors
    - ii. Explore partnering with law schools for clinic third year that is required
  - b. Engaging Counsel to Get the Documents up and Running
  - c. Utilizing the Bar Offices for meetings with clients
    - i. Get an electronic calendaring system in place
    - ii. Lawyers can pay a fee to use Law & Justice Center
3. Community Lawyering (starts with Family Law, but we would expand it to add a new area of law every year)
  - a. "Community Lawyering Class" Modeled after Chris' Acupuncture Center and Wayne's Divorce Clinic
    - i. Phased Rollout
      1. Pilot in SLC
      2. Uses Electronics that are being installed in Court for CLEs to allow people to attend remotely from rural areas

1. Renaming UPL to Consumer Protections
5. Legislative Component
  - a. Support from Legislature
    - i. Talk to Senators Hillyard and Weiler
    - ii. Get support of lawyer legislators
  - b. Expanding Third-Year Practice Rule
    - i. Change Law School Requirements to require 150 clinic hours
  - c. Small Claims Court
    - i. Raise Small Claims limits
      1. Look at Discovery Rules to see if there is a logical dollar amount
    - ii. Electronic Dispute Resolution
      1. Ebay Model of Conflict Resolution
  - d. Asking for funding
    - i. Optimization of searches
    - ii. Ask for funding for the Bar's Open Legal (matching/we would fundraise)
    - iii. Centralized Website
  - e. Engage thought leaders like Senator Urqhart in the Process
    - i. Reach out to see if he will sponsor this legislation
      1. Raising Small Claims Limit
      2. Allowing Electronic Dispute Resolution for Small Claims
      3. Funding for Bar's Open Legal Development Project
      4. Expanding Third-Year Practice Rule to include 2Ls
    - ii. Include him in the feedback loop
6. Law School Component
  - a. Incubator program
  - b. Check Current Requirements
    - i. Explore Potential of Additional Requirements
    - ii. Internship hours
    - iii. Partnering with Bar's new "Open Legal" Program
      1. Some sort of joint clinic between the law school and the bar
7. Unbundled legal services (review rules to make sure the rules of professional conduct line up with allowing more unbundled legal services)