

**BIVENS/BUTLER WORKGROUP RECOMMENDATIONS RELATED TO THE THIRD CHARGE TO THE TASK FORCE IN AO 2018-111:** “Examine and recommend whether other non-lawyers, with specified qualifications, should be allowed to provide limited legal services, including representing individuals in civil proceedings in limited jurisdiction courts, administrative hearings not otherwise allowed by Rule 31(d), and family court matters.”

At this time, the workgroup has developed the following three recommendations for the task force’s consideration and vote for inclusion in the final report.

**RECOMMENDED PROPOSAL 1:**

The Arizona Supreme Court should develop a program for licensed non-lawyers, qualified by education, training, and examination, to provide legal services to clients within specific limits. Within the scope of practice to be determined in the future, [name] should be free to provide legal advice and to appear in judicial or administrative proceedings with or on behalf of clients.

The task force recommends that the Supreme Court appoint a steering committee to determine: (A) areas and scope of practice; (B) rules and discipline, (C) education, examination and licensing, and (D) assessment and evaluation of the proposed program. The task force recommends that family law be one of the areas of practice in which [name] be approved to provide legal services. However, the task force recommends that a steering committee consider all limited jurisdiction civil practice areas, limited jurisdiction criminal matters involving no incarceration, and administrative law as additional subject matter areas in which [name] could provide meaningful legal services to persons who cannot hire a lawyer.

A steering committee should include lawyers experienced in the subject area, members of the judiciary who have presided over cases involving the subject area, educators, administrators, and public members. Consumers of legal services and potential consumers currently excluded from most avenues of legal services due to economic barriers should be included in the steering committee processes. Guiding principles should include access to justice, service to the public, economic sustainability, professional competence and accountability, and respect for our system of justice.

The task force itself has considered the topics of: (A) areas and scope of practice; (B) rules and discipline, (C) education, examination and licensing, and (D) assessment and evaluation of the proposed program. In its work, the task force determined that developing the details of each of these practice areas was beyond the scope of expertise and knowledge of the membership and required more time than allowed by the task

force's short duration. Therefore, the task force offers the following recommendations for consideration and refinement by a steering committee.

#### (A) AREAS OF PRACTICE AND SCOPE OF PRACTICE

- Familiarize itself with the report and recommendation of the Delivery of Legal Services Task Force, consider the practice areas explored by the task force, and address questions raised by the task force about areas of practice and scope of practice. The steering committee should also explore and resolve questions that come up in its discussions.
  
- The task force recommends consideration of the following areas of practice:
  - family law
  - administrative law in areas not otherwise addressed by Arizona rules
  - limited jurisdiction court civil cases
  - basic transactional work related to contracts, business formation
  - criminal law matters in limited jurisdiction courts where defense counsel is not otherwise provided and in matters where incarceration is not a penalty, including where the prosecution and court have waived a penalty of incarceration
  - other areas of practice that the steering group determines are appropriate

The task force recommends consideration of the following issues related to scope of practice for each of the practice areas listed above:

- Providing pre-litigation education about legal rights and responsibilities (for example, counseling tenants about how to avoid eviction, counseling debtors about avoiding debt collection litigation)
- Forms practice – scope of advice during completion of forms by self-represented litigants versus representing clients and filing forms on their behalf
- In-court advocacy versus attending court hearings (having a “seat at the table”)
- The task force recommends that the steering committee explore a path from certified Legal Document Preparer to [name], from experienced paralegal to [name], and from lay legal advocate to [name].

#### (B) RULES AND DISCIPLINE

The task force recommends that a subcommittee develop rules and regulation on ethics, scope of practice, and discipline for unauthorized practice of law and ethical violations. In general, the task force recommends that rules setting forth scope of practice and ethical rules be approved by the Supreme Court as are similar rules for attorneys. The task force

further recommends that matters of discipline for [name] be overseen by the State Bar of Arizona.

### (C) EDUCATION, EXAMINATION AND LICENSING

A subcommittee on licensing and examination should develop rules, regulations, and administration processes for examination and application for license. Examination and application necessarily involve understanding of education and training requirements. Therefore, the task force recommends that one subcommittee should consider all of these topics. The task force recommends, based on requirements for lawyers and other legal paraprofessionals in Arizona, that regulations in the following areas be considered:

- Application and Licensing
  - Application and fee
  - Annual licensing fee
  - Background check (character and fitness)
  - Continuing education requirements (CLEs)
  - Disclosure of status as non-lawyer
  - Initial and annual costs of licensure
  - Oath of Office
  - IOLTA Account
  - Complaint and discipline process
- Examinations
  - Develop examination
  - Set policies on passing scores
  - Set policy on number of examination attempts allowed
  - Delivery of examination
  - Cost of examination
- Develop the curriculum and academic requirements to meet the requirements for obtaining a license to become a [name].
  - The task force recommends the following consideration for academic credentials be considered:
    - Juris Doctor degrees
    - Domestic or foreign equivalent to United States J.D. degree
    - Completion of ABA accredited paralegal degree or post-degree certificate coupled with a national certification through one of the professional paralegal certification examinations.

- Bachelor of Law or Master of Laws with specific credits in subject matter areas related to areas approved for scope of practice
- Certificates issued by an ABA accredited law school, for specific credits in subject matter areas related to areas approved for scope of practice
- In developing curriculum and academic requirements, the steering committee should consider these questions:
  - What are the pre-requisites for enrollment in an educational program designed for [name]?
  - What are the learning objectives; what does a person need to know to engage in the limited practice of law?
  - What model for delivery of curriculum will allow individuals from all areas of Arizona, rural and urban, to obtain the required educational and academic prerequisites for licensing?
  - Will program curricula be reviewed by the Arizona Supreme Court?
  - How will participants in educational training be tested on their learning competencies within the institution?
- Questions the task force did not have time or expertise to resolve.
  - Should a minimum GPA be required?
  - Should a minimum number of hours in legal ethics be required
  - Should only ABA accredited JDs be accepted or all J.D.s?
  - Are there equivalent credentials from other states or nations that should satisfy the education requirement?
  - Should there be an experiential learning requirement? If so, should it be part of an academic program?
  - Should years of experience as an LDP or paralegal substitute for any experiential requirement, if such a requirement is required?

#### (D) ASSESSMENT AND EVALUATION OF THE PROGRAM

The task force recommends that a steering committee develop methods for measuring the appropriateness, effectiveness and sustainability of a [name] program. Program goals should be to increase access to justice and to protect consumers of legal services.

(1) APPROPRIATENESS

- Measurement of whether the authority of [name] make a difference in access to legal services.
- Assess whether the education, licensing, and regulations required to obtain a license enabled licensed persons to perform tasks competently.
- Determine whether the education, licensing, and regulations required to obtain a license sufficiently protect consumers.

(2) EFFECTIVENESS

Measurement of whether [name] are indeed competently performing their authorized tasks.

(3) SUSTAINABILITY

Determine whether the program is sustainable including:

- Whether the education, licensing, and regulation costs to the licensed individual is durable
- Whether key stakeholders, particularly courts and customers, perceive value.
- What avenues of legal service delivery can incorporate services by [name].

## **RECOMMENDED PROPOSAL 2:**

In spring 2019, the Innovating Legal Services course offered by the Innovation for Justice Program the University of Arizona James E. Rogers College of Law framed its course objective as “should Arizona create a new tier of civil legal professional, and what could that mean for victims of domestic abuse?” The course objective was the direct result of the Arizona Supreme Court’s formation of the Task Force on the Delivery of Legal Services. Students in the course partnered with Emerge! Center Against Domestic Abuse and collaborated with community participants including domestic violence survivors, Juris Doctor and Bachelor of Arts in Law students from the University of Arizona, state bar representatives, members of the bench and bar, and other stakeholders in their process.

The result of the students’ work is presented in a report titled [\*Report to the Arizona Supreme Court Task Force on Delivery of Legal Services: Designing a New Tier of Legal Professional for Survivors of Domestic Violence\*](#). Course co-instructors Stacy Butler and Jeffrey Willis shared the course’s report along with a [video presentation](#) at the task force’s May meeting. The report demonstrates that domestic violence service providers like Emerge! serve thousands of domestic abuse survivors a year. Lay legal advocates employed by agencies like Emerge! provide information and explain options and rights within all aspects of the legal system, but currently cannot provide legal advice. The Innovating Legal Services course developed a proposal for a pilot program that would train lay legal advocates to become licensed legal advocates (LLAs), able to legally advise participants as they navigate the Arizona civil legal system. The proposed pilot removes the barrier imposed by unauthorized practice of law restrictions, giving the LLAs ability to handle specifically-identified legal needs of participants at Emerge! and enhancing those participants access to justice. The Innovating Legal Services course report identified above details the scope of service LLAs would be allowed to provide as well as the training and education requirements a lay legal advocate would be required to complete to become an LLA. The report further details licensing and regulation requirements, bench, bar, and public education about LLAs, and an evaluation process for the pilot.

The task force recommends that the Supreme Court issue an administrative order establishing the Licensed Legal Advocate Pilot Program developed by the Innovation for Justice Program, Innovating Legal Services course at the University of Arizona James E. Rogers College of Law to serve domestic violence survivors and assist those survivors in navigating the legal system.

A draft administrative order can be found in Appendix \* of this report.

**RECOMMENDED PROPOSAL 3:**

The task force reviewed various court coordinator and court navigator programs around Arizona. The task force also reviewed the report of the Justice Lab at Georgetown Law Center, titled [Nonlawyer Navigators in State Courts: An Emerging Consensus](#). Programs reviewed demonstrate that well-trained and appropriately supervised non-lawyers can perform a wide array of tasks while enhancing the effectiveness of and building trust in the courts, helping self-represented litigants understand and manage their cases.

The task force recommends that the Supreme Court pursue means to advance local courts establishment of non-lawyer staff who are located within the court and who provide direct person-to-person assistance to self-represented litigants.