

## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Wednesday, August 14, 2019

Room 119 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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**Present:** Justice Ann Timmer; Chair; Victoria Ames; Robyn Austin; Betsey Bayless; Justice Rebecca Berch (ret.); Don Bivens; Stacy Butler; Dave Byers; Whitney Cunningham; Judge Maria Elena Cruz; Jeff Fine; Paul Friedman; Tami Johnson; Judge Joseph Kreamer; John Phelps; Judge Peter Swann; Billie Tarascio; Guy Testini; Mark Wilson

**Absent:** Robyn Austin; Diane Culin

**AOC Staff:** Theresa Barrett; Sabrina Nash; Kathy Sekardi

**Guests:** Justice Scott Bales (ret.); Patricia Sallen; Lynda Shely; Chris Groninger, Arizona Bar Foundation; Judge Lawrence Winthrop, Arizona Court of Appeals, Division 1

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### I. REGULAR BUSINESS

The eighth meeting of the Task Force on the Delivery of Legal Services was called to order at 12:00 p.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from July 11, 2019, were provided to members in advance. Justice Timmer asked if there were any edits. A member moved to approve the minutes, and the motion was seconded. The minutes were approved unanimously.

#### Recommendation for Title for New Tier of Legal Service Providers as Recommended by Task Force.

Staff to the task force had gathered recommendations of names for the new tier. After conducting surveys of task force members and various groups, such as paralegals and LDPs, the two titles with the highest percentage of support were *Limited License Legal Technicians* and *Limited License Legal Practitioner*. Justice Timmer noted that one of those titles was the same initials as the Washington State Limited License Legal Technician program.

Judge Swann noted that it seemed unfair to have “limited license” in the title, as that portion of the title seemed self-effacing. Mr. Bivens noted the goal was to ensure these persons were not confused with lawyers, so perhaps dropping the “limited” from the title would be more palpable. Discussion indicated that other presentations from the Bivens/Butler workgroup that would be presented later in the meeting might influence the vote, and it was asked if vote on this item could be deferred until later in the meeting. It was agreed the matter would be deferred.

After the further discussion of other proposals, Judge Swann made a motion, seconded by Mr. Bivens to adopt the term *Limited License Legal Practitioner* for use in the report for the new tier program. The motion passed 15 votes in favor, 1 vote against.

#### Demonstration of the Limited Scope Representation page on AZCourtHelp.org website.

Kathleen Cole of the Arizona Bar Foundation gave a demonstration of the website. Ms. Cole shared that on the website there were already a few items that addressed limited scope representation, but there was not a comprehensive page on the various types of legal services. She explained that to discuss limited scope representation, it was necessary to include other types of services, such as full-service representation. As such, the page that was designed included the various types of legal services, including a subpage that focuses on limited scope representation. Each types of service subpage gives basic information about service, benefits, and limitation of that types of service. The pages are written in 7th grade language level, as studies have shown that is the average reading level of a self-represented litigant.

Mr. Fine recommended that the page have a paragraph that explains what a self-represented litigant is and what the page is designed to give information about. Ms. Cole welcomed the recommendation and shared that Powtoons videos would accompany the page as well. Mr. Bivens noted that since the task force was recommending new tiers of legal service providers, if the webpage focused on services provided by lawyers, perhaps it would be better now to make that clear in the language used on the page. It was also recommended that the gender-neutral term for lawyers not be “it.”

Judge Cruz asked when the page could be made public. Ms. Cole indicated that when the next edits were made, and it was reviewed. The page could be launched by the end of the month if content was approved. It was also noted that from May to July the website was visited 60,000 times. Ms. Cole also noted the webpage is responsive designed to be accessed on a mobile device.

#### Arizona Bar Foundation Domestic Violence Legal Advocate Preparer

Chris Groninger of the Arizona Bar Foundation gave a presentation on a proposal for a pilot program for expanding the role of lay legal advocates to allow them to become either certified legal document preparers – with some modifications to that program, or to at least be able to provide document preparation under a separate authority. The goals of the pilot program are to increase access to free legal help for domestic violence victims throughout Arizona; create a path using existing systems and partnerships to allow lay legal advocates a greater role in their advocacy; define their ability to help with court forms and their role as an advocate; relieve demand from legal aid programs to complete court forms; improve court form filing accuracy; self-represented litigant outcomes; access to legal aid and volunteer lawyer help; and strengthen court, judicial staff, lawyer, and lay legal advocate partnerships and collaboration throughout Arizona. The idea for the proposal came about to alleviate the backlog that legal aid agencies have in providing services to victims of domestic violence. Usually legal aid services are limited to some basic advice on how to represent oneself and document preparation help. Currently legal aid services rarely involve attorneys going with persons to court because of the volume of persons that legal aid serves.

Ms. Groninger's presentation explained that the expanded role of lay legal advocates, they would be supervised by attorneys, receive education, and they would be licensed and certified. The entirety of the scope of what these individuals could do would be to draft domestic violence-related legal forms. They could not do research or analysis nor could they give legal advice. They could appear in court in a supportive manner, but not as an advocate for the client. Ms. Groninger explained that this in part was due to the nature of legal aid organizations and the type of insurance they carry. The process for the 24-month pilot, including evaluation of the pilot, was discussed. Ms. Groninger sought a vote of the task force in support of the program, and inclusion into the final report and recommendations of the task force.

Members discussed the proposal and asked questions of Ms. Groninger. The scope of work that would be allowed was inquired about and discussed further. Distinctions between the University of Arizona, Innovation for Justice (i4J), Licensed Legal Advocate pilot program recommendation and the Bar Foundation's proposal were discussed. Ms. Butler explained that the i4J program was a new tier of legal service provider where legal advice would be allowed and there would be a more advanced education, testing, and licensure requirement. Ms. Butler commended the alignment of the Bar Foundation's proposal with the LDP program, noting the program differs from the i4J program in that survivors of domestic violence would be able to receive legal document preparation services through a nonprofit but not legal advice (the i4J pilot licensees would be able to give limited legal advice), a key difference in the two programs. Ms. Groninger also clarified that the Bar Foundation proposal limited the scope of documents that could be prepared compared to what LDPs do. Persons under the Bar foundation pilot would only be allowed to do the work for a non-profit agency (not for a fee) as an example of differences between the Foundation's proposal and the LDP program. There was further discussion of the differences between i4J program and the Foundation's proposal and the demographic served, and the benefits of multiple pilots in the arena of domestic violence services.

A motion was sought to move the pilot forward and include it in the task force's final report. Justice Berch moved the motion. The motion was seconded by John Phelps. The motion passed unanimously.

#### Update from Lynda Shely regarding ABA and California Task Force.

Ms. Shely gave an update on California's Task Force looking at ethical rule changes that would allow limited alternative business structures. The California Task Force has put out some broad concepts and some options but are not at a point of detailed change proposals. At this point they are merely taking input on those broad changes as far loosening rules on passive investment and non-lawyers partnering with lawyers. Ms. Shely noted that Arizona is further along in the process on this topic than California.

Ms. Shely also gave an update on Utah, who is further along than California. Utah is considering a two-year pilot regulatory program. In Utah the Supreme Court oversees the Bar. The general proposal is that the Supreme Court would also oversee an independent regulator that would be a non-profit. The independent regulator would offer regulatory services for everything except lawyers and law firms. The details of this proposal are not worked out yet. But it is clear the focus is risk-based analysis looking at the level of risk to the consumer versus the level of benefit to the consumer and then developing a regulatory framework from that information. Utah's task force

will be issuing a report in the next two weeks. She also shared information about results of Utah's survey of consumers.

Justice Timer asked if Ms. Shely knew if Utah was thinking of developing rules or would be regulating entities on a case-by-case basis. Ms. Shely noted Utah's regulation would be on a case-by-case basis and that since it was a two-year pilot program, they determined that after the pilot, existing alternative business structures would be allowed to continue, but new ones would not if the program is not adopted on a permanent basis. Ms. Shely clarified that the independent regulator would act under the guidance of the Supreme Court.

## **II. WORK GROUP BUSINESS**

### **Presentation by the Cruz Workgroup**

Judge Cruz first shared an update on the workgroup's discussion on entity regulation. She shared that the workgroup's discussion included whether to recommend entity regulation in the first place. That concept involves considering who would be the regulating entity – an independent regulator, the Court, the State Bar; whether there would be insurance requirements, and would that only apply to the entity or lawyers as well; and what the regulatory structure and costs would be, if any. As an example of the latter issue Judge Cruz shared the difference between the more restrictive entity regulation in the UK versus the more permissive regulation in Australia.

Next Judge Cruz discussed the topic of unbundled legal services (or limited scope representation). Judge Cruz shared the workgroup determined there was no need for amendments to the existing rule permitted limited scope representation. The workgroup has focused on how to make limited legal services better known to the public, bench, and bar. The workgroup looked at Washington D.C.'s administrative order on unbundled services. Even though there is a rule in place in Arizona permitting unbundled legal services, an administrative order from the court would endorse and promote the practice and give the lawyers something to turn to if denied ability to withdraw from a matter even if they had a limited scope representation agreement. It was suggested there be forms accompanying the administrative order, to offset the existence of specific forms used in certain practice areas (noting that may be helpful to lawyers who want to engage in the limited scope representation in areas of law where it is not yet a common practice). Judge Cruz also indicated the workgroup proposed that a certificate of completion of limited scope representation be created and be required to be filed to ensure parties and the court know when representation has ended.

The workgroup also discussed additional education of the bench, bar, and public on what limited scope representation is. Suggestions were made to require information on the topic in new judge orientation and that the bar have more information on the State Bar webpage. She noted the prior presentation on the education to the public efforts through the AZCourtHelp.org website.

Justice Timmer noted at a prior presentation on the work of the task force, it was noted by the audience in that presentation that lawyers are scared to enter into limited scope representation because they are afraid they will not be let out of the representation when they complete the limited services agreed upon. Judge Kreamer added that there is inconsistency with judges and how they treat those agreements, and he suggested that administrative orders do have the effect of making judicial practices more uniform across the state. He noted the rules direct lawyers, but

administrative orders give the judiciary direction on uniformly handling limited scope representation appearances by attorneys, what the process is, and how the judges should handle these types of representative capacities. He also noted that the certificate of completion will help avoid some of the confusion that has been antidotally noted by lawyers about continuing to receive filings from the court, being required to appear, and otherwise being held to be involved in a case even after completing the limited scope representation. He noted a certificate of completion would allow the bench and court administration and clerks to know when an attorney is no longer involved in a case. Tami Johnson noted that in her opinion the requirement of filing a certificate of completion would likely allow attorneys she works with to assist in bankruptcy matters on a pro bono basis feel more confident they would not be required to represent the client beyond the limited scope representation they entered into.

A motion to recommend that the Arizona Supreme Court issue an administrative order consistent with the discussion and that the task force recommend education of the bench and bar and recommend that a rule petition be filed to require that a notice of completion be filed by attorneys at the end of a limited scope representation. Motion was seconded by Don Bivens. The motion passed unanimously.

#### Presentations by the Bivens/Butler Workgroup

Stacy Butler shared that the workgroup had 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 workgroup proposed including a recommendation that, generally, the Supreme Court pursue means to advance the establishment of locale appropriate navigator or court coordinator-types of programs where non-lawyer staff who located within the court could who provide direct person-to-person assistance to self-represented litigants in the form of helping litigants understand the processes and procedures and move through the court itself.

Discussion was had about the great variety of navigators and coordinator programs both within and outside of Arizona. It was also clarified that what was being sought was that the Supreme Court advocate for local courts to identify and embrace these types of programs. Judge Kreamer indicated that any expansion of navigator program should include consideration of ethical issues that may arise from court employees providing certain kinds of services.

It was also clarified that there was not a pilot program sought, was what sought was an active role of the Supreme Court to advocate for these types of programs in courts that are located within the court to advance access to the courts. Judge Kreamer reiterated, it would be helpful to have definition of the extent of services a court employee can give so that courts that may implement such a program to understand the boundaries that the navigators or coordinators can work within.

A motion was made to recommend 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 in the form of helping litigants understand the processes and procedures and move through the court itself. Second, by Diane Culin. It was noted that Arizona is already road mapping processes step by step, using as an example detailed

information on AZCourtHelp.org. Staff, Kathy Sekardi, explained that the Question and Response Handbook the AOC developed for court employees to use in answering questions from the public had been recently updated and that information was further translated into webpages on AZCourtHelp.org. Jeff Fine noted that the Commission on Access to Justice did a great deal of work in clearing up the line between giving information versus giving advice and not only are step-by-step process-related information webpages in existence, but videos walking the public through, for example, the eviction process were available. He noted these do not steer a person toward a specific direction but inform about options. He further explained that court employees no longer have to worry about going too far, the Commission's work created definitions and scripts that can be used. Mr. Phelps noted that the Commission's work did focus on just eviction actions, but to Ms. Butler's point, that process provides a roadmap of how to expand these types of services available to the public. The motion passed unanimously.

Next Mr. Bivens presented several recommendations of the workgroup related to the certified legal document preparer (LDP) program. He noted that the recommendations were in pages 7-11 of the attachments to the amended agenda. The first recommendation is a one word change to the ACJA § 7-208(J)(5)(b) to permit an LDP to respond to direct questions or communications from a judge, as follows: *A legal document preparer shall not assist a consumer in a court proceeding unless otherwise authorized by the court.* Mr. Bivens made a motion that this amendment be recommended in the final report. Justice Berch seconded the motion. Judge Swann offered that allowing LDPs to speak in court was incongruent with not allowing them to give legal advice, not allowing them to ghostwrite pleadings, and not allowing them to conduct legal research to draft substantive legal documents (as opposed to completing forms). The motion passed 15 in support and 1 opposed.

Mr. Bivens next discussed the recommendation that the Arizona Supreme Court develop a campaign to educate the bench, the bar, and the public on the existence of certified legal document preparers and the scope of their authorized services. Components of such a campaign might include presentations at judicial conferences, bar conventions, CLE programs, and articles directed to the public and the legal profession. He made a motion to include the recommendation in the final report. The motion was seconded. The motion passed unanimously.

The next recommendation was that the Arizona Supreme Court and bar associations develop educational programs directed to the needs of legal document preparers, particularly in rural areas. Mr. Bivens moved the recommendation be adopted, Paul Friedman seconded. The motion passed unanimously.

Mr. Bivens then presented a recommendation to amend Arizona Code of Administration § 7-208 to clarify the extent to which LDP's can conduct legal research in the performing their services. The clarifications are:

- a.) A legal document preparer may conduct legal research to develop a general understanding of legal principles, statutes and definitions relevant to the completion of legal forms or documents for a consumer.
- b.) A legal document preparer cannot conduct legal research for the purpose of advising a consumer on legal options or potential arguments that might support a particular legal option.
- c.) A legal document preparer cannot conduct legal research for purposes of preparing or supporting a consumer's substantive pleading, motion, or brief to any court. A legal document preparer cannot prepare or assist in preparing a substantive pleading, motion or brief to be filed in any court.

Motion to recommend the proposal by Mr. Bivens. Seconded by Paul Friedman. Discussion was had on the matter. Judge Swann pointed out inconsistency between parts (a) and (c) of the proposal. His point was this proposal did not add clarification and perpetuates a legal fiction that LDPs do not give legal advice or practice law beyond completion of forms or assisting clients to identify and complete forms. The discussion became one of what the LDP program was designed to be versus what certified LDPs actually do currently. It was agreed that the majority position of the task force was that the LDP program should exist. The opposition that was voiced was that the rules should reflect what is or is not allowed – in the context of what is being done by LDPs today.

It was pointed out the original concept of LDPs was that they would help fill out pre-existing forms and therefore they would not need to do legal research. However, as time went on, it became evident that LDPs were needing to assist a client in seeking some kind of relief where there was no pre-existing form. So that, in turn, led to them needing to draft documents that were not form based. That practice continued to progress resulting today in LDPs doing highly sophisticated document drafting, such as appellate briefs.

The discussion moved on to inquire if the rule clearly defines “form” and if appellate briefs and substantive motions are excluded from that definition. A member who owns an LDP business, stated the current rules are not clear and that everyone, LDPS, the public, the bench, and LDP Board need guidance. It was also discussed that the lack of complaints to CLD and the LDP Board about LDPs drafting substantive motions, appellate briefs, and answering civil complaints are not a gauge for whether it is happening or not.

The chair clarified that LDPs need more guidance and that the task force needs to provide its recommendation to guide the court on what it thinks LDPs should and should not be doing. The chair pointed out that it appears that is what the proposal presented was trying to do.

The public was allowed to speak on this topic before a vote was considered. A member of the public disagreed that the original intent was to complete forms. Rather it was to allow drafting of any kind of legal document and any research needed to do so. That public member supported all the recommendations of the workgroup, except the portions that prohibit legal research to complete substantive motions because it harms the public by preventing the public from having assistance with certain aspects of their case.

Another member, who led the LDP program early in its existence and who is a certified LDP, discussed some of the history of what the LDP program was meant to be and shared that in her experience the role was not limited to forms, but it also was limited to preparing documents without providing an opinion or making a decision that required legal advice. She gave examples of how, in her business, that works and how LDPs, under ACJA § 7-208 can prepare a document that is not a form but has to avoid doing research that would entail suggesting a legal direction, legal outcome, or giving advice about whether to pursue the legal strategy the form represented. This individual indicated the proposal before the task force clarified the scope of work allowed by LDPs. A task force member asked if the authority of LDPs should be expanded. The member of the public stated no, because the new tier previously proposed and voted upon by the task force would create a tier of provider to do that work.

Another member of the public spoke on concerns about drafting documents where a form does not exist, but statute or other law states what must be in the document. An example given was a document for a change of custody proceeding where the LDP researches the statute and points the client to the statute. The public member stated the recommended proposal appeared to state that conduct would not be permitted by an LDP because the research may point the client in a legal direction.

A member of the task force responded that the portion of the proposal that restricted the types of documents that can be drafted and the ability to conduct legal research is a scaling back of a program that has provided greater access to the courts and provided legal assistance to members of the public that cannot afford or otherwise obtain an attorney.

The chair asked where the task force was on the motion. Mr. Bivens, who made the motion originally withdrew the original motion and made a new motion seeking support from the task force that the workgroup bring back language at the next meeting clarifying terms and language of LDP scope of authority in ACJA § 7-208(f). Motion was seconded by Paul Friedman Approved unanimously.

Mr. Bivens then moved on to the next LDP-related proposal which was to allow LDPs to work with lawyers, which aligns with the task force's recommendation, previously approved, to eliminate ER 5.4. Mr. Biven's moved to approve the proposal, without subsection (i), as presented in the meeting packet. Paul Friedman seconded the motion. The motion passed unanimously.

Finally, Mr. Bivens presented a recommendation that complaints against members of the public who were not certified LDPs, but who were acting as an LDP be handled by the Presiding Disciplinary Judge versus being handled by the Superior Courts. Mr. Phelps pointed asked if the PDJ had authority over such matters and if not if legislation needed to be sought to ensure that authority existed. Justice Berch pointed out the Supreme Court constitutionally had jurisdiction over the practice of law, and these matters involved claims of UPL. It was suggested that further investigation and legal research was needed. Mr. Phelps clarified that the PDJs authority is limited, so it needs to be determined if the Court can expand the PDJ authority. A motion was made to approve this proposal I concept, pending further investigation. The motion was seconded by Paul Friedman. The motion passed unanimously.

### **III. OTHER BUSINESS**

#### Call to the Public

The meeting concluded with a call to the public. There were no additional comments from the public.

Justice Timmer shared that the next meeting would have additional proposals to clarify those not fully decided upon at the meeting. In addition, the draft report would be reviewed during the meeting. She shared the task force's report was to be presented to the Arizona Judicial Council (AJC) in October therefore there would be no October meeting. The November meeting would remain on the calendar in case the AJC requested further action by the task force.

#### Next Meeting:

Thursday, September 19 14, 2019, at 10:00 a.m. in Room 329/330

#### Adjournment:

The meeting adjourned at 3:00 p.m.