

## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Monday, January 7, 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 Austen; Betsey Bayless; Justice Rebecca Berch (ret.); Don Bivens; Stacy Butler; Dave Byers; Diane Culin; Whitney Cunningham; Judge Maria Elena Cruz; Paul Friedman; Tami Johnson; Judge Joseph Kreamer; John Phelps, Judge Peter Swann; Billie Tarascio; Guy Testini; Mark Wilson

**Absent:** Peter Akmajian; Jeff Fine

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

**Guest Presenters:** Chief Justice Scott Bales; Professor William Henderson; Mr. Will Morrison

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### I. REGULAR BUSINESS

The first meeting of the Task Force on the Delivery of Legal Services was called to order at 9:01 a.m. Justice Timmer, Chair, welcomed the membership, guest speakers and others in the room. After reviewing AO 2018-111 and the charge of the task force, members introduced themselves.

Staff to the task force, Jennifer Albright, reviewed the business rules and proxy form with the membership. Members were shown where on the task force webpage the documents were available.

### II. PRESENTATIONS

#### Professor William Henderson

William D. Henderson, Professor & Stephen F. Burns Chair on the Legal Profession, Indiana University Maurer School of Law, presented on the legal market landscape. Professor Henderson conducted a study of the legal market for California and the report from his study was available through the meeting materials.

Professor Henderson stated that the legal profession is facing a challenge due to the cost of traditional legal services going up, access to legal services is going down, law firms are not growing, and attorneys who serve ordinary people, not large business or corporate interests, are struggling to earn a living. Professor Henderson shared that he divided the legal profession into two groups, one serving individuals (called PeopleLaw) and one serving large businesses (Organizational Clients). The PeopleLaw sector has been declining since the 1970s and the number of self-represented persons has been climbing. At the same time corporate clients have

increasingly in-sourced legal services or turned to non-traditional law firms, thus negatively impacting the growth of traditional law firms.

Professor Henderson concluded that the legal profession suffers from lagging legal productivity. For legal productivity to rise, lawyers need to be able to partner with professional of other disciplines. Professor Henderson posited that changes to legal ethics rules that currently prohibit non-lawyer investment and non-lawyers partnering with lawyers would lower the cost of legal services and increase legal productivity. Professor Henderson answered questions from the task force membership throughout his presentation.

#### Will Morrison

Will Morrison, the Strategic Policy Counsel of the Law Society of Ontario gave a presentation on Ontario's licensed paralegal program. Mr. Morrison related that prior to licensing Ontario allowed limited ability of "agents" to appear in court, but these there was no regulation of those persons. It was determined that regulation would be a benefit to the public and the legal profession and Ontario began licensing paralegals in 2007. Ontario structured its paralegal licensing program in the same fashion as its attorney regulation program. The Law Society of Ontario licenses both attorneys and paralegals.

Mr. Morrison discussed the education, experience, continuing education, ethics, trust account, insurance, and other licensing requirements for paralegals. He also discussed the testing, background check, and disciplinary process Ontario has put in place.

Mr. Morrison shared information on the roll-out of the licensing program, including grandfathering of persons meeting educational and experience requirements. He also discussed the scope of practice allowed by paralegals and answered questions from the task force membership throughout his presentation

#### Chief Justice Bales

After the presentations, Chief Justice Scott Bales took a few minutes to welcome the task force membership and thank them for their service. He discussed the role of the task force considering the Supreme Court's current strategic agenda.

#### Mark Wilson

The last presentation of the morning was given over lunch by Mark Wilson, Director, Certification and Licensing Division of the Arizona Administrative Office of Courts (AOC), on the certified legal document preparer program (LDP). Mr. Wilson is also a member of the task force.

Mr. Wilson discussed the requirements for becoming a certified legal document preparer including education requirements, experience requirements, testing, background checks, scope of practice, and complaint and disciplinary process

### **III. WORK GROUP BUSINESS**

#### Formation

Justice Timmer explained that the task force has been divided into two work groups. Work group leads were Don Bivens and Judge Maria Elena Cruz. The Bivens led workgroup would focus on the first 3 charges of AO 2018-111 and the work group led by Judge Cruz would focus on the last 3 charges.

Work groups then broke out to discuss their charges, generate ideas, and discuss a path forward. Members reconvened after meeting for about 90 minutes to report back to the task force.

### Report Out

Judge Cruz reported the work group discussed the topic of unbundling of legal services and determined that based on national information, initial focus would be on the concepts of ghostwriting and notices of limited appearance and withdrawal. Nationally, these two topics are where the bulk of work has been done to improve the provision of unbundled services. Judge Cruz then reported that the work group determined that the topic of alternative business structures was likely to be where the most time was spent researching and discussing ideas. She noted that Arizona could look to Washington D.C., England and Australia to see what they had done and noted that California recently convened a committee to look at the topic as well.

Don Bivens reported that the work group heard from John Rogers, of the Supreme Court Staff Attorneys office. John shared a draft re-styled Rule 31 of the Arizona Rules of Supreme Court. John explained the draft and new organization, noted areas where the task force would need to make further decisions and answered questions. The work group also heard from Judge Gass, Superior Court of Maricopa County, about a petition to amend Rule 31(d) he had filed the previous year. Mr. Bivens reported that the work group determined that it would wait to further work on re-styling of Rule 31 until it was known if other work of the task force would necessitate rule changes.

Mr. Bivens then shared that the work group began to discuss its thoughts on the LDP program and the possibility of a new tier of limited licensed legal practitioner. He shared that there was a variety of input from members, both for and against a new tier of legal services providers. Discussion on the topic would continue at future meetings.

## **III. OTHER BUSINESS**

### Call to the Public

The meeting concluded with a call to the public. Several members of the public were present, but no request to speak was submitted for this meeting.

### Next Meeting:

Wednesday, February 13, 2019, at 9:00 a.m. in Room 101.

### Adjournment:

The meeting adjourned at 3:00 p.m.