

TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

DRAFT MINUTES

Thursday, March 14, 2019

Room 345 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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

Absent: Don Bivens; Judge Joseph Kreamer; Justice Rebecca Berch (ret.)

AOC Staff: Jennifer Albright; Kathy Sekardi

Guests: Mark Lassiter, Attorney at Law; Patricia Sallen, Attorney at Law

I. REGULAR BUSINESS

The third meeting of the Task Force on the Delivery of Legal Services was called to order at 9:07 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from February 13, 2019, were provided to members in advance. Justice Timmer asked if there were any edits, additions, or other concerns. Having heard none, Mr. Byers moved to approve the minutes. Mr. Fine seconded the motion. The minutes were approved unanimously.

II. PRESENTATIONS

Mark Lassiter, Attorney at Law

Mr. Lassiter gave a presentation to the task force on legal services delivery models and how legal organizations are changing. The presentation was titled *The End of Law Firms?: Rethinking Legal Services Delivery in the 21st Century*. The presentation centered on the following:

- An overview of the main forces changing on the delivery of legal services, including a historical look at where legal jobs were and where they are today and what types of matters are brought to lawyers today versus the types of legal matters attorneys took in the past;
- The impact of evolving legal regulations and the need for innovations toward affordable legal services; alternative business structures particularly as that concept is defined as a charge to the task force;

- A proposal for how Arizona might test a change in ethical rules to allow for alternative business structures where lawyers could partner with non-lawyers.

Members asked questions throughout the presentation which were answered by Mr. Lassiter.

III. WORK GROUP BUSINESS

Work Group Breakouts

The task force then moved into team breakout sessions. Members of the public were able to attend these breakout sessions. Mr. Lassiter was asked to join the team that was working on the topic of alternative business structures.

The team led by Don Bivens and Stacy Butler had invited several legal practitioners to speak about the subject matter areas of landlord/tenant law and debt collection to share information about those practice areas and answer questions for members, as the team was working on the task force's charge to look at the possibility of Arizona creating a limited license non-lawyer tier of legal service providers. Several members of the public who were identified as current certified Legal Document Preparers also participated in that breakout session.

Report Out

The full task force reconvened at 1:40 p.m. to hear from the work groups.

First, Ms. Butler discussed the Bivens/Butler Workgroup breakout session. The workgroup was able to obtain and look at some high-level data on case types in limited jurisdiction cases. That data was shared with the task force.

Once again, the work group engaged in a great deal of discussion on the merits of a limited license non-lawyer practitioner program. Members of the legal community and public attended the breakout session, several of whom were invited to discuss the specific topics of landlord/tenant and debt collection practice. Ms. Butler shared that it was clear that these are very "one-sided" matters as far as who could afford representation. As such the group did inquire on where gaps were for those that are unrepresented, as the goal of a new tier legal service provider would be to allow more people to obtain some type of legal assistance should they choose to.

Ms. Butler shared the work groups process of hearing from a limited jurisdiction court judge, an attorney with community legal services, and an attorney who represents property owners/landlords as to the process of landlord/tenant cases, timelines, gaps in services for tenants and landlords, and where a limited legal service provider might close those gaps. Ms. Butler shared that it was learned from the process that these case types move quickly and that in non-payment of rent cases, there were few defenses. When slowed down, that often leads to increased monetary judgments against tenants. Although it was noted that there was a lukewarm response to non-lawyer legal service providers practicing in these areas, the legal professionals who spoke with the team agreed that a limited legal service provider could help in several ways, including:

- Agencies like Community Legal Services might be able to use this new tier of legal professional to handle cases it otherwise turns away;
- Landlords that often do not hire attorneys because they own one or just a few properties may use non-lawyer legal service providers if hiring those persons was more cost effective than hiring a lawyer

- All parties would benefit from the new legal service providers if they assisted in explaining and advising on processes, defenses or lack thereof, negotiation in non-payment of rent cases (minimizes further debt or harm to tenant and reduces landlord's attorney's costs)

Ms. Butler went on to share the workgroups process of hearing from a limited jurisdiction court judge and attorneys who represent creditors in debt collection matters as to the process of such cases, timelines, regulatory restrictions on the practice, and where a limited legal service provider might assist persons who otherwise are not represented. Ms. Butler shared that it was learned from the process that these case types are governed heavily by the Federal Consumer Protection Act. Concern was shared by the guest attorneys about education of a non-lawyer legal services provider as to those regulations as those regulations create strict liability for attorneys. The participants in the discussions agreed a non-lawyer legal service provider may be most beneficial to litigants in the form of aiding with negotiating settlement of cases.

Members asked questions and discussed points of view on the need for a new tier provider in these areas. Concerns were shared as to whether these case types alone would provide enough work to anyone pursuing a job as a limited legal service provider.

Justice Timmer inquired if there was some relationship between Legal Document Preparers (LDPs) and non-lawyer legal service providers. It was discussed that LDPs who may want to do more or specialize, may find opportunities to get the education and training to become providers under the new tier. This led to some discussion on the educational requirements the work group had begun to consider for the non-lawyer legal service providers, which involved looking at programs like the University of Arizona B.A. in Law.

John Phelps then reported out on the work of the Cruz Workgroup. Mr. Phelps indicated that the group had been looking at ER 5.4 (Rules of Conduct for Attorneys) and changes to that rule to allow alternative business structures. The group had been trying to imagine what kinds of alternative structures may be wanted or desired by lawyers in the future; however, after hearing Mr. Lassiter's presentation the group put that approach on hold and looked at Mr. Lassiter's approach of having a program where businesses would apply to the Supreme Court and seek an exception to ER 5.4 to allow lawyers and non-lawyers to partner.

Mr. Phelps shared that the group discussed specific concerns that have been shared by members of the Arizona State Bar with various members of the workgroup and noted that input from the Bar would continue to be sought.

Mr. Phelps shared that the group would continue to pursue the original path of identifying areas of the ethical rules that might be changed to allow for lawyers and non-lawyers to partner together in light of the uniqueness of the "Lassiter" approach.

Judge Cruz added that the draft proposal of Mr. Lassiter, which was projected by staff onto the screen in the room, was the basis of their work, but the workgroup through their discussions began to add to, change, and otherwise modify the proposal based on discussions of the group. Judge Cruz went through that draft document. Members of the task force then provided feedback, asked questions, and in-depth discussion was had on the topic.

A member noted that the American Bar Association (ABA) uses a system similar to the proposal. A council is used to vet proposals by law schools when a law school seeks an exception to the very structured requirements for being ABA approved. He noted this works well in that arena because it allows for a new approach to providing legal education to be tested to see if

effects, both on students and on the quality of legal education. He noted that may be a benefit to this proposal for the case-by-case application approach for an exception to ER 5.4.

A notable concern that was shared by a member was that the program of having the Supreme Court make determinations of whether to allow an exception to ER 5.4 on a case-by-case process could lead to persons who did not get their applications approved to allege preferential treatment by the Court. It also creates an avenue to allow people to write their own rules in a way where there would not be the same vetting of the rules that currently exists. That member suggested there be a careful consideration and public comment period of the proposal before it was adopted, if the proposal continued to be pursued by the task force and ultimately by the Supreme Court. Those concerns and suggestions were noted and would be further explored by the workgroup at its next meeting.

Other discussion included questions about the efficacy of businesses writing their own regulations, who would be conducting the application review, the regulatory process and some matters related to the application that may require more detail if the task force continued to pursue this path.

III. OTHER BUSINESS

Call to the Public

The meeting concluded with a call to the public. A number of public members representing legal document preparers provided statements to the task force. Task force members asked questions of these public members as well.

Next Meeting:

Thursday, April 25, 2019, at 9:00 a.m. in Room 345 A/B.

Adjournment:

The meeting adjourned at 2:56 p.m.