

TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

DRAFT MINUTES

Thursday, May 16, 2019

Room 119 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

Present: Justice Ann Timmer, Chair; Peter Akmajian (telephonic); Robyn Austin; Betsey Bayless; Justice Rebecca Berch (ret.) (telephonic); Don Bivens; Stacy Butler; Diane Culin; Whitney Cunningham; Judge Maria Elena Cruz; Tami Johnson; Judge Joseph Kreamer; John Phelps, Judge Peter Swann; Billie Tarascio; Mark Wilson

Absent: Victoria Ames; Dave Byers; Jeff Fine; Paul Friedman; Guy Testini

AOC Staff: Jennifer Albright; Kathy Sekardi

Guests: Jeffrey Willis, President, Arizona State Bar

I. REGULAR BUSINESS

The fifth meeting of the Task Force on the Delivery of Legal Services was called to order at 9:02 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from April 25, 2019, were provided to members in advance. Justice Timmer asked if there were any edits. No edits having been requested, Mr. Wilson moved to approve the minutes. Ms. Culin seconded the motion. The minutes were approved unanimously.

II. PRESENTATIONS

Stacy Butler, Director, Innovation for Justice Program at UA Law and Jeffrey Willis, Arizona State Bar President. Presentation on a New Tier of Civil Legal Professional for Survivors of Domestic Violence developed by UA Innovation for Justice Program

Ms. Butler and Mr. Willis gave a presentation explaining what the Innovation for Justice Program is, and how students in the Innovating Legal Services course at the University of Arizona designed a one-year pilot program that would provide legal training to lay legal advocates at Emerge Center Against Domestic Abuse (“Emerge”). Emerge currently has seven lay legal advocates who assist domestic violence survivors (“participants”) in navigating civil legal processes. Ms. Butler explained that domestic violence survivors typically navigate the civil legal system without the assistance of counsel, or with limited advice and brief service from legal aid agencies. Currently, lay legal advocates can provide legal information to survivors, but cannot offer legal advice.

In the pilot program, lay legal advocates who complete training and an exam offered by the University of Arizona James E. Rogers College of Law would be licensed for a one-year period as “LLAs” (“Licensed Legal Advocates”), a new tier of civil legal service provider. As LLAs, they would be licensed to provide legal advice to Emerge participants in specific areas of law. The pilot would provide valuable information about whether a new tier of legal service can improve access to justice in the civil legal system. Ms. Butler provided an overview of the pilot program, including: (1) the scope of legal services that LLAs could provide; (2) how LLAs would be trained at University of Arizona Law; (3) how the LLAs would be certified, licensed and regulated by the State Bar of Arizona; (4) how the bench, bar, and public would receive education regarding the new LLA program; and (5) recommendations for evaluation of the pilot. Following Ms. Butler’s presentation, she presented a 30-minute video, which featured her students and provided a more in-depth explanation of the pilot program and its creation.

After several questions were answered about details of the pilot program, including an outline of the program’s timeline, several members suggested that the task force recommend that the pilot program be implemented. Additional topics were discussed, such as changes to the pilot if it were expanded or adopted as a permanent new tier of legal service provider. Discussion was had on whether the LLAs should be allowed to advocate in court. Ms. Butler reiterated that the pilot did not include representation in the traditional sense because current lay advocates had expressed repeatedly in the development of the program that such authority was not desired and that part of the process to help and empower survivors of domestic violence was to assist them in managing legal needs on their own. The task force membership was reminded that the full written report containing details beyond both the verbal and video presentation had been made available to them and was posted on the task force website as part of the meeting materials.

III. WORK GROUP BUSINESS

Work Group Breakouts

After presentations, members broke into workgroups. Members of the public were able to attend breakout sessions.

Report Out

The full task force reconvened at 12:45 p.m. to hear from the workgroups.

First, Judge Cruz presented for her workgroup. She reported that work on a next version of the Rule 38 amendments was still ongoing. The workgroup hoped to have a final draft to present for the task force’s final consideration at the June meeting.

Judge Cruz shared that the workgroup spent most of the breakout session working on draft ethical rule amendments related to what is being called “Option 3” on the topic of how ethical rules might be amended to allow for alternative legal business structures (ABS). She reminded the task force that Option 3 involves elimination of ethical rule (ER) 5.4 and transferring content related to independence of lawyers and conflicts on interest that are currently in that rule into other

ethical rules. Significant discussion arose over lawyer responsibility for conduct of non-lawyer partners and whether there was a difference in that responsibility when a non-lawyer is an active partner in an ABS versus when passive investors are involved in the ABS. That discussion involved whether the ethics rules, the Supreme Court, and the State Bar had authority over non-lawyers and if the non-lawyers could consent to the jurisdiction of the Court and Bar or if Arizona needed to adopt an “entity regulation” approach versus the current structure of regulating persons only.

Discussion included whether a threshold of lawyer ownership should be required in an ABS to ensure lawyer independence. Specifically, the issue raised was whether lawyers should be required to be majority owners of any ABS. Members discussed several aspects of this issue, the chief concern being that by limiting investment by non-lawyers, the goal of removing the barrier of non-lawyers and lawyers partnering would be thwarted. Based on feedback and discussion the workgroup determined it would look into identifying persons in the business community as well as a representative from LegalZoom to discuss some of the questions raised by the membership.

Next Don Bivens presented on behalf of the Bivens/Butler workgroup. First, Mr. Bivens shared that the workgroup further discussed the pilot project created by the UA class that was presented earlier in the meeting. The workgroup planned to request that the task force recommend the Supreme Court pursue the pilot project. To that end the workgroup would bring to the June meeting an updated Administrative Order (AO) (referring to the draft AO in the final report shared by Ms. Butler and Mr. Willis) and would assist in determining if there were possible funding sources to such as grants that might support the pilot program.

Mr. Bivens also shared that the workgroup was going to speak with members of charitable and non-profit organizations that provide legal services to determine what if any value a licensed non-lawyer practitioner might bring to other types of agencies.

Mr. Bivens shared that the workgroup had also determined that a recommendation for expansion of “court navigator” programs like those in Coconino, Santa Cruz, and Maricopa counties would be a part of their overall recommendations. Discussion was had on the variety of “navigator” programs nationwide and the workgroup indicated it would further explore the concept of court employee positions that could assist those who did not have the benefit of legal representation.

Mr. Bivens then shared that the workgroup planned to make specific recommendations on improvements, but not substantial changes, to the Legal Document Preparer (LDP) program. Members from the Cruz workgroup asked that the Bivens/Butler workgroup specifically consider whether barriers to lawyers and LDPs working together, which are currently part of the rules governing the LDP program, could be relaxed or eliminated.

Finally, Mr. Bivens shared that they had reviewed a draft of a restyled Rule 38 prepared by John Rogers of the Supreme Court staff attorney’s office and Mark Meltzer of the Administrative

Office of Courts. Mr. Bivens stated that the workgroup sought additional edits to further clarify and reduce redundancy in Rule 38. The workgroup planned to review a next draft during the June task force meeting breakout and then provide further updates to the task force as that work progressed.

III. OTHER BUSINESS

Call to the Public

The meeting concluded with a call to the public. One member of the public spoke and answered questions by task force members. As a result of the public comment, Judge Cruz suggested the Task Force should consider, with the assistance of the Arizona State Bar, a survey of Arizona solo practitioners. The objective would be to: 1) provide them information regarding the potential for ABSs in Arizona, 2) determine their level of interest in partnering with non-lawyers, and 3) assess whether solo practitioners anticipate this opportunity could enhance their ability to expand their practice, drive legal costs down and thereby serve a greater number of clients.

Justice Timmer asked the workgroups to begin drafting their portions of the final report to the Supreme Court. She asked for drafts beginning as soon as possible but at least by July, as the report must be finalized by October 1.

Next Meeting:

Thursday, June 13, 2019, at 9:00 a.m. in Room 119 A/B.

Adjournment:

The meeting adjourned at 2:07 p.m.