Executive Summary of Practice Committee Recommendations (October 2015)

Law School Education-Practical Legal Training

- Actively support the promulgation of new ABA accreditation rules to incentivize law schools to integrate traditional clinical education with innovated legal and law-related services delivery models. [WG 1, PDF p 1-5.]
- Collaborate with law schools to assist with bridging the theory-practice divide by reforming their curriculum to pair traditional doctrinal courses with lab components to hone writing, drafting, communications skills, technology skills, including accessing court systems, and practical application, including "business of law," conflict resolution, professional and personal wellness courses and required clinical application hours. [WG 1, PDF p 1-5.]

JD Practice Ready Programs

- Develop post-graduate incubator programs to create job opportunities for new lawyers; increase access to justice for underserved populations; and provide mentorship opportunities and resources to new attorneys. [WG 1, PDF p 6-9.]
- Develop and implement a New Lawyer Institute to offering practical training to help bridge the gap from law school to traditional law practice and expose new lawyers to the emerging and fast growing number of non-traditional roles in the legal industry which require, or prefer, a person with a JD degree. [WG 1, PDF p 9-11.]
- Inspire robust voluntary CLE participation through use of incentives. [WG 1, PDF p 15-16.]

Law Practice Professional Competencies

- Appoint a SBM standing committee to create standards for specialty certification programs for lawyers and review and endorse providers and programs, including programs on related professional responsibility issues. [WG 3, PDF p 69-74.]
- Identify essential technological competencies by practice type, develop curricula, including, cybersecurity, cloud computing, e-discovery, internet-based investigations and marketing, and "new law" technology, and encourage ongoing training on the use of existing and emerging technologies and court systems. [WG 2, PDF p 23-26; 33-39.]
- Issue ethics opinions on use of internet for marketing and delivery of legal services, and propose amendments to MRPC 1.1 (competence), 1.4 (communication), and 1.6 (confidentiality) to address such use. [WG 2, PDF p 27-31, 34-39.]

Modern Approaches for Delivering Legal Services

- Recommend changes to the MRPC to allow multidisciplinary practice (MDP) to meet consumer needs and expectations. [WG 3, PDF p 40-59.]
- Recommend amendments of MRPC and MCR to facilitate limited scope representation in civil litigation. [WG 3, PDF p 60- 63.]
- Encourage and facilitate innovative law firm models to expand the geographic reach of solo and small firm practitioners, improve the economics of their law practice, and improve access to people in lower-income and rural counties, e.g., the "primary care model." [WG 4, PDF p 75-80.]
- Research and collect data on alternative and non-traditional fee agreements used by members, including types used, methods of implementation, success of implementation, client satisfaction, profitability, attorney satisfaction, and associated risks and benefits; and publish the results for use by members. [WG 4, PDF p 85-91.]

Technology Enhancements for Law Firms

- Encourage remote law office access and use of secure online portals for clients. [WG 2, PDF p 34-39.]
- Establish social media best practice policies and checklists. [WG 2, PDF p 27-28; 34-39.]

- Encourage use of electronic transmission and recordkeeping systems, including official email address for each SBM member. [WG 2, PDF p 27-31; 31-33; 33-34.]

Technology Enhancements for Courts

- Encourage further modernization of court system to expand remote access by lawyers and parties for proceedings. [WG 2, PDF p 31-33.]
- Propose digitally enabled courtrooms for submission of digitized exhibits and real-time annotation of legal precedent. [WG 2, PDF p 31-33.]
- Adopt minimum modern technology standards for all courtrooms, which will include [WG 2, PDF p 31-33.]
    1. High-Speed internet/Wifi access for litigants
    2. Monitors linked to the courtroom technology at counsel tables
    3. Annotated monitors with live transcription
    4. Video-conference capabilities
    5. Cross-implementation with other systems, e.g., VA TeleHealth, etc.
- Develop appropriate safeguards for the use of social media in courtroom proceedings. [WG 2, PDF p 31-33.]
- Create secure, uniform electronic transmission and recordkeeping system, including e-filing, e-discovery, e-communications, e-cloud storage, and web browsing research. [WG2, PDF p 33-34.]
- Establish ongoing training programs for judges and court staff, and other users, on the use of existing and emerging technologies. [WG2, PDF p 33-34; WG 5, PDF 113-115.]

Methods to Improve Litigation Efficiencies

- Reduce cost of litigation by enhancing discovery and court efficiencies, including:
    1. Modification of civil discovery rules to reduce the expense and burden of civil discovery and creation of a SBM special committee to review and propose such modifications, utilizing the Federal Rules of Civil Procedure as a starting point. [WG 5, PDF p 99-102.]
    2. Greater judicial oversight and active intervention, particularly in less complex cases. [WG 5, PDF p 99-102; 103-106.]
    3. Improved education of the bench and the bar on the appropriate use of MCR sanctions to discourage unnecessary discovery. [WG 5, PDF p 99-102.]
    4. Use of discovery masters/facilitators or circuit court magistrates, including modifications of the Michigan Court Rules to permit such uses. [WG 5, PDF p 99-102.]
    5. Use of the business court model of early case conferences, including modifications of the Michigan Court Rules to permit such uses. [WG 5, PDF p 99-102.]
    6. Implementation of user-friendly and uniform protocols for use by litigants, attorneys and the courts. [WG 5, PDF p 112-115.]
    7. Use of non-lawyers in the discovery process, including modification of the Michigan Court Rules to permit such use. [WG 5, PDF p 99-102.]
    8. Use of technology in the discovery process, including modification of the Michigan Court Rules to permit such use. [WG 5, PDF p 99-102.]
    9. Tracking of trial date adjournments by court and judge. [WG 5, PDF p 103-106.]
    10. Frequent, mandatory intensive judicial training on docket management and developing court practices. [WG 5, PDF p 103-106.]
    11. Encouragement of staggered dockets to reduce wait time in the court room on motion and pre-trial days. [WG 5, PDF p 103-106.]

12. Encouragement of enforcement of hearing adjournment court rule (MCR 2.503). [WG 5, PDF p 103-106.]
13. Elimination of unnecessary court conferences, and allowance of use of appearances by telephone for all pre-trial conferences unless the judge specifically orders personal appearance by attorneys and/or parties. [WG 5, PDF p 103-106.]
14. Better training to attorneys on the use of virtual office tools. [WG 5, PDF p 103-106.]
15. Development of local bar associations' resource sharing tools for the benefit of members and their clients. [WG 5, PDF p 103-106.]
16. Encouragement of earlier ADR where appropriate in coordination with discovery, and use of early intervention to develop a discovery plan. [WG 5, PDF p 103-106; 107-112.]
17. Provision of technical expertise on questions regarding use of technology. WG 5, PDF p 113-115.]
18. More training for lawyers on time management and education about existing resources. [WG 5, PDF p 103-106.]

- Improve opportunities for early dispute resolution using ADR, including

1. Enhancement of ADR options to include, e.g., mediation, arbitration, med/arb, and summary jury trial, and modification of MCR 2.403 (case evaluation rule) to eliminate its mandatory provision and make it an ADR option. [WG 5, p PDF 107-112.]
2. Increased training of judges for better understanding and use of ADR. [WG 5, PDF p 107-112.]
3. Encouragement for lawyers to take full advantage of relevant ADR advocacy training. [WG 5, PDF p 107-112.]
4. Education of lawyers about the ADR Benchbook and how to make best use of it. [WG 5, PDF p 107-112.]
5. Education of judges and lawyers about the Community Dispute Resolution Centers and creation of a system to effectively use the centers for early case resolution. [WG 5, PDF p 107-112.]
6. Education of lawyers on pre-filing dispute resolution utilizing ADR. [WG 5, PDF p 107-112.]
7. Tracking of ADR metrics to document impact on efficiencies. [WG 5, PDF p 107-112.]

Specific Public Protection Measures

- Continue to prohibit alternative business structures that would allow non-lawyers to invest in law firms. [WG 4, PDF p 81-84.]
- Use SBM website as a clearing house to educate the public about lawyers and the practice of law by providing credible, objective, peer-reviewed information through SBM. This information would include statements or articles outlining the law, legal issues, solutions, problems, examples, or when a lawyer may be needed, etc. Other articles could provide basic information such as "Tips on Hiring the Best Attorney for You and Your Issues." [WG 4, PDF p 93-98.]

Future study recommendations

- Revisions to the bar exam to: 1) incorporate a multistate performance test (MPT), or 2) promote a more practice ready bar exam to incentivize change to law school curriculum. [WG 1, PDF p 1-5.]
- Legal residency requirement for new lawyers as an experiential training component of the licensing process to prepare them for entry-level practice. [WG 1, PDF p 6-12.]
- Intensive mentorship programs to foster professionalism and civility. [WG 1, PDF p 6-12.]
- A mandatory innovative professional responsibility program for new lawyers and lawyers involved in the disciplinary process. [WG 1, PDF p 13-16.]
- Performance measures for delivery of legal services by lawyers and ancillary staff (paralegals, admins, secretaries, etc.). [WG 5, PDF p 112-115.]
- Systems and protocols best suited to meet client needs and facilitate the efficient and timely delivery of legal services. [WG 5, PDF p 112-115.]
- Limited legal licenses for nonlawyer service providers. [WG 3, PDF p 64-69.]

Legal Education and Continuing Practice Competency Working Group

Co-Chairs: Marjorie Basile and Brian Pappas

Members: Heather Abraham, Joe Baumann, Jerome Crawford, Howard Lederman, Brian Shekell, Aaron Sohaski, Rick Troy, and Joan Vestrand.

The chairs of the Building a 21st Century Practice Committee have assigned Working Group #1 to explore the following topics: law school curriculum, licensing, on boarding and mentoring, internships, residencies, articling, incubators, and cost of legal education/return on investment. The working group formed three subgroups to examine 1) Legal Education (p. 1), 2) Post-Graduate Programs (p. 7), and 3) Competency and CLE (p. 13). The following report is a culmination of the efforts of the subgroups, and includes recommendations for SBM adoption in each area.

Charge 1: Legal Education
By Jerome Crawford, Howard Lederman, and Joan Vestrand

I. Status Quo

Law schools nationwide are graduating students who are saddled with significant debt, ill-equipped to start practicing law, and, in increasing numbers, unable to find full time jobs. This, coupled with a legal marketplace that is dramatically changing in the way services are sought by clients, creates a serious crisis. Technology has allowed clients, who increasingly are willing to pay high fees only for high-level advice, to disaggregate and unbundle legal work engaging lower paying, non-JD level suppliers to perform much of the work that new lawyers use to provide while training on the job. These fundamental changes in the legal marketplace require a reexamination of legal education.

Until the mid-nineteenth century, most aspiring lawyers were required to train as apprentices to practitioners. This apprenticeship model remained the most common form of legal training in the United States until the second half of the nineteenth century, and during that period the "vast majority of the legal profession"—including well-known lawyers like Abraham Lincoln—"still experienced only on-the-job legal education." Over time, the apprenticeship model increasingly was viewed as flawed. By the mid-1850s, twenty-one law schools existed in the U.S., many of which had been formed at least in part to address the perceived deficiencies of learning law by studying [it] in an office. Professor Christopher Langdell's casebook model of legal education, first introduced at Harvard Law School in the late nineteenth century, was a contrast to the apprenticeship model of supervised legal practice. Under Langdell's case method, students read and analyze leading cases before class in an effort to distill the fundamental principles of law. Students then engage in a Socratic discussion in a classroom, during which university professors question the students closely about the facts of the case, the points at issue, the judicial reasoning underlying the doctrines and principles, and how the case compares with other cases.

Although most law school curricula provide some experiential, practice-ready classes and programs such as clinics and internships, the balance of offerings still favors a doctrinal case book method of study as opposed to more practice-ready learning. Burgeoning technology raises questions about the necessity of a law student's memorization of vast amounts of information and suggests a focus on linking doctrinal courses to practical skills to produce 21st Century lawyers.

II. Trends

Law schools in Michigan, and elsewhere, have made some inroads in offering practice-ready oriented programs such as Professional Responsibility, Research, Writing and Analysis, Contract Negotiations, clinics, externships, and some hands-on skills exercises. Consideration of some of the robust programs described below would be beneficial for Michigan schools in that these programs would likely attract more students.

1. U of M Miami School of Law has created "Law Without Walls" — a part-virtual international initiative that blends business and law students with business professionals and academics to work together for solutions to challenges such as globalization, technological change, access to justice, and new legal service models. Ideas are then presented to industry leaders and venture capitalists.

2. WMU Cooley Law School requires that every student have at least three credits of practical legal experience in order to graduate. In order to achieve this experience, students may avail themselves of the school's in-house and blended clinic programs, or take an externship, choosing from more than 3000 established sites across the country and internationally. Students must also take at least three credits of skills training.

3. At WMU Cooley Law School, ethics is a third pillar (along with knowledge and skills) of legal education. Through such emphasis and related programs, courses and initiatives, ethics, service, and professionalism have an equal emphasis to skills and theory and play a significant role in a student's training and education. The American Bar Association awarded the school its E. Smythe Gambrell Professionalism Award on the basis of the outstanding nature of the program.

4. Northeastern Law School— every law student is required to achieve a total of one-year of full-time work experience in the profession. Each student engages in four quarters of different employment experience, ideally both in public service and in the private sector, as a requirement for graduation.

5. Stanford Law is a partner in a multidisciplinary laboratory called CodeX, which brings together organizations from industry, government, and academia to explore ways in which information technology can be used to enhance the quality and efficiency of our legal system while decreasing its cost.

6. Harvard, through its Berkman Center Law Lab, engages with various partners in multidisciplinary research to investigate and harness the varied forces that shape the role of law and social norms.

7. Georgetown University's Law Center offers a new course called "Technology Innovation and Law Practice: an Experiential Seminar" that exposes students to the varied uses of computer technology in the practice of law. In the seminar, students team up with a legal technology expert to develop a platform, application, or system that increases access to justice and/or improves effectiveness of legal representation. The class culminates in a design competition, judged by outside experts.

8. MSU School of Law "21.^{5}t Century Law Practice Summer Program" — in partnership with a school in England, this program provides students with intensive study of technology, innovation, deregulation, entrepreneurship, and the international legal market.

9. MSU School of Law offers "Entrepreneurial Lawyering," a course that exposes students to the economic pressures, technological changes, and globalization facing the legal profession, and to equip students with the ability to successfully navigate these challenges. The course explores the concept of virtual law practice as well as the use of technology and cloud-computing in building a law practice; free and low-cost resources and tools are shared to assist the entrepreneur-minded student. Ethics, licensing, and malpractice issues related to virtual and multi-jurisdictional practice are also explored.

10. MSU School of Law "Reinvent Law" is a law laboratory devoted to technology, innovation, and entrepreneurship in legal services. The lab exposes students to new methods for solving problems facing the legal profession in the areas of access to justice and new vehicles for delivery of legal services.

11. William Mitchell received a variance from the ABA to offer a "Hybrid Program" which allows students the ability to take the bulk of their coursework online. Students spend a week or so on-campus for orientation and preparatory work, followed by 12 weeks of online study from home. Weekly assignments must be completed for which students receive written professor feedback. At the end of each semester, students return to campus for a one week "Capstone" experience consisting of experiential learning. The program, which is new, has allowed some students, because of outside responsibilities, their only access to law school. It is not a cheaper option, however, at least not yet.

12. California Western School of Law has what it calls its STEPPS Program (Skills Training for Ethical Preventive Practice and Career Satisfaction) which places heavy emphasis on skills training. The program covers legal analysis and research, various forms of legal writing, interviewing, counseling, negotiation, oral advocacy, legal drafting, problem solving, and strategic planning. Values of the legal profession are also covered.

13. The advent of the "Limited License Legal Technician" (Washington) and its role and impact on lawyers. The need for training programs should the concept spread.

14. Suffolk University implemented an Accelerator-to-Practice Program, a three year course of study that will include an embedded fee-generating law practice in the law school that will teach students firsthand how to leverage new competencies to deliver legal services to the public efficiently, effectively, and profitably. Students in the new concentration must take courses in legal project management, automated document assembly, and a survey course on 21[52] Century lawyering. They also attend six hours of seminars and programs by leading experts in the field and complete four electives may of which are offered jointly with the University's Business school. They will learn how to create a business, marketing and technology plan for a small practice and they will receive specialized practical training through the law school's embedded fee-generating law firm.

15. Hastings College of the Law has a Legal Garage program where students provide corporate and intellectual property work to early stage startup companies under the supervision of leading attorneys throughout the Bay Area. The Startup Legal Garage teaches students to become partners in the enterprise and more than just "the lawyer in the room". Students bring their deals into the classroom which allows faculty to harvest hypotheticals in real-time and bring the teaching of legal doctrine alive.

16. New York University's Lawyering Program provides students with a hands on, interactive introduction to the practice of law. The Lawyering Program, which has been a part of N.Y.U.'s mandatory first-year

curriculum since 1986, is made up of a series of exercises, each of which includes an opportunity to experiment with acting as a lawyer, followed by a critique and self-reflection period.

III. Options

Lobby the ABA to promulgate new accreditation rules that create incentives for law schools to make more concrete, permanent change. With this support, SBM could open up opportunities for Michigan law schools to adopt initiatives similar to Suffolk University's Accelerator-to-Practice Program. The Program integrates traditional clinical education with new insights about the delivery of legal and law-related services. The Program creates immediate value for both law firms and non-traditional legal employers. The legal marketplace is rapidly evolving; the goal is to ensure that students can compete more effectively in a modern and continuously changing legal profession that looks far different from the profession of just a few years ago.

Lobby for significant revision to the bar exam by working with the Board of Law Examiners and the Supreme Court. Schools are in a tough position because on one hand, they may want to make radical adjustments; but on the other, they need to ensure their students are bar exam ready. Potential solutions might be to: 1) incorporate a multistate performance test (MPT), or 2) take an active role in promoting a more practice ready bar exam which, in turn, would incentivize the law schools to adopt a more practice ready curriculum. Potential allies include law schools and bar associations, while potential obstacles include the ABA accreditation procedures and the Board of Law Examiners.

Advocate to reform law school curriculum into a 21st Century curriculum with a focus on practical skills, knowledge and development.

Law schools as a whole are in crisis. If they don't change, many will not survive. So, law schools must override tradition-bound and other past-bound opposition. They cannot continue to turn out multitudes of graduates unprepared or half-prepared for the rapidly changing modern world, unable or far less able to find meaningful employment, and unable or far less able to repay their massive student loans. Some critics have questioned the need for a third year of law school at all. While we agree that controlling the cost of legal education is an important goal, we also believe that, at least at this time, eliminating the third year is not the right instrument to accomplish it. Indeed, the need for better-prepared lawyers suggests the need for ***more*** training, not less. We believe the better solution is to encourage law schools to reduce the traditional third year casebook courses and unconnected seminars. Instead, we suggest law schools replace them with a thoughtfully constructed third-year curriculum that enables students to develop practical skills and knowledge and expertise needed in today's legal marketplace. It should continue to be the subject of creative and energetic innovation in order to help new lawyers graduate with the skills and experiences needed to be "practice-ready" in the modern legal environment.

In advocating for change, we do not deny or disparage that teaching legal theory and legal reasoning is absolutely necessary. We emphasize that the 21st century demands a theory-practice rebalancing. The stark reality is that meaningful experiential education often requires low student to faculty ratios and is quite expensive. One way of doing this is to pair traditional doctrinal courses with lab components to hone writing, drafting, communications skills, and practical application of material.

The approaches recommended below could be integrated into the entire law school curriculum, including the first year.

1. **Creation of "Business of Law" Courses.** Include a "survey course" for law students that allows them to experiment with the various software and program options available to lawyers for office management; Provide them an intensive hands-on course to learn the "business of law." Empower students to know that if no employer is willing/able to hire them, they could confidently hang out their own shingle.

   Technology is truly double-edged sword. On one hand it has revolutionized the practice of law allowing us to be more efficient and provide greater value to more clients more effectively. On the other hand, it has eliminated some of the inherent value that lawyers once enjoyed. We now have to classify our value differently. Consumers walk into our offices far more educated with the advent of the Internet. We need to differentiate ourselves by highlighting our unique ability to apply the law. Examples of resources include Bert's Access Legal Care Software and SBM Resources for running a solo/small practice.

2. **Communications and Conflict Resolution Skills.** In almost every legal environment, lawyers will be working with fellow lawyers (as allies and opponents), paralegals, secretaries, judges, their clerks and secretaries, and many other people inside and outside their organizations. To succeed as a lawyer, good human relations abilities are crucial. Courses and classroom components focusing on communication (verbal, written, and oral) and conflict resolution skills are critical.

3. **Law Student Wellness.** Another crucial area that lacks attention is the area of Law Student Wellness. Law schools need to recognize the strong link between emotional togetherness (a high EQ) and professional and personal success. Our profession suffers from high depression and substance abuse rates, and often these problems become evident during law school. Ensuring that students have sufficient professional support will ensure practicing lawyers have the tools to thrive in legal practice. In no way is this a call for easier, less robust, less challenging, or less rigorous teaching, expectations, or evaluation.

4. **Sample 3rd Year Course Offerings may also include:** Logic and Legal Reasoning; Critical Thinking; Ethical Decision Making or Advanced Professional Responsibility; Ethical Decision Making/Personal and Professional Responsibility; Advanced Research and Writing courses; Interviewing and Counseling; Advanced ADR, Mediation, Negotiation or Restorative Justice; Pretrial and Trial Skills; Courtroom and Technology; Legal Project management; Marketing/Sales and Law Office Management courses; Accounting for Lawyers; Entrepreneurship and Entrepreneurial Lawyering; Design Thinking for Lawyers; Leadership development. Similarly, a 3rd year course exploring some emerging non-traditional applications of a JD degree might present new opportunities to consider post graduatuation.

5. **Required Clinical Practicums, Externships, Incubator Programs** can also bridge the gap between doctrinal courses and the practical application of legal knowledge and reasoning necessary for the practice of law.

IV. RECOMMENDATIONS:

- **COLLABORATE WITH LAW SCHOOLS TO ASSIST WITH BRIDGING THE THEORY-PRACTICE DIVIDE.**
- **LOBBY THE ABA TO PROMULATE NEW RULES THAT CREATE INCENTIVES FOR LAW SCHOOLS TO MAKE MORE CONCRETE, PERMANENT CHANGE**

- **LOBBY FOR SIGNIFICANT REVISION TO THE BAR EXAM BY WORKING WITH THE BOARD OF LAW EXAMINERS AND THE SUPREME COURT**

Charge 2: Post-Graduate Programs
By Joe Baumann, Aaron Sohaski, and Brian Shekel!

Due to fewer available entry-level jobs, new lawyers are struggling to develop the practical skills necessary to adequately transition into the practice of law. As a result, new lawyers are less marketable, are burdened with the inability to repay significant student loan debt, and as a result may risk running afoul of ethical duties to effectively represent clients. As we explore the future of the practice of law in the 21st Century, we analyze what opportunities exist to prepare recent law school graduates to practice law and offer suggestions for successfully bridging the gap from law school to law practice.

I. Status Quo

The legal profession in the United States is rapidly changing. In the past, law school graduates generally used their JD degrees in traditional lawyer roles in a law firm, small or big, or in-house, or in public service/government law. In addition to being in a better position to pay back the cost of law school loans, graduates working in traditional law positions benefit from training and mentorship they receive from more experienced colleagues. Today, law students are graduating with diminished job prospects and unprecedented debt. These individuals frequently transition directly from law school to legal careers as a solo or small firm practitioner. Even graduates who do obtain employment at larger law firms may encounter senior partners who lack the time necessary to adequately train new lawyers due to heavy workload and business development expectations. For many, traditional lawyer jobs are just not a possibility.

While many law schools offer clinics and other practical skills classes, lawyers are rarely prepared to practice law because there is little, if any, practical training or assistance for young lawyers after law school. A need exists for new lawyers to participate in programs that provide the practical skills necessary to adequately represent clients and succeed in the practice of law or to seek opportunities to use their JD degree for non-traditional roles. Many state bar organizations and law schools are attempting to help bridge the transition from law school to employment by offering either voluntary or mandatory participation new lawyer CLE, intensive mentorships, and legal incubator programs. In addition, many non-traditional JD degree roles are emerging in the legal industry for JD degrees.

Recommendations

A. Encourage the development of legal incubator programs

We recommend encouraging the continued development of legal incubator programs by having the SBM partner with or support law schools, bar associations, and legal aid centers that have developed or want to develop incubator programs. This innovative option addresses significant needs for the practice of law in the 21st Century by creating job opportunities for new lawyers; increasing access to justice for underserved populations; and providing mentorship opportunities and resources to new attorneys.

i. Trends

The concept of legal incubators began in 1998, when CUNY School of Law developed a program to train and support lawyers who wanted to start their own practices to help the under-served. The Community Legal Resource Network sought to teach lawyers the skills needed to run their own shops quickly and efficiently. Over 40 law schools throughout the United States offer select students the opportunity to participate in one of these prestigious incubator programs, including major schools such as Rutgers School of Law, the University of California, Los Angeles School of Law, and the James E. Rogers College of Law at the University of Arizona. In Michigan, legal incubators are now operating at Wayne State University Law School and the University of Detroit Mercy Law School. Today, participating law schools typically model legal incubators after small law firms. These incubators are setup on law school campus' or in nearby cities. Establishment of incubators at local courthouses, while not yet mainstream, can build on the law school model and reach those law school graduates who have settled in places where there is no law school to support an incubator. Participating attorneys generally take on a large volume of cases at significantly reduced rates, along with whatever clients they can attract at market rates, with the goal of developing the practical skills necessary to open and operate a solo or small law firm upon completion of the program.

ii. Analysis

Encouraging the development of legal incubators at the law schools or in the county courthouse presents numerous opportunities to develop and improve the legal skills of recent law school graduates. For example:

a) Legal incubators provide work opportunities and resources to those who have difficulty finding jobs in a challenging economic environment.

b) Incubators can serve as a storefront for virtual law offices that can reach rural or underserved populations. This opportunity may serve the dual purpose of providing new attorneys will practical experience while increasing access to justice.

c) Incubators provide collaboration with various social interests groups, which may ultimately lead to serving a greater population of individuals who may not have had equal access to justice. We recommend studying ways to expand the legal incubator programs beyond law schools to legal aid clinics and local bar foundations that focus on providing legal support to those in need of inexpensive legal services. Developing legal incubator programs in this manner may also allow seasoned-practitioners to partner with, and support, recent law school graduates on a volunteer basis.

d) Incubators help produce practice-ready attorneys who seek to start their own practice armed with the necessary tools to become successful practitioners. Incubators provide recent law school graduates with the opportunity to gain significant practical experience

with a dedicated support system during the critical time period of one to two years after graduation.

e) Just like a shared office, lawyers can refer work to each other, share advice and generally support one another while enjoying the connections to faculty and alumni mentors. Legal incubators are also typically located in close proximity to law schools, which may permit law students to serve as clerks.

f) The SBM currently provides support and resources to the few legal incubators that exist in Michigan. For example, the SBM's Practice Resource Management Center has assisted with the development of the incubator program at the University of Detroit Mercy Law School. The resources provided by the SBM that can be utilized to support the expansion of legal incubators throughout the state include: providing practice management guidance for lawyers and staffs at smaller firms; teaching necessary business skills associated with the practice of law; an 800 number where people can ask about HR, insurance, etc.; offering seminars and webinars periodically; assisting with the creation of a website; access to a free digital library; consultations at law firms; access to technology consultations

g) The SBM also presented a 21st Century Boot Camp last year at Cooley Law School's Auburn Hills campus. Those graduates who were in a legal incubator program also attended and were educated on practical topics for operating a solo law firm, such as: virtual law firms, financial software, paperless office, trust accounting, modern fee structuring

There are, however, some risks that accompany the development of legal incubator:

a) Legal incubators require significant start-up costs. Typically, these programs are funded through the efforts of donors, law schools, public and private grants, or other funding sources.

b) For incubators to live up to their full economic potential, they need to overcome two pitfalls: they need to provide real value, not just office space, and they need to measure success in more than just outside funding. There will likely be negative returns on investment for some period of time. We recommend studying the economic effects and long-term viability of legal incubator programs given this relatively new concept.

c) Two factors that typically determine whether a business can get off the ground successfully and sustainably include a market opportunity with customers willing to pay for a product or a service; and a product or service that addresses such an opportunity. We recommend analyzing the ability for legal incubators to meet these goals.

d) Most incubators use funding as a success metric, which is a somewhat flawed criterion. Over 99% of companies should operate as organically grown, self-sustaining businesses — bootstrapped, without external financing. For them the goal is to achieve customer validation, not financing. The nature of the legal incubator program, including the emphasis on new attorney training and development, may conflict with the typical goal of a business to be financially secure and successful.

e) Legal incubator programs are typically small in number, with between 2-10 attorneys participating. These programs will likely not meet the growing demand of jobs for the hundreds of unemployed law school graduates each year, but the concept should not be discarded for that reason since it is only one, of many solutions to the problem.

The relatively new concept of legal incubators presents many unanswered questions and unknowns that require further research and consideration. Prior to the SBM encouraging the development of legal incubators to meet the needs of a 21st century legal practice, the following questions require analysis:

a) Funding — how are start-up costs for legal incubator programs going to be funded? Is there enough support for these types of programs from the community that will lead to investment opportunities? Can/should the participating attorneys be required to contribute to the operation? How economically sustainable are legal incubators in the short and long term?

b) How can data be collected to test the efficacy of such programs? Right now, there has been a large onset of legal incubators. However, there is little data at this point to show successes/failures, and long-term systemic effects.

c) What type of legal incubators programs should the SBM encourage the development of?

d) The development of legal incubator programs requires partnership with law schools, bar associations, and/or legal aid clinics. The SBM will need to survey potential allies to determine interest.

e) Are there sufficient resources available to implement legal incubator programs? The development of these programs requires capital, space, a demand from recent law school graduates, and practitioners who will dedicate time and support.

RECOMMENDATIONS:

- **STUDY ECONOMIC EFFECTS AND LONG-TERM VIABILITY OF LEGAL INCUBATORS**
- **STUDY WAYS TO EXPAND THE LEGAL INCUBATOR PROGRAMS TO LEGAL AID CLINICS AND LOCAL COURTHOUSES**

B. <u>Develop and implement a New Lawyer Institute</u>

We also recommend considering the creation of a New Lawyer Institute (NLI). The purpose of the NLI would be to give law school graduates the necessary tools to be successful in the legal profession in Michigan by offering practical training on various issues that new lawyers often confront. A NLI program could be designed to specifically address areas that assist recent law school graduates in bridging the gap from law school to traditional law practice. It could also expose new lawyers to the emerging and fast growing number of non-traditional roles in the legal industry which require, or prefer, a person with a JD degree.

1. Trends

a) The New York City Bar Association recently created a NLI for recent law school graduates. The NLI provides new lawyers with a professional home at the New York City Bar Association. Its curriculum is focused on the needs of recent graduates as they transition from student to practitioner and on preparing them to be successful in the legal profession in New York.

Beginning with the law school class of 2014, the NLI provides an introduction to the New York legal community for all new lawyers who begin their careers in the City, including those who later will have access to formal training programs with their employers. The program offers a one-year curriculum-based training program tailored to the needs of new lawyers in

search of a job, beginning their own practices, or who otherwise are unable to access such a program through their employers.

The New York NLI is comprised of four main components: (1) an introductory event and orientation; (2) professional development curriculum; (3) career development programming; and (4) professional networking and speaker series. A certificate is thereafter issued to each participant who completes the program, as measured by the number of courses and programs they attend.

b) Alternative measures are exploding opening new avenues of opportunity for JD degrees and law firm management. See Jordan Furlong *The New World of Legal Work: The Changing Rules of the 21st Century;* CBA Futures Initiative, page 21. Some have predicted that the "agile" lawyer will rise as permanent, full-time, salaried employment vanishes or, at best, is hard to find. Agile lawyering is a redefinition of traditional practice and encompasses such things as niche opportunities for solos, project work, mobile and flex-time arrangements, as well as hybrid careers, i.e. lawyer-knowledge curator, lawyer-analyst, lawyer-technologist, and lawyer processer. Any NLI should consider a session on the opportunities for a non-traditional practice.

ii. Analysis

Developing NLIs for recent law school graduates provides numerous opportunities to teach new attorneys practical skills that they may otherwise not receive in law school. The benefits of instituting NLI's include:

a) Design and implement a new lawyer CLE program to specifically address areas that assist recent law school graduates to bridge the gap to practicing law. This will require a committee or focus group comprised of individuals with varying degrees of specialties and experiences who can identify training topics based on common deficiencies in new lawyer skills. Ideally, a new lawyer CLE program will also present a survey-type course initiating the newly graduated lawyers to job opportunities that exist as alternatives to traditional lawyering jobs.

b) Making participation in a NLI or similar CLE program mandatory for newly admitted lawyers would ensure that all newly admitted lawyers obtain the same instruction on areas that are identified as needing improvement for recent law school graduates.

c) Participation in a NLI can be useful to new lawyers' overall career development, and also signals to potential employers and clients that the participant has gained skills and experience necessary for a successful practice.

d) As a CLE-type program, a NLI would not take the place of new lawyers' employment opportunities or commitments. Rather, the NLI training operates on an intermittent basis throughout the course of an identified period of time. The NLI supplements the training or experience a new lawyer may otherwise obtain.

There are, however, several considerations that must be taken into account when analyzing whether a NLI would address the needs of the legal profession in the 21' Century. For example:

a) CLE in Michigan is not mandatory. Making a NLI elective for recent law school graduates could result in low attendance, thereby defeating the purpose of providing all new lawyers with necessary information and training. Alternatively, making a NLI mandatory for all recent law

school graduates will require approval from the Michigan Supreme Court, which has been reluctant to make CLE mandatory.

b) Significant investment and planning are required. An oversight committee responsible for developing and overseeing a curriculum for new lawyers will need to be established. Additionally, an organization will either have to be created to develop the program, or an existing organization (such as the SBM or ICLE) will have to oversee the NLI.

c) Participating in a NLI will require additional time commitments and costs for new lawyers who are focused on starting a law practice or working at law firms.

In considering whether to recommend the development of a NLI in Michigan, the following questions and unknown will need to be analyzed:

a) Will the Supreme Court approve mandatory NLI that involves practical experience CLE, or should this be a voluntary program?

b) Who will be responsible for designing and implementing curriculum?

c) Should the SBM or another related entity develop a NLI pilot program prior to rolling the program out statewide?

d) Is there overlap with law schools? Law schools have recently increased practical skills programs through the development of clinics. What would a NLI provide that law schools cannot, or will not, provide.

RECOMMENDATION:

- **DEVELOP AND IMPLEMENT A NEW LAWYER INSTITUTE**

II. Additional Post-Graduate Opportunities

The following programs were also considered and analyzed by the committee, but the committee chose not to recommend these post-graduate options.

A. Intensive mentorship programs

Utah and Georgia are examples of states that have established mandatory mentorship programs for new lawyers. For example, Georgia started its mentoring program after "enough leaders of Georgia's bench and bar got mad about a growing lack of professionalism and civility." The bar viewed the program as "a way to protect the public and the profession from incompetence and the lack of civility by instilling the values of professionalism at the beginning of a lawyer's practice." Utah began its mentoring program in July 2009 in response to the downturn in the legal market, which resulted in "new lawyers need[ing] mentors to show them how things should be done, how to build civility and pride in the profession, or how to manage a practice." The Supreme Court of Ohio recently implemented a voluntary mentorship program for new lawyers. Upon completion of the program, mentors receive CLE credit and new lawyers receive required new lawyer training credit.

The committee analyzed whether to recommend studying ways to improve voluntary or mandatory participation in post-graduate mentorship programs. However, current experiences with voluntary mentorships in Michigan have resulted in mediocre penetration to the legal profession. Additional challenges to the implementation of a more robust mentorship program include: lack of interest/initiative

on part of new practitioners to utilize mentors is not a requirement for licensure; an insufficient number of mentors willing to participate in the program because there is no requirement (or incentive) to do so; other states with CLE requirements offer credits to individuals who participate in the program; practitioners also report a lack of time to dedicate to the program; strong program infrastructure is needed to match mentees with mentors; and even with greater penetration to new lawyers, is a voluntary mentorship program enough to make recent law graduates practice ready?

Should the committee seek to further study the use of mentorship programs in Michigan, we recommend investigating how the SBM could improve the existing program or, with Supreme Court acquiescence, require participation in mentorship programs in at least the first year of practicing law. The SBM could incentivize participation to help recruit mentors and match with mentees. The SBM could also assist in establishing benchmarks and recommend topics for the mentor/mentee relationship.

B. Articling

In Canada, which has had a long history of articling programs, all provincial bar law associations require a period of article for all unlicensed law grads, which requires those putative lawyers to practice under the tutelage of a practicing attorney for a prescribed period of time (e.g. 9-12 months). Such requirements are much like residency programs for doctors —they pay, but not well and they provide a period of supervised practice. Michigan could adopt an articling requirement for new lawyers as an experiential training component of the licensing process designed to assist the candidate to become prepared for entry-level practice.

However, no state bar association in the United States is known to have required articling or apprenticeships as part of the admission to practice law process. There are also significant obstacles associated with pursuing articling requirements in Michigan. For example, articling adds a significant new requirement to the licensing process in addition to completing three years of law school and a bar exam. This could be an unnecessary requirement for those who obtain a law degree with no intention of practicing law, and may drive down number of individuals who pursue a legal career. There is also a strong likelihood of a lack of participation from firms/legal entities to meet the demand of the number of law school graduates each year. Articling is paid work for lawyers-in-training, much like a medical residency, and, therefore, requires funding by participating employers.

Practice Committee: Work Group 1 – Subgroup 3

Charge 3: Competency and Continuing Legal Education
By Heather Abraham and Rick Troy

I. Introduction

Michigan is one of four states that do not mandate continuing legal education.[1] In 1989, SBM recommended the adoption of mandatory continuing legal education (MCLE). After considerable debate, the Michigan Supreme Court adopted a compromised 36-hour requirement for new attorneys within three years of licensure.[2] In 1994, the Supreme Court rescinded the requirements at SBM's request.[3] In 1998, SBM again recommended MCLE. The proposal was hotly debated but, after three years of inaction by the Supreme Court, SBM withdrew its proposal.[4] As we explore the future of the practice of law, we reexamine whether SBM should recommend the adoption of MCLE. We also consider creative ideas to inspire voluntary CLE participation.

II. Trends

In 1975, Minnesota and Iowa became the first states to adopt MCLE. In 1986, the ABA approved a resolution urging states to "seriously consider" MCLE.[5] Most states followed suit. "The trend toward MCLE has continued in spite of strenuous opposition."[6] There is a consensus in the literature that no empirical data supports the proposition that MCLE enhances attorney competence.[7] Three common justifications for MCLE are: (1) enhancing attorney competence, (2) increasing public trust, and (3) improving the quality and variety of CLE programming.[8]

III. Volunteer Participation in Michigan

According to a 2011 member survey, almost 90% of SBM members spend at least some time each year in professional development or continuing legal education. Regarding the degree of involvement, 32.2% reported spending 1−10 hours on such activities and 34.5% reported 11−25 hours. The most common CLEs attended were conducted by the Institute of Continuing Legal Education (ICLE) (53.5%) and local

[1] Others include Massachusetts, South Dakota, and Maryland, *see* http://www.americanbar.org/cle/mandatory_cle.html.
[2] Cynthia McLoughlin, *Michigan Lawyers Reject Mandatory Continuing Education*, Michigan Society for Psychoanalytic Psychology, Vol. 12, No. 3 (October 2002), *available at* http://www.mspp.net/mcloughlin2.htm; *see also* Stuart M. Israel, *On Mandatory CLE, Tongue Piercing and Other Related Subjects*, Michigan Society for Psychoanalytic Psychology, Vol. 12, No. 3 (October 2002), *available at* http://www.mspp.net/israel.htm.
[3] Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE*, 8 Geo. J. Legal Ethics 1145, 1145 & n.1 (1994−1995).
[4] McLoughlin, *supra* n.3.
[5] ABA Model Rule for Continuing Legal Education with Comments, http://www.americanbar.org/content/dam/aba/migrated/2011_build/cle/mcle/aba_model_rule_cle.authcheckdam.pdf
[6] Aliaga, *supra* n.2, at 1151.
[7] Alan W. Ogden, *Mandatory Continuing Legal Education: A Study of Its Effects*, 13 Colo. Law. 1789, 1790 (October 1984).
[8] Deborah L. Rhode & Lucy Buford Ricca, *Revisiting MCLE: Is Compulsory Passive Learning Building Better Lawyers?* The Professional Lawyer, Vol. 22, No. 2 (2014), at 3.

bar associations (39.7%). Respondents most frequently cited two factors for not attending CLE events, time away from home and cost of programs. When asked about whether they favored MCLE, 59.3% were opposed while 40.7% favored some form of MCLE.

IV. Options

A. **MCLE for all practitioners**: Recommend to the Michigan Supreme Court a minimum number of CLE credit hours per year, uniformly applied to all practitioners. SBM might also consider recommending specific substantive requirements, such as professional responsibility (PR).

Analysis: This implicates all three justifications: MCLE might enhance attorney competence, increase public trust in Michigan attorneys, and improve CLE programming. However, there is no empirical evidence that MCLE enhances attorney competence as compared to voluntary CLE. **This option is not recommended, for the following reasons:**

- The Michigan Supreme Court may not adopt it.
- SBM members, who opposed MCLE roughly 60% to 40% in the 2011 survey, may oppose new MCLE requirements.
- The strong majority of practitioners already engage in voluntary CLE. Almost 90% of practitioners report participating in professional development or CLE, and, among those who do not, many do not participate because they are retired, not seeking work, or work in non-law jobs. This data raises questions about whether MCLE will increase CLE participation.

B. **Targeted MCLE**: Recommend MCLE for certain categories of practitioners that the task force deems more likely to need additional education, such as practitioners subject to disciplinary, judicial, or malpractice sanctions, and new attorneys. CLE would be voluntary for all others.

Analysis: At least one jurisdiction, the District of Columbia, has adopted a requirement that all newly-admitted lawyers take a professionalism and practice course, but does not require ongoing CLE. There is room to build on this model. With respect to disciplined attorneys, there is less risk of backlash because there may be a correlation between discipline and the need for further professional education. **This option is not recommended, for the following reasons:**

- Significant risk of backlash among younger attorneys, and a risk of perception among others that MCLE is duplicative for attorneys who recently graduated from law school.
- SBM previously required MCLE for new attorneys, but not others. By some accounts, it was "universally detested by the young lawyers" and not well received by others.[9]
- Requiring PR MCLE for disciplined attorneys (discussed below), as opposed to general MCLE requirements, is a more targeted method of addressing attorney competence.

[9] McLoughlin, *supra* n.1.

C. **Develop pilot PR curriculum**: Professional responsibility is universally applicable to all practice areas. Under this option, SBM would allocate resources to a partnering institution to develop an innovative PR program. Once developed, it would be presented to SBM for consideration as one-time MCLE for all practitioners, similar to the requirements in the District of Columbia.

Analysis: The purpose of the pilot project is to design a more engaging curriculum that avoids the pitfalls of passive CLE lectures and webinars,[10] and targets the most common attorney competence problems of Michigan attorneys. According to the Michigan Attorney Grievance Commission, three of the most common grievances relate to professional responsibility: failure to communicate, neglect, and misappropriation. A one-time PR MCLE requirement is likely the avenue of least resistance, and it has the potential to address the most fundamental attorney competence problems.

The potential for innovation is significant. The curriculum we envision would focus on effective delivery methods for adult learning. This approach is supported by recent literature critical of the passive CLE learning model as "inconsistent with adult learning principles."[11] Under this approach, SBM would dedicate resources to a collaborative partnership, such as with an entity ranging from a law school's curriculum design committee to the ICLE. **For these reasons, we recommend option C, along with option D.**

D. **Inspire robust voluntary CLE participation:** Incentivize more voluntary CLE attendance.

Analysis: There is little risk in encouraging more CLE participation. Possible methods include:

- Reduce bar dues for voluntary completion of a minimum number of CLE credits
- Generate a publicly available list of "compliant attorneys" and feature it on SBM's website, possibly also indicating "compliance" with a recommended number of CLE hours on an attorney's SBM directory profile.[12]
- Create a certificate program using CLE curriculum, such as: technology, practice management, or process improvement like Six Sigma. Certificates could be featured on a member's SBM directory profile and otherwise identified on SBM's website or promoted in press releases. We note that other work groups of the Practice Committee have considered specialty certificates. One group recommends the adoption of a specialty certificate program to serve the dual purposes of (1) providing additional specialized education, particularly to new graduates, and (2) offering an informative credential to the public in selecting an attorney. This recommendation aligns with and reinforces our recommendations.
- Create and implement a basic PR quiz that is randomly triggered when attorneys renew their bar licenses. Attorneys would not know which year (or which version of the quiz) they would receive. Attorneys who fail the quiz would be required to do an additional PR webinar or in-person training by a certain deadline.

[10] *See* Rhode & Buford Ricca, *supra* n.7.
[11] *Id.* at 8.
[12] Alaska generates a list of "compliant" lawyers, available at https://www.alaskabar.org/servlet/content/mcle.html

V. **Recommendation:** Our work group recommends developing an innovative PR curriculum for consideration by SBM as a one-time MCLE, and creating incentives to encourage more voluntary CLE participation.

VI. Implementation:

1. **Identify potential supporters and allies:** Partners in designing a new, engaging PR curriculum include ICLE, law schools, and local bar associations. One member of our workgroup, a professor and administrator at Western Michigan University's Cooley Law School, indicated that the school regularly revises and redesigns curriculum. Specifically, she has participated in revising PR curriculum to engage students in day-to-day "real-world" ethical dilemmas. We anticipate involving persons with such experience in this effort. Also suggested is (1) recruiting and involving our Master Lawyers Section, and (2) focusing intently on local bar associations as ideal partners for development and delivery of CLE.

2. **Anticipate and rebut potential opponents and obstacles:** Designing a more effective PR curriculum will require SBM resources. Moreover, if this curriculum is adopted by SBM for adoption as MCLE, it is likely to face the MCLE opposition discussed above. However, PR may be the path of least resistance because PR affects all practice areas and targets fundamental attorney competence. To overcome these obstacles, SBM could work with the Attorney Grievance Commission to study the most common grievances and design PR curriculum that addresses those grievances. The goal is to help practitioners to identify and avoid common pitfalls before they occur.

3. **Timetable for Implementation:** If SBM adopts these recommendations, we recommend that within one year, SBM (1) identify an institutional partner to design new PR curriculum, and (2) set a workable deadline to present the curriculum to the SBM for consideration as MCLE. Regarding increasing voluntary participation, SBM should implement the suggested methods immediately.

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To finalize the report from the Technology Work Group to the Building a 21st Century Practice Committee, our focus must incorporate the inter-sections technology has with the other work groups. Below is a summary of each work group's technology issues:

WORK GROUP – Education and Competency

A) "Burgeoning technology" impacts the ability to rapidly and efficiently acquire information.
    1) In direct question is the continued need for law schools to require students to memorize vast amounts of information.
    2) This suggests a focus to link doctrinal courses to practiced skills, i.e. 3rd year of law school adding "Courtroom & Technology" courses.
B) Technology is a "double-edged sword" with a revolution in law practice efficiency and greater value provided to clients, some inherent traditional value of lawyers is eliminated.
    1) We must reclassify the lawyer's value with internet educated clientele.
    2) We must allow lawyers to differentiate from non-lawyers by highlighting lawyers unique ability to not only perform a function but apply the law to it.
    3) Use new resources and marketing strategies, i.e. Bert's Access Legal Care Software for primary care lawyers, seminars/webinars of CLE for creating/using websites, consulting at law firms, and technology consults.
C) New certificate programs must be created for specified curriculums including "technology" to inspire more robust voluntary CLE.

WORK GROUP – Practice Paradigms I – Scope

A) Remove regulatory barriers within the practice and with multi disciplines of other related professions.
    1) Technology programs could be created to provide help to organize networking structures, improve communications, and establish transparent financial structures.

2) Provide one stop shopping for clients with legal issues that cross into multi disciplines, using internet, social media, online resources and mobile apps.
3) Unbundled legal services increases effectiveness with;
    a) Available “sample limited engagement letters”
    b) “On line practice guidelines”

B) Create Specialty-Certifications

C) Continue and improve voluntary CLE

WORK GROUP – Practice Paradigms II – Business

A) Create Special Knowledge/Practice Certifications in every main aspect of law using the SBM Standing Committees for an outline.
    1) SBM website can list vast array of legal topics vetted through each committee/section with appropriate links including frequently asked questions with vetted answers on each topic.

B) Using online services with innovate educational design and technology platforms will increase accessibility, deliverability, interactivity, networking, and increase effectiveness in all areas.

C) Obtain influential placement (top 5) in Browser search listings

D) “Primary Care Attorney” model
    1) Promotes access to justice with affordable expanded legal care
    2) Improved delivery for remote areas
    3) Improved communication
    4) Improved more effective marketing
        a) Lists of primary and litigation attorneys
        b) On line content – unbundled services
        c) On line training/education for clients
    5) Promotes efficient court scheduling by reducing adjournments when multiple appearances needed on same day in different courts by using multiple litigation attorneys.

WORK GROUP – Trial Practice and Court Innovation

A) Address Court Rule changes to reform E-Discovery with greater use of technology
    1) Increase use of remote testimony and electronic dispositions
    2) Increase use of telephone or polycom conferences to manage discovery and reduce docket wait times
    3) Predictive coding
    4) E-filing statewide
B) Performance Measures (staggered dockets) to track
    1) Adjournments of hearings, trials, and notices and reduce wait while preventing the appearance of production line justice
    2) Delivery of other legal services
C) Improved training for lawyers on the use of virtual office tools
D) SBM to provide technical expertise on use of technology, i.e. polycom, telephone conferencing, document sharing
E) Increase and improve Judicial training

DRAFT REPORT- TECHNOLOGY WORK GROUP

This Draft Report of the Technology Work Group is meant to outline the technological intersections between the Technology Work Group and the Work groups for Education and Competency, Practice Paradigms – I) Scope and II) Business, and Trial Court Practice/Court Innovation. Please review the attached word file and this draft and offer comments, changes, corrections, etc., so we can offer a final report to the 21st Century Committee.

I. Education/Competency – Law School

A) Should law students be continually expected to memorize vast amounts of detailed information when internet research is so obviously more advanced, more accessible, and more powerful than ever believed possible when the current teaching models were created and adopted?

B) Should Law schools focus on linking doctrinal courses to practiced skills?

a. 3rd year courses on courtroom practice/technology/online practice guidelines

b. Practical courses on the competencies and ethics of legal practice covering social media, marketing, networking and organization, ethics, communication, confidentiality/cyber security, legal research and writing?

II. Education/Competency – CLE

A) Should the Rules of Professional Conduct and other related guidelines, be amended or adopted that more directly (rather than just implicitly) require attorneys to be competent in the use of law related technology?

B) While better technology training should begin in Law School, should more advanced training be offered (and/or required) through CLE in the following areas internet and computer areas;

a. legal writing and research

b. marketing and networking

c. video conferencing and other electronic communication

d. confidentiality and cyber security guidelines

e. ethics

f. unbundled services and limited electronic consultations

g. Efiling, EDiscovery, and courtroom evidence presentation systems

h. Remote video testimony and depositions

i. Responsibilities and liability sharing between legal and other law related professional disciplines

C) Lawyers should be educated and reeducated on how to differentiate themselves from other multi law related disciplines by recognizing and promoting their unique ability not only to provide a service but to apply the law to it. This recognizes that while some inherent legal value of lawyers may be lost to other disciplines due to technology, lawyers have and must market this difference to reestablish and redefine their value with an internet savvy public and client base.

D) The State Bar of Michigan should offer new resources for consulting/marketing and internet practice strategies using available technology and seminars/webinars;

a. "Primary Care Attorney" and other virtual legal service software

b. Indigent referrals to Michigan Legal Help website

c. Unbundles services with sample engagement letters, orders, and other documents (automated document imaging/ assembly software)

d. Cloud computing and internet based law office management

e. Confidentiality and Cyber security

f. Electronic communication and video conferencing

g. Evidence presentation in digitally enhanced courtrooms

h. Maneuvering Court Case Management systems, statewide Efiling, and EDiscovery

i. Social Media
j. Knowledge management, expert systems and legal analytic programs

E) Maneuvering between cross disciplines and other law related multi disciplines post barrier removal/reforms for ethical, financial confidentiality, liability, marketing, inter communication and networking, client sharing and related structures.

a. Create "Special Knowledge Practice Certifications" in all main aspects of legal and multi-disciplinary legal practice fields by adopting and using the existing SBM Standing Committee and Section structure, organization and operations as the outline of and preferred process for vetting and training lawyers for these Certifications. This would include the incorporation of proper technology competencies and all uniquely adapted technological skills for each Certification especially those that emphasize specific new technologies that cross all area of practice and are primarily technological in nature.

III. Practice Paradigms – Business/Scope

A) Remove Regulatory Barriers and reform Multi law related disciplinary Guidelines to serve the public with greater more efficient and affordable access to those in need of legal and legally related services. Create new or reformed paradigms for combined practice areas that recognize and incorporate the new realities of client based legal and legally related needs and services that have evolved with the use of new technology.

B) With "One Stop Shopping" technology can be used to help organized and track financial, marketing, networking and ethical parameters between these areas for more efficiency and value for the clients. The technologies should target;

a. Social media for advertising and communication
b. On line resources for basic research and unbundled services with sample vetted documents
c. Mobile applications for all these resources including calendaring, messaging, and document sharing

C) "Primary Care Attorney" model and self-help online legal services (MLH)

a. Promote more affordable and indigent access to justice
b. Improves delivery of legal services to those in remote areas or with transportation issues
c. Improves overall communication
d. Improves and expands marketing opportunities and gets more unbundled vetted legal products to those who are indigent
e. Promote more efficient court scheduling and better docket control by reducing need for adjournments when multiple hearings are set on same day in multiple locations by using lists of litigations attorneys and having online scheduling catch more scheduling conflicts

D) "Special Knowledge Practice Certifications" organized by and operated through SBM structure with SBM vetted Q & A and legal products.

IV. Trial Court Practice and Innovation

A) The Michigan Court Rules need revision to further electronic practice in the Courts;

a. EDiscovery
b. Remote testimony for hearings and depositions
c. More video conferencing on pretrial dockets to allow for remote presence of counsel and defendants and better manage electronic and other discovery issues.
d. Statewide Efiling
e. Advanced Case Management Systems able to communicate on common state run platform/portal for efficient information management, security and archiving.
f. Make more involved and smarter use of Judicial Data Warehouse and other agency databases to enable a more informed judiciary, probation and clerk staff make accurate decisions and promote more efficient scheduling of court events.
g. Improve predictive coding of events for more accurate and more transparent computerized records.

B) Improve docket management through technology to reduce wait times for lawyers and the public and save on costs while improving customer satisfaction.
C) Improve Judicial and staff training to promote the efficiencies offered through the use of new technologies and programs while preventing the appearance of production line justice.
D) Promote a consistent statewide source of funding for the technology needs of all the state courts to provide better and more efficient access to justice, while reducing the burden on local funding units.

21st Century PRACTICE Task Force

Report of Workgroup 2 "Technology Challenges and Opportunities"

Hon. Kirk Tabbey – *Group Leader*
Diane Ebersole – *State Bar Liaison*
Jeffrey Barker – *Law Student Intern*
Marla McCowan – *Group Leader*
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Hon. William A. Baillargeon
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Charge 1 – Technology Competency

Technology drives the modern practice of law. Competency assures better consumer engagement, efficient practice management, and better management of the courts and administration of justice. We further believe that technological competency is foundational to the legal education in law school and continuing legal education.

Reason for Charge 1

Lawyers must possess and maintain a basic working knowledge of modern technology to deliver legal services competently and ethically.

I. Status Quo

Rapid advancements in technology have changed the way information is created, stored and accessed by everyone, and have changed the way the public expects to interact with those delivering services, including legal services. The legal profession and the justice system are struggling to react appropriately and one challenge is the lack of technology competency by many lawyers. Many lawyers are not digital natives and have difficulty understanding and using different applications.

II. Options and Trends

In everyday legal practice, lawyers and legal professionals are surrounded in an ever-changing technological landscape. Lawyers use technology to communicate regularly with colleagues, clients and the courts. Critical information is transmitted electronically - beyond simple communications – including discovery and other important documents and evidence. Lawyers must maintain a competent knowledge of basic technology and the rules of professional conduct should match the continuing duty of technological competence and its relevance (and importance) in day to day practice.

In 2012, the American Bar Association (ABA) approved a change to the Model Rules of Professional Conduct ("Model Rules") to state that lawyers have a duty to maintain competency in technology, "including the benefits and risks associated with relevant technology." Since then, several states have adopted this change. *See* Robert Ambrogi, http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html, (updated March 27, 2015). Lawyers can no longer turn a blind eye to technological advancements and their effect on the practice of law. Lawyers must maintain a basic level of competence to practice law. For example, lawyers have the obligation to seek out information that is readily available to the public as part of conducting reasonable investigation into claims. *See e.g. Johnson v. McCullough*, 306 S.W.3d 551, 559 (Mo. 2010) (use of "reasonable efforts" required to investigate juror's litigation history). Further, lawyers have a continuing obligation to maintain technology competence, including all relevant ethical implications that flow from using modern technology in the legal practice.

A. **Basic competencies**. Basic technological competencies should be identified for different practice types and curriculums developed to train to those competencies throughout a lawyer's career. These include, at a minimum, the following:

1) Cybersecurity

As technology continues to develop, there are many dangers that lawyers and clients face with regards to possible cyberattacks. Lawyers have the duty to safeguard confidential information by understanding the importance of strong passwords (containing a mix of letters, numbers, and special characters), encryption, and multifactor authentication. Andrew Perlman, "The Twenty-First Century Lawyer's Evolving Ethical Duty of Competence." *The Professional Lawyer*, American Bar Association. 22:4 (2014). Pg. 2. Lawyers also need to understand what metadata is and how to remove it, the dangers of using public computers and unsecured Wi-Fi connections, the risks of using file sharing sites, and how to protect themselves against malware. *Id.*

2) Cloud Base

Additionally, if a lawyer employs any new technology, such as "cloud computing," the lawyer must have a basic understanding of the technology, and he or she must take reasonable steps to preserve client confidentiality. Pardau, Stuart & Edwards, Blake. The Ethical Implications of Cloud Computing for Lawyers. 31 J. Marshall J. Info. Tech. & Privacy L. 71, 76 (2014). Cloud computing is a mechanism in which data and software are stored offsite on servers owned and maintained by a third party. Scruggs, Mark. The Ethics of Cloud Computing and Software as a Service. *Lawyers Mutual*. May 27, 2015.

Since third parties maintain these servers, the use of cloud computing raises many ethical concerns of confidentiality, competence, and proper supervision of non-lawyers. Opinion 12-3 (2013), *available at*

http://www.floridabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+12-3?opendocument

Examples of cloud computing include web-based programs such as Gmail and social media platforms. *Id.* Furthermore, the ABA permits a lawyer to use a cloud computing system to store client files provided that the lawyer takes reasonable steps to ensure that the system is secure and that confidentiality will be maintained. http://www.americanbar.org/groups/professional_responsibility/services/ethicsearch/ethicstipofthemonthmay 2014.html

Moreover, law firms using either private or public clouds need to ensure that their cloud uses appropriate security protocols to safeguard the information. *Perlman, supra.* Several states require that lawyers know how the providers handle storage and security of data and have an enforceable obligation to preserve confidentiality. http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/cloud-ethics-chart.html#CA

3) E-Discovery

Lawyers who regularly conduct discovery must be competent in performing e-discovery or "face discipline and sanctions if they do not understand the basics of electronically stored information (ESI) or fail to collaborate those who do." *Perlman, supra*, at 3. In Massachusetts, a lawyer was disciplined for failing to take the appropriate measures to prevent a client's spoliation of ESI and was also found to have violated Rule 1.1 because he did not have the competency to represent the client. *Id.* New York mandates e-discovery competence while California emphasizes the importance of e-discovery competence, stating that lawyers are required to be familiar with the technical aspects of e-discovery. If the attorney lacks such skill, the attorney must either take steps to acquire sufficient knowledge or consult with someone with the appropriate expertise to assist. Id. at 3-4.

Relevant technology also includes the use of social media, which lawyers need to understand the legal ramifications of existing and future postings, and the removal of any postings that may violate the rule and law on preservation and spoliation of evidence. http://www.ncbar.com/ethics/ethics.asp?page=528

4) Internet-Based Investigations and Marketing

The Missouri Supreme Court held in 2010 that lawyers should use reasonable efforts to research the litigation history of jurors prior to trial in order to preserve possible objections to the empanelment of those jurors. *Johnson*, 306 S.W.3d at 558-59. Other jurisdictions

have emphasized the importance of using simple Internet investigations to gather information without raising any ethical issues. Lawyers are only permitted to access information that is publicly available with the need to request for access, for example: "friending" someone. Perlman, *supra* at 4. Lawyers need to also recognize how to use Internet-based marketing, such as social media, pay-per-lead services (paying a third party for each new client lead generated), and pay-per-click tools (e.g. paying Google for clicks on a law firm's website). *Id.* For example, a lawyer in Indiana received a private reprimand for using a pay-per-lead service whose advertisements failed to comply with the Indiana Rules of Professional Conduct. The Indiana Supreme Court held that the lawyer should have known about the improper marketing methods and should not have used the services. *In re Anonymous*, 6 N.E.3d 903, 907 (Ind. 2014). Even if lawyers create their own online marketing, they need to be careful as to not violate any rules of professional conduct. Perlman, *supra* at 5.

5) "New Law" Technology

The ABA defines "New Law" as technology and other innovation that facilitate the delivery of legal services, such as automated document assembly, expert systems, knowledge management, legal analytics, virtual legal services, and cloud-based law practice management. *Id.* Currently, lawyers are not ethically required to use these tools or have an essential competence in it, but if they want to remain competitive in this rapidly changing marketplace and stay ahead, gaining competence in this field will be beneficial. *Id.*

B. **Guiding principles.** Virtually every one of the guiding principles would be served by requiring a basic level of technology competence by lawyers, along with the duty to maintain that competence and all related issues. A growing number of users of the legal system expect to access legal services in the ways they access other services – online and all the time. Innovations generally involve the application of technology to systems and lawyers need to know how to use that technology to deliver legal services. Clients are looking online and through social media for legal help and have available to them all kinds of information. Lawyers are responsible for the legal services delivery system and should make sure they know how to provide services using technology and social media. Technology changes rapidly and lawyers must keep up with those changes. Amending the competency rule to add the duty to maintain competency in technology is very practical guidance to lawyers. Technology competences and guidance on cloud computing will address future-oriented skills.

Charge 2 – Technology Professionalism: Ethics Online
Technology drives the modern practice of law. As practice evolves attorneys must maintain the highest ethical standards to meet new challenges and opportunities.

Reason for Charge 2
"[T]he legal profession's fate does not lie in its ability to embrace new technology. The profession's fate hinges on its ability to maintain, through this period of intense change, its core values, as shown in its strict code of legal ethics and rules of confidentiality to protect the attorney-client relationship." Glenn Lau-Kee, *The Gap*, N.Y. St. B.J., July/August 2014, at 5.

I. Status Quo

Lawyers and legal professionals rely on their own general professional judgment in the creation and maintenance of an online presence. Ethics opinions and guidelines for best practices from a variety of sources nationwide help form parameters for interaction with clients and courts online and in the continuing self- education of lawyers.

II. Options based on Trends

Basic technological competence as detailed in Charge 1 implicates the related ethical obligations that lawyers and legal professionals must adhere to, regardless of any changes in technology's landscape: the duty to communicate with the client, to protect confidentiality, and to provide competent representation. Kristin J. Hazelwood, *Technology and Client Communications: Preparing Law Students and New Lawyers to Make Choices That Comply with the Ethical Duties of Confidentiality, Competence, and Communication*, 83 Miss. L.J. 245, 247 (2014). Creating specific ethical rules for attorneys to refer to in an effort to maintain the highest level of professionalism will ensure that the needs and expectations of clients are addressed efficiently, and should be broad enough to adapt to a variety of circumstances and changes in both the law and technology. Rules governing "Ethics Online" should be amended to address these areas:

A. Competence.

Michigan Rule 1.1 on Competence is as follows:
A lawyer shall provide competent representation to a client.
A lawyer shall not:

> (a) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;
> (b) handle a legal matter without preparation adequate in the circumstances; or
> (c) neglect a legal matter entrusted to the lawyer.

Michigan's rule and related commentary may *implicitly* reference competence in the use of technology, but it should go further. The American Bar Association's House of Delegates voted to amend the Comments to the model rule in 2012 to explicitly reference technology competence. Comment 8, "Maintaining Competence" states that "[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject." At least 14 states have adopted some version of this ethical rule to maintain technological competence. *See* Robert Ambrogi, http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html, (updated March 27, 2015). Updating or amending MRPC 1.1's comment on "Maintaining Competence" should address a lawyer's competence in understanding the benefits and risks associated with relevant technology, and should mirror the model rule.

B. Communication

Michigan Rule 1.4 on Communication is as follows:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The ease of electronic communication enables timely and efficient contact between lawyers and clients. The term "promptly" allows for countless forms of communication. The commentary for MRPC 1.4 should address best practices for using good judgment regardless of the method of communication, but particularly for using technology to communicate with clients. *See generally The Florida Bar Best Practices for Electronic Communication*, June 2015. Attorneys must be aware of the value of using technology to communicate with clients, particularly when it comes to "promptly" communicating, but at the same time some must be aware of the perils of using electronic communications with clients. Some situations might make it simply unprofessional to communicate by way of texting or direct messaging (notifying of a loss in court, or a complicated legal ruling). Face-to-face meetings, personal telephone calls, and detailed written correspondence remain at the heart of attorney professionalism and are core values of client-centered communication. Absent extraordinary circumstances, electronic communication should be limited only to brief updates for the purpose of promoting efficient practice on less than critical matters.

C. Confidentiality

Michigan Rule 1.6 on Confidentiality is as follows:

> (a) "Confidence" refers to information protected by the client-lawyer privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(b) Except when permitted under paragraph (c), a lawyer shall not knowingly:
(1) reveal a confidence or secret of a client;
(2) use a confidence or secret of a client to the disadvantage of the client; or
(3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(c) A lawyer may reveal:
(1) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;
(2) confidences or secrets when permitted or required by these rules, or when required by law or by court order;
(3) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;
(4) the intention of a client to commit a crime and the information necessary to prevent the crime; and
(5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

(d) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (c) through an employee.

The ABA recently amended the corresponding Model Rule 1.6 to include language about access to information:

> (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Confidentiality is perhaps the most vital aspect of an attorney client relationship, and the most vulnerable when it comes to using technology in any legal practice. Language addressing the need to protect all confidential matters should be adopted in Michigan in the Rule itself, and must be understandable to anyone with access to confidential information and in the following areas:

(1) **Practice Management**. "One of the greatest risks of data breaches comes not from malicious outside hackers, but from the inadvertent disclosure or loss due to internal lax controls. The increased prevalence of lawyers and other staff using personal devices to practice law and the widespread use of flash drives and other portable storage devices dramatically raises the likelihood of an unintentional breach. There are numerous examples of lawyers losing laptops or flash drives containing client information. Everyone knows you need to take care to delete information from old computers and tablets, but many copy machines and printers have hard drives that capture the data copied. Proper disposal of any

device that stores data is essential to protecting client and other confidential information. Regular employee training on the importance of data protection is essential, and many clients are requiring their lawyers to have acceptable data protection safeguards in place. Where lawyers use personal devices in their practice, having a BYOD (Bring Your Own Device) policy with appropriate data protection provisions is of vital importance." Randy L. Dryer, *Litigation, Technology & Ethics: Teaching Old Dogs New Tricks or Legal Luddites Are No Longer Welcome in Utah*, Utah B.J., May/June 2015, at 12, 19-20.

(2) **Consumer Engagement**. Just as all lawyers are required to be more thoughtful about using technology to communicate with clients, they "must also monitor their clients' use of technology to make sure that it does not jeopardize communication confidentiality." Kristin J. Hazelwood, *Technology and Client Communications: Preparing Law Students and New Lawyers to Make Choices That Comply with the Ethical Duties of Confidentiality, Competence, and Communication*, 83 Miss. L.J. 245, 279 (2014). It is incumbent on lawyers to explain to their clients about the risks of using technology to communicate with anyone involved in litigation, particularly when it comes to seemingly routine tasks such as drafting, reading or forwarding an email to or from a lawyer. The ease and ability to forward such communications must be met with ample warnings.

(3) **Courts.** Electronic filing yields the most fertile opportunity for inadvertent disclosures. Attorneys and their staff should never attach client communications or work product documents to electronic filings. Anyone e-filing should take care to redact personal identifying information from materials that will be part of the public court file. Most courts accepting electronic filing of documents have provisions for submitting non-public records, whether under seal or other protections, in their e-filing user guides, local rules, or internal operating procedures. Staff responsible for electronic filing must be careful about clearly identifying non-public records when filing electronically and must be familiar with all rules about confidential information. Courts should provide a process for retracting improperly e-filed documents that violate attorney confidentiality.

(4) **Legal Education**. Law students and new lawyers must be educated and mentored on the use of technology in the modern law practice, and its relation to the ethical rules regarding competence, communication and confidentiality. Basic competencies are addressed in Charge 1, and specific guidelines are suggested in Charge 5.

(5) **Social Media**. Most firms will benefit from having a social media policy that sets clear expectations for use and firm consequences for misuse when it comes to social media and any violation of client confidentiality. Templates are suggested in Charge 5. Any policy, even informal, rests on the use of good judgment. "In all matters, an attorney must be guided by common sense, due diligence and judgment. And judgment is something, that unlike the latest in technology, will *never* become obsolete." Glenn Lau-Kee, *The Gap*, N.Y. St. B.J., July/August 2014, at 5, 6.

Amendments to Michigan Rules of Professional Conduct 1.1, 1.4 and 1.6 (or comments on the MRPCs) would meet all of *Guiding Principles for the work of the Task Force and its Committees* (1-7).

Charge 3 Technology Opportunities
Technology drives the modern practice of law. As technology creates uncharted opportunities, lawyers are able provide accessible, efficient, and effective service to clients, and provide the lawyer with greater flexibility in balancing work and personal obligations.

Reason for Charge 3
Lawyers need to keep pace with evolving technology, but they should not implement the latest technology for technology's sake alone. All lawyers must analyze the relative risks and benefits of using technology, with a particular eye on opportunity: how does technology move the ball forward?

I. Status Quo

By nature, the practice of law is steeped in tradition and respect for precedent. Because of this, the legal profession is often slow to embrace new technology. This technological conservatism stems from a variety of sources. Anecdotally, these concerns range from concerns about cost-benefit and risk (both legal and ethical) of becoming an early adopter, to resistance against change and mistrust of--or discomfort with—technology. *See* http://www.quora.com/Why-might-some-lawyers-dislike-technology. This conservative rate of adoption, however, translates in many cases into a barrier to allowing attorneys to nimbly adjust to the realities and demands of a digitally enhanced practice that evolves day by day.

II. Options and Trends

Attorneys, their clients, and the courts can use new innovations to enhance client service, accessibility, and communication. Properly implemented opportunities within attorneys' legal practices can also enhance their quality of life, both professionally and personally. In a world where people are nearly always connected to their devices and the Internet, it has become a common expectation that technology is leveraged to provide immediate, on-demand access to information and communication anytime and anywhere. Immediacy of access to and from clients, real-time case / matter status, electronic billing, electronic filings to courts, and remote appearances via video conferencing are only a few options available today that deeply impact what has heretofore been considered the traditional practice of law. These options are no longer "the future"--they are baseline expectations that the community at large has for anyone (including the legal community) to keep pace with the rest of the world. More importantly, implementing even

these few opportunities can dramatically impact accessibility to justice to those that are geographically remote, indigent, and/or socially diverse. Areas of ample opportunity include:

(1) **Practice Management**. The immediacy of digital communication directly to specific parties of all types makes it possible, if not necessarily desirable to be accessible on a 24/7 basis. While it behooves an individual to make decisions on personal boundaries, it allows for access to those remote and or marginalized. Use of the cloud enhances the ability to access documents and files with the same immediacy and state of the art data security.

Back office/ Administrative

Attorneys and clients are able to access real time reports on status and work product. These programs can expand a practitioner's ability to concentrate on matters of concern to the client rather than administrative concerns such as billing. Importantly it allows the court and attorney alike readily available translation services, and expansive research resources.

(2) **Courts.** Technology enabled courts allow for remote access for purposes that are already expanding to include testimony, saving travel time for many and saving expenses associated with transport, security and monitoring prisoners needing to address a court. While these efforts have reaped enormous savings to date, their use and savings are expected to expand quickly.

Digitally enabled courtrooms could also allow counsel to utilize digitized exhibits, dramatically reducing the need to securely transport potentially voluminous documents and exhibits. This also allows for real-time annotation of legal precedent.

- Modern technology-equipped courtrooms include:
  - High-Speed Internet/Wifi access for litigants
  - Monitors linked to the courtroom technology at counsel tables
  - Annotated monitors with live transcription
  - Video-Conference capabilities (Already in Michigan state courts)
  - Cross-implementation with other systems (VA TeleHealth, etc.)

(3) **Social Media**. Social Media is widely regarded in general terms as a "hot" technological opportunity in nearly any business. Nevertheless, the engagement of social media in any particular industry does not necessarily result in benefits to the industry or those who are a part of it. Indeed, as discussed in other Task Force reports, the use of social media can represent a threat to the legal profession, and must be approached thoughtfully. This is especially true given that the very concept of social media is the broad, frictionless sharing of information with wide networks of people, many of whom are not identified or identifiable. In this regard, the legal industry's use of social media presents concerns and problems that will be discussed in a separate report.

Nevertheless, this widespread sharing of information does present some opportunities to the legal community. In particular, social media provides a mechanism through which the

industry can reach out to an enormous audience with publicly-consumable information. As social media becomes ubiquitous to everyday consumers, the use of social media is particularly relevant to the practitioner who seeks to market services to the public.

Through the use of social media, attorneys also have the ability to provide a more familiar digital engagement of a consumer and use platforms to create a virtual environment that allows earlier consultation and intervention with clients to address needs immediately when possible and a plan of action for those that cannot be immediately addressed. So forearmed and or forewarned, clients can be more confident and bold in making decisions. Such early access may also better allow an attorney to efficiently match expertise with client need, or to determine the need to effectively refer the matter to a party that can best address the needs of the client.

In addition, the use of social media can help attorneys provide immediate, context-relevant information and "free" public advice to the public (and potential clients) in a manner that is responsive and directly relevant to current events. These updates could be responses to evolving changes such as new regulatory rules, or much more exigent, such as providing advice as to a person's rights and obligations during times of civil unrest or natural disaster.

Finally, social media can prove to be a highly effective tool for attorneys (and courts) to independently investigate and discover relevant information to matters in which they are currently engaged. This is particularly true as many people use social media as a method of documenting significant aspects of their lives. The information documented within social media is also often tagged with metadata that provide even more insight into the information that is posted (e.g., timestamps, GPS coordinates, originating device, IP addresses, etc.). Ethically, and competently used, social media can provide a significant amount of independent evidence to attorneys who may have a need for this information.

Charge 4 - Technology Challenges
Technology drives the modern practice of law. As technology creates uncharted opportunities we must learn and manage technology that increases efficiency while preserving confidentiality and the security of client information.

Reason for Charge 4
Recognizing and anticipating challenges that come with opportunities is essential to the modern practice of law and will ultimately help form guidelines for managing change.

I. Status Quo

Law Practice and the Courts are in transition from paper to digital/data based information and document management with new electronic communication platforms.

II. Options and Trends

A. Move away from paper. The efficiencies of one time data entry, electronic storage and transmission, almost unlimited access, and database search ability drive the move away from paper. This option is already the top priority and serves all the guiding principles.

B. Retrain current lawyers, judges, administrators, and clerks. While current continuing legal education offers some courses, new more expansive courses need to be developed and taught. Law Schools must offer revamped legal writing and research training based on electronic data. Judges and staff must retrain on new systems and learn to operate electronically. This includes new technologies for interpreting and easy access for those who are indigent. This option deserves a top priority and serves all the guiding principles.

C. Electronic measures and new applications for preserving confidentiality must be adapted to use electronic data and communication on the web. E-filing, E-discovery, e-communications, e-cloud storage, and web browsing research have been trending and will accelerate. This option deserves a top priority and serves all the guiding principles.

D. Data and electronic documents must be properly stored and secured yet be easily accessible. This includes security and back up processes in place running 24/7. This also deserves top priority and serves all the guiding principles.

There is less emphasis on paper and more on electronic methods of data use, storage and communication. Legal services are unbundling. Marketing is more television and web based. Training is more often remote and web based. Population diversity is increasing language barriers. Poverty is increasing resource barriers.

Charge 5 – Technology Guidelines
Technology drives the modern practice of law. As new technologies evolve, we must timely implement adaptive guidelines for the use of technology in the courts, in lawyer to lawyer, and lawyer to client communication; we must modernize rules and processes consistent with best practices and lawyer professionalism.

Reason for Charge 5
Lawyers and legal professionals would benefit tremendously from specific guidelines governing the use of technology in their practice. Guidelines should be adaptable as technology continues to change, while adhering to the critical values of the rules of professional conduct.

I. Status Quo

Currently, lawyers and legal professionals in Michigan do not have any specific guidelines governing the use of technology in day to day practice, and must rely on general principles from the rules of professional conduct, ethics opinions, and case law for insight in the absence of direct applicability.

II. Options

Consistent with the guiding principles for the work of the task force as detailed in Charges 1-4, specific guidelines must be implemented in order to ensure client-centered representation, innovation in practice, and effective response to change with a commitment to continuing legal education. It is recommended as follows:

A. Michigan Rule of Professional Conduct 1.1 should be amended to include the ABA 1.1 comment 8 "lawyers have a duty to maintain competency in technology including the benefits and risks associated with relevant technology."

B. Basic technologies competencies should be identified for different practice types and curriculums developed to train to those competencies throughout a lawyer's career.

C. Specific guidance on cloud ethics for Michigan lawyers should be provided through the issuance of an ethics opinion like those developed recently in other states.

D. Paperless systems should be fully instituted in every court in Michigan, with training for court staff and lawyers on the mechanics and ethics of maintaining electronic data.

E. Sample/Template social media checklists and policies should be designed to assist the modern practitioner, with caveats for law firm use and the interrelated employment and constitutional law issues.

III. Trends

People and businesses are using the internet, social media and other technologies to take care of their personal, business and legal needs. The federal court system requires lawyers to understand sufficient technology to use an e-filing and docket management system already. More than 13 states have adopted ethical duty of technology, *See* Robert Ambrogi post, *supra*. At least twenty states have issued ethics opinions regarding cloud computing.

IV. Analysis needed for any option under consideration:

A. Best Case Scenario.

Lawyers and the justice system will be able to respond to people's legal needs and deliver services in new ways that make access to justice available to more people with less cost while maintaining privilege and protection of confidences. Client confidences can be maintained with appropriate guidance in an ethics opinion.

B. Worst Case Scenario.

Threats and risks exist in the digital practice as well as in what is considered the more traditional practice. An honest and objective review of these risks is necessary and desirable, but with an eye to the point that data stored in cloud services are probably far more secure there than in a locked office, car, filing cabinet or brief case. Nevertheless the possibility of

hacking, identity theft, corporate espionage and even competitor attorney hacks or breaches all remain possible. Also, there is a threat of a technological divide that one is tempted to brand as old against the young, but competence in this area is varied across age and socioeconomic boundaries. Another real concern, to potentially all parties, is the lack of personal face to face interactions, often leading to misunderstandings based on missed cues, inadvertent and or bad jokes or spell check corrected statements changing the meaning or even comprehensibility of a message. Justice and the rule of law could become compromised without appropriate and necessary human judgment and intervention. Lawyers may resist technology as an appropriate tool to administer justice.

C. Unanswered Questions and Unknowns.

For some options, more research is required. For example: it is unclear in Michigan whether or how a lawyer can ethically practice and communicate with clients through cloud computing. And in terms of cloud computing: once the vendor responsible for data storage is retained, can the information be retrieved- ever?

For the paperless data storage and cloud based systems, pilot programs in Michigan state courts and full implementation in Michigan federal courts and successful applications in similar states (Texas) demonstrate that we have enough data to show it will work; support from stakeholders is the unknown.

For the ethical rules, opinions and guidelines, it is true there is nearly always hesitation and discomfort with change, and the worries of some are in some aspects legitimate. Cost is not securely contained or even established, there is uneven and sometimes non-existent security from both consumer and client ends to even some of the software providers. It is also uncertain as to the amount of time and/or receptivity that will be needed to bring attorneys, courts or clients to an adequate level of competence. There does not need to be a pilot period however, these issues will need to be addressed as we move through the process of becoming a digital friendly practice. Much will depend on what is out there.

D. What is innovative about these options?

We are creating an environment where the new tradition is to adapt as technology evolves. We would balance traditional technological conservatism with ability to take advantage of new opportunities where they matter. This would require a more limber judiciary, especially the Supreme Court determining means of allowing "official filings" etc.

E. Implementation Strategies.

1. Potential supporters and potential allies

a. Vendors

Since meeting change is always uncomfortable, there are natural allies that will be present to assist those needing tutorials and assistance. Naturally, vendors cannot

sell products that their target consumer is either unable to use or unfamiliar with the full range of possibilities present in any particular program. It will be incumbent upon them to help educate the consumers. In so doing they are able to gauge and report on the utility of the product and the proficiency of the consumers in being able to use it. This will have the important added benefit of being able to witness firsthand what is needed, spurring legally specific innovations.

b. Attorneys and Courts

As the practice moves to more and more technological innovations, those having these new resources will be in a stronger position, as can already be seen in some areas of practice today. This will encourage entrepreneurial attorneys and innovative judges to develop products and policies to utilize the efficiencies achieved by new programs. An immediate beneficiary of such advances would be geographically remote attorneys. New generations of both attorneys and judges will magnify the need to innovate and capitalize on the efficiencies of technology.

c. Clients

Market drives will likely see clients insisting on the use of technology to assist them in monitoring the status of issues in real time. Some clients will see it as a base or fundamental requirement at the disposal of their counsel. It also greatly broadens the pool of experts available to any address any specific concern.

d. Specific Groups and Resources

Professional Ethics Committee, Judicial Ethics Committee, Michigan Supreme Court, ICLE, State Bar Practice Management Resource Center, Michigan Legal Help, Counsel and Advocacy Law Line, lawyers who have established internet and online practices like Bert Whitehead IV (Access Legal Care PLLC) and Enrico Schaefer (Traverse Legal PLC). There are also numerous resources like "How to Start and Build a Law practice" by Jay Foonberg, "Dangerous Law Practice Myths, Lies and Stupidity" Kessler, Legal Tech Audits see attached and D. Casey Flaherty and Andrew Perlman http://www.legaltechaudit.com/ http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/state_implementation_selected_e20_20_rules.authcheckdam.pdf ABA state by state adoption of 1.1 comment 8

2. *Potential opponents and potential obstacles*

a. Attorneys and Judges

Although from this same group we drew support, we recognize that there are those that do not know and do not care to know. There are also those too close to retirement that do not wish to expend the time or resources to reach competency in the use of technology. They may be comfortable in the traditions and resources

of the past and will still want to be relevant to policy issues of today, making it in their interest to maintain the status quo.

b. Privacy Advocates

There are legitimate concerns to face pertaining to security, permanency of the digital data and where that data is stored secured and maintained. Perhaps louder still are those with irrational fears and paranoia opposed to all things digital. Both will seek to slow any march toward technological innovation.

c. Vendors

Commercial providers like Legal Zoom, Avvo, perhaps Big Law entities that are depending on the status quo as a business model.

d. Funding

With all of these options the opponents are members of each group who abhor or are afraid that change will detract from the best practices already achieved under the old methodologies and those individuals and groups who see no real advantage in spending resources on these priorities when they can identify many other higher spending priorities. The Legislature is a current obstacle to getting authority to charge appropriate fees, collect, allocate, and spend the resources to create and maintain the technology needed to adopt all of these changes. A general funding obstacle is a lack of funding of the state courts instead of the current locally controlled funding model.

3. *Interested SBM entities*

Most State Bar Committees and Sections would be interested in some aspect of this process.

4. *Other Interested stakeholders or potential partners*

The public, bar associations with continuing legal education programs, State Bar sections, legal aid providers and vendors, possibly even through the State of Michigan.

5. *What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?*

Technology is already improving effectiveness in these areas and will likely see expansion through new applications and mobile secure communications.

6. *How might this intersect with or impact other justice system areas/needs?*

Technology already intersects with all the other workgroups in this Task Force.

7. *Staging*

a) Does this option need experimentation or piloting?

Some piloting is necessary as indicated in charges 1-4; in some cases, we can learn from other jurisdictions that have already implemented the changes recommended.

b) What is the recommended timetable, if any?

Now. We are just catching up.

c) What is the recommended order of recommended steps, if any?

All are equally important.

8. What role should the State Bar play, if any?

- Provide access to resources, education, etc.
- Promote and endorse use of technology - make it "safe" for attorneys to use certain technologies by adopting standards and/or normalizing its use.
- Facilitate partnering of the courts at every level
- Continue the work of the Task Force
- Lobby the Legislature, as needed.

Practice Committee

Charge 1
Review and Analysis of multi-disciplinary professional services organizations

Reason for Charge 1 (include citations to research and data wherever relevant)

I. Status Quo

Research concludes that there are no direct ethics opinions in Michigan discussing considerations of multidisciplinary practice networks or organizations. However, existing regulations restrict both the ownership of law firms by non-lawyers and the sharing of fees between lawyers and non-lawyers.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

GUIDING PRINCIPLES: It is believed that permitting multi-disciplinary professional networks and organizations operating within various operating models supports all seven guiding principles articulated by the Task Force. Specifically, meeting the expectations and needs of potential clients and others (#1), innovation in the delivery of legal services (#2), and a legal services delivery system to help clients timely obtain information needed (#3) will be addressed below. It is believed that allowing creativity and market-driven options in the creation of a wide variety of multi-disciplinary operating structures will also provide for optimal access to justice for all people as these organizations can be tailored to meet the needs of the diverse population served (#4). It is recognized that mechanisms will need to be developed and monitored to ensure that there is an ongoing assessment and effective responses to changes and questions that may arise (#5). The SBM will be needed to assist by enforcing existing lawyer-client ethical obligations and by updating adverse or outdated ethics rules and opinions that currently restrict fee sharing and the operation and ownership of multi-disciplinary organizations and practices (#6). Ongoing legal/professional services education will need to be expanded as a multi-disciplinary professional services model will require a greater understanding of organizational operations, project management and other related skill sets needed to effectively own and/or operate a professional services organization or practice in the 21st Century (#7).

1. Permit multi-disciplinary professional networks or organizations.

The potential structure of these organizations are varied and include (i) structures that only allow the sharing of fees between lawyers and non-lawyers to (ii) structures that allow the joint ownership of these organizations by lawyers and non-lawyers. Permitting multi-

disciplinary professional organizations specifically support the Guiding Principles of the work of the Task Force by organizing and operating legal service delivery models which are client/consumer access friendly and allow for (a) one-stop professional services shopping, (b) immediate and vetted access to professionals other than lawyers who are often critical to specific practice areas and the professional services solutions needs of clients/consumers, (c) structures that encourage collaboration amongst professional services providers in the overall best interests of the client/consumer, (d) professional services strategies that permit for a balancing of professional services advice so that the best client solution outcome takes into consideration all professional disciplines and not just the advice of one focused discipline ("we saved the arm, but killed the patient" concern or " we can win the case on legal principles, but the client cannot afford the cost of litigation").

The advantages of allowing a broad range of multi-disciplinary organizations is that this allows professional service providers to collaborate, be creative and innovative, and to focus a particular professional services model on a wide variety of needs of potential clients/consumers of services. This flexibility allows clients/consumers of professional services to have multiple options to fit the clients/consumers' needs. In addition, these multi-disciplinary structures will ensure that all professionals are properly licensed and qualified to provide the services, which will protect the clients/consumers from unscrupulous providers of professional services that are only interested in monetary gain as opposed to client/consumer focused professional services solutions.

2. Do not permit multi-disciplinary networks or organizations

While there could be concerns raised that a lawyer's independent professional legal judgement could be compromised, the continuing existence and enforcement of attorney ethical obligations to clients would continue under the multi-disciplinary professional services model. Existing law firm business models which only reward revenue generation by high billable hour rates and high annual billable hour targets have already impacted the ability of clients/consumers to obtain client focused legal services in the best interests of obtaining creative and prompt solutions for the client's legal issues. The existence of extreme pressures to achieve revenue generation often leads to actions and activities of lawyers that are not in the best interests of clients and not the best route to provide solutions to clients/consumers legal needs.

Unfortunately, outdated thinking continues, at least as it relates to the non-lawyer ownership of law firms. Please see *Jacoby & Meyers, LLP v. Presiding Justices, 2015 WL 4279720 at *9 (S.D.N.Y. July 15, 2015)* and the attached article published (on page 9) by the Illinois State Bar Association. It is believed that the conclusion of Judge Kaplan as well as the comments of John Theis, former President of the Illinois State Bar Association, are based on a mistaken conclusions that only lawyers have a fiduciary duty to clients, only lawyers must act in the best interests of clients, only lawyers in law firms can exercise independent judgment free from control by others, and that the ownership of law firms by non-lawyers is

somehow different than the existing permitted ownership of law firms by only lawyers. There are no known empirical studies or other support for these conclusions. Any lawyer that has ever worked in a large law firm will tell you that the business model of many of these law firms are driven by maximizing billable hours (i.e. revenue) and that the best interests of the clients are secondary to generating revenue. Despite the platitudes that only lawyers owe an ethical duty of loyalty to their clients and that they must always act in the best interests of their clients, the reality is otherwise. Lawyers do not make partner and are asked to leave law firms if they do not generate revenue. Many law firms ensure that the "scorecard' is known to all in the law firm by weekly and monthly postings of billable hours and revenue generation. Acting in the best interests of the clients is not a metric that is measured and client satisfaction and other metrics related to client focused service is not a typical measure that is rewarded within large law firms. In addition, and as lawyers who have worked as in-house counsel can attest, despite the fact that you are employed by a corporation or a business person, as a lawyer you still owe a duty of loyalty to your clients and must act in the best interests of your client. To act otherwise subjects an in-house lawyer to sanctions for violating attorney ethics rules just as it does for lawyers in private practice.

Even if the legal profession is not open to understanding the above realities of the practice of law within a large law firm or within a corporation, then at least the legal profession should draw a distinction between ownership of a law firm by non-lawyers and the ownership of multi-disciplinary professional services organizations by both lawyers and non-lawyers. For the reasons stated above, there are many valid reasons for allowing multi-disciplinary professional services business models and no known reasons for prohibiting new and creative business models to serve the public that maintain the professional responsibility protections placed on both lawyers and non-lawyer professionals.

Other negatives of the existing lawyer only professional service model are that a large percentage of potential users of legal services are opting not to retain lawyers for a variety of reasons-(i) from the cost-(ii) to the limited view of the client concern by only allowing for a legal solution-(3) to the image projected and reality that attorneys are not necessarily viewed as the best option to find solutions to problems. In addition, the continued establishment of non-lawyer organizations providing legal related services to clients/consumers will continue to accelerate unless the legal profession offers new innovative legal and professional services delivery models. The current professional services delivery models require clients/consumers to sign multiple engagement letters with multiple professional service providers. The current access to professional services is complicated and leads to inconsistent professional engagement strategies for clients/consumers. The cost of separately owned and operated organizations also leads to inefficiencies and an increased cost to clients/consumers.

There are no known reasons to not allow the creation of multi-disciplinary networks and organizations, other than to protect the status quo of the options available for the delivery of legal services and the delivery of multi-disciplinary practice professional services.

III. Trends

There appears to be a growing trend of recommending and allowing legal services and multi-disciplinary practice professional networks and organizations. Please refer to page 68 of the Canadian Bar Association (CBA) "Futures: Transforming the Delivery of Legal Services in Canada" and in particular Recommendations # 1, 4, 5, and 6 (see attached on page 10) for the CBA and the delivery of legal and professional practice services in Canada. In addition, the United Kingdom Legal Services Act of 2007 (http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf) permits the non-lawyer ownership of legal services organizations. Please see Part 1 for a discussion of the Regulatory Objectives and Part 5 for a discussion of Alternative Business Structures (see attached on page 12). Australia has also reviewed this topic. Attached is an analysis with recommendations from 2000 (http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/MDPissuespaper.pdf) (Portions of the analysis and recommendations are attached on page 13). Further attached is an article (on page 16) from November 2014 in the Australasian Lawyer discussing the acceptance of multi-disciplinary professional practices services business models (https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=australian+multidisciplinary+professional+services) (see attached on page 15).

IV. Analysis needed for any option under consideration:

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

The Michigan Supreme Court or the State Legislature, as the case may be, determines it is in the best interests of the public and the legal profession to permit the establishment of multi-disciplinary professional practice organizations for the delivery of legal services and other professional services. Existing ethics rules need to be updated and modernized for the realities of the 21st Century needs and market demands of the clients/consumers of legal and other professional services. These rules include the sharing of fees with non-lawyers and the joint ownership of multi-disciplinary organizations by lawyers and non-lawyers. A variety of value driven business models where clients/consumers can choose the professional services needed and the cost for these variety of services is needed.

There is an enormous amount of existing professional services work in the United States According to Select USA, in 2012, the U.S. professional services industry comprised about 760,000 firms with combined annual revenues of $1.5 trillion. The industry employed 7.8 million Americans. See http://selectusa.commerce.gov/industry-snapshots/professional-services-industry-united-states.html as well as an article (on page 17) that details existing industry subsectors in accounting ($131.6 billion), architectural services ($62.5 billion), engineering services ($184.1 billion), legal services ($270.6 billion) and management consulting services

($171.9 billion). With this amount of annual revenue generated in only the above mentioned industry subsectors, there are clearly opportunities to combine subsector industry know-how and resources for the benefit of the consumers of professional services.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

The public and the users of legal services do not accept the alternative business models for the delivery of legal services and other professional services. There may be concerns raised about potential conflicts of interest and multi-professional advice. However, it is believed that these issues can be overcome with regulatory reviews and lawyer-client ethical requirements that continue to exist in order to enjoy the privilege of practicing law. If multi-disciplinary practices organization delivery model options are not permitted, it is expected that unlicensed individuals and entities will continue to expand and to provide even more legal services and legal related services to an uninformed public and to the clients/consumers of legal services; in effect making lawyers irrelevant.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

The international trend to allow the expansion of the legal service delivery models into multi-disciplinary professional services delivery models as noted above in Canada, the United Kingdom and Australia are good real world indicators of the potential success of alternative business models to deliver legal and combined professional services to the public. Further research and analysis of negative implications or potential harm to the public in these international jurisdictions may be warranted. It is possible that a staged liberalization of the permitted types of alternative business models for multi-disciplinary networks is the best approach. However, allowing creative and innovative approaches to structuring professional services delivery models call for an immediate relaxing of the existing and current restrictions on multi-disciplinary professional practices.

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

The permitted business models for the delivery of legal services have not been dramatically changed or updated for modern times and the existing realities of how the public accesses and obtains professional services advice. The liberalization of permitted alternative business models are expected to address the public's access to a one-stop professional services organization demanded or desired by the public **[NOTE-NEED TO GET CITATIONS FOR DEMAND AND ARTICLES/STUDIES IN PARTICULAR INDUSTRIES/PRACTICE AREAS]** and by the consumers of legal services and other professional services. The alternative professional service delivery models would provide value-added and market driven options to the consumers of professional services. To stay current with international trends and to provide licensed professional alternatives to current non-lawyer providers of legal services and legal related services, changes

to the permitted business models for the delivery of legal and various other professional services are needed. Changes could involve implementing creative and new operating metrics and norms which measure client/consumer satisfaction and additional value added services to clients/consumers than are currently offered in the typical legal services delivery model.

There is also significant ongoing risk to the legal profession if innovative and alternative legal services delivery models are not approved and implemented. Data shows the tremendous gains that have been made by innovative non-lawyer legal service providers by companies such as Legal Zoom and other providers of professional services. These companies and other creative entrepreneurs will continue to circumvent the legal profession in an attempt to gain a further foothold and market share of the public's demand for legal services and other types of professional services. This trend is a danger to protecting the public from unlicensed and unscrupulous providers of these services.

E. What resources will be necessary to implement this idea?

Professionals to provide the Michigan Supreme Court or the Michigan Legislature, as the case may be, with information and this specific topic addressed in the proposed recommendations of the 21st Century Legal Practice Task Force. Professionals are also needed to review and implement regulatory changes to existing restrictions placed on multi-disciplinary professional services business models.

F. Are there any language access barriers that need to be addressed?

None known at this time.

G. Implementation Strategies

1. Potential supporters and potential allies

The public and consumers (business and individual) of legal services and other professional services as well as creative lawyers and other forward-thinking professionals looking for ways to provide better alternatives for the delivery of legal services and other professional services.

Examples of industry specific multi-disciplinary organizations could include:

a. Real Estate-providing consumers with a one-stop professional service and access to real estate brokers, mortgage lenders, title companies as well as lawyers to service a real estate seller or a real estate buyer's total professional service needs. Currently, there is no industry incentive to have professional legal advice available for these potential consumers of legal services and many non-lawyers are handling and providing legal services (which is the unauthorized practice of law) to fill this void. There are some states that require that lawyers be involved with real estate transactions. This requirement does not exist in Michigan.

b. Domestic Relations-providing consumers with a one-stop professional service and access to social workers, mental health experts, child-care experts, financial experts, real estate experts as well as lawyers and others who need to be consulted during a divorce or other domestic relations proceeding. Currently, we are not aware of any one-stop professional services organizations to handle all these domestic relations needs.

c. Business Organization/Consulting-providing businesses and individuals with a one-stop professional service and access to CPA's , accountants, tax experts, employee benefit, human resources as well as lawyers and other professional service providers to businesses or individuals with professional business needs. These combined professional services models are permitted in the international jurisdictions discussed above. Currently, a business or an individual needing professional business services must retain multiple professional service organizations.

d. Elder Care-providing consumers and the families of the elderly with a one-stop professional service and access to nurses, social workers, elder care facilities, providers of food, transportation as well as lawyers and other providers of daily living needs of elders. Currently, we are not aware of any one-stop professional services organizations to handle all these elder care needs.

2. Potential opponents and potential obstacles

   Large law firms, legal institutions and/or professionals in other disciplines that are pleased with the status quo of how legal services are delivered. In addition, non-licensed providers of legal services and legal related services who are profiting from the void that the legal profession has not addressed. These unlicensed providers will continue to expand their offerings in search of profits until and unless there are viable alternatives offered by licensed professionals and until there is a clear definition of what constitutes the practice of law.

3. Interested SBM entities

   None know at this time.

4. Other Interested stakeholders or potential partners

   CPA's, tax experts, accountants, Human Resources, IT; Real Estate brokers, mortgage companies and title companies; social workers, mental health, child care and other domestic and juvenile related experts; elder care facilities, transportation, food and daily care providers; and other professionals that could see the benefits of a multi-disciplinary network/organization for the delivery of all types of professional services.

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

The liberalization of the permitted delivery models for legal services and other professional services would allow lawyers to work with other professional service providers and use their combined resources to reach the public and consumers of professional services using all means currently available through the internet, social media, on-line resources and mobile apps to better respond to and serve clients/consumers of professional services.

6. How might this intersect with or impact other justice system areas/needs?

   No negative impact seen at this time. In time, there could be less need for court intervention as the resolution of client/consumer legal problems will be driven by a multi-disciplinary review and an ability to collaborate to achieve non-court intervention solutions.

7. Staging

   a) Does this option need experimentation or piloting?

      This is not required. However, it is possible that the liberalization of the extent and type of permitted multi-disciplinary professional service models could be allowed incrementally to test assumptions. For example, initially the ability to share fees between lawyers and non-lawyers and the ownership of multi-disciplinary organizations could be limited to private organizations as opposed to publicly traded organizations. It is believed however that limits should not be placed on the creative and innovative ideas of professionals to meet the needs and demands of the public for access and use of professional services, and the multi-disciplinary organization should not be limited to only certain types or practice categories of professional service needs.

   b) What is the recommended timetable, if any?

      As soon as possible. Permitting the organization and co-ownership of multi-disciplinary professional services networks/organizations by legal and non-legal professionals should be part of the 21st Century Task Force report and recommendations. The above mentioned demand for access and use of professional services and the continued penetration of unlicensed providers of alternative business models will continue to accelerate.

   c) What is the recommended order of recommended steps, if any?

      Approval of initiative by the 21st Century Practice Committee, followed by approval of the 21st Century Task Force, followed by a request to the Michigan Supreme Court to permit multi-disciplinary professional services organizations in conjunction with the adoption of revised ethics rules.

8. What role should the State Bar play, if any?

   The SBM's role includes (i) recommendation as part of the 21st Century Task Force; (ii) modifying existing ethics rulings that could potentially be determined adverse or complicating the implementation of multi-disciplinary professional practice

networks/organizations; (iii) providing answers to ethical questions that may arise in the context of establishing, owning and operating a multi-disciplinary professional services network/organization; and (iv) acting as an innovator and a leader in improving and modernizing business models to deliver legal and other professional services.

New York ban on nonlawyer ownership upheld

By
Matthew Hector-published in the September 2015 Illinois Bar Journal

A federal district judge issues a strongly worded rejection of Jacoby & Meyer's challenge to New York's rule banning nonattorney ownership of law firms.

In the United States, law firms have long been prohibited from being owned by non-attorneys. Some countries, like the United Kingdom and Australia, allow the practice.

Jacoby & Meyers, billed as America's largest full-service law firm, recently filed a constitutional challenge to New York State's version of ABA Model Rule of Professional Conduct 5.4, which prohibits the nonattorney ownership of law firms. The firm argued that the Rule violates the firm's free speech and equal protection rights, among others. On July 15, 2015, the United States District Court for the Southern District of New York (SDNY) dismissed Jacoby & Meyers's lawsuit for failure to state a claim.

Divided loyalty

The idea of allowing non-attorneys to own, or have equity shares in, law firms has been rejected by the American Bar Association, the Illinois State Bar Association, and other attorney organizations nationwide. The ISBA reaffirmed its opposition in 2012 when Urbana lawyer John Thies served as ISBA president.

Thies says the biggest risk of the idea is that allowing non-lawyer ownership would "sacrifice the independence of the profession." While corporations have a duty to maximize profits for their shareholders, attorneys owe their clients an ethical duty of loyalty - they must act in the best interests of their clients, Thies says. The conflict between these divergent obligations complicates a key question for the legal industry: how can we best deliver legal services?

In its challenge to New York Rule of Professional Conduct 5.4, Jacoby & Meyers argued, among other things, that outside equity investment was necessary to allow the firm to grow its practice. This growth would, in turn, allow Jacoby & Meyers to continue to deliver legal services to underserved groups, such as low-income Americans. Thies, a member of the board of directors of the Land of Lincoln Legal Assistance Foundation, says that this position is "not supported by facts."

Thies says there are better ways than amending Rule 5.4 to address the needs of traditionally underserved clients. For example, he says, recent changes to Illinois Supreme Court Rule 13 allow attorneys to provide unbundled services to clients. This means that lawyers can provide services to clients on an as-needed basis, a practice that can reduce the cost of legal services because clients only pay for the services that they need. In addition to changes like unbundling, "we have a committed bar that cares about pro-bono work," he says.

Thies agrees with how the SDNY analyzes the issue of nonlawyer ownership. "What really strikes me is how Judge Kaplan describes the importance of Rule 5.4." "New York laws 'promote[] the independence of lawyers by preventing non-lawyers from controlling how lawyers practice law' and by, among other things, 'attempt[ing] to minimize the number of situations in which lawyers will be motivated by economic incentives rather than by their client's best interests,'" Kaplan wrote in *Jacoby & Meyers, LLP v. Presiding Justices*, 2015 WL 4279720 at *9 (S.D.N.Y. July 15, 2015).The court pointed to the state's "extremely important interest in maintaining and assuring the professional conduct" of attorneys as a "more-than-adequate justification" for the existence of Rule 5.4. *Id.* Thies hopes that Judge Kaplan's "sound reasoning" will have an "influence on other discussions of Rule 5.4."

No constitutional violations

Jacoby & Meyers argued that Rule 5.4 violates the First and Fourteenth Amendments, as well as the dormant commerce clause. Kaplan was unpersuaded. In addition to finding that Jacoby & Meyers's desire to expand its practice was not protected expressive speech, the court found that the speech interest asserted was, at best, commercial speech. Traditionally, commercial speech enjoys very limited constitutional protection."This case has nothing to do with speech," wrote Judge Kaplan. *Id.* at *6. He noted that commercial speech is designed to inform individuals of available services and their cost. *Id.* The court found that Jacoby & Meyers sought to carve out a constitutional protection for commercial conduct, not speech. *Id.*

Kaplan also disagreed with Jacoby & Meyers's Fourteenth Amendment and dormant commerce clause challenges. He found that there was no equal protection violation because the firm had failed to show how Rule 5.4 abrogated a fundamental right without due process. *Id.* at *13. In any event, Kaplan observed, similarly situated parties may be treated differently if there is a rational basis for the treatment - such as the state's interest in regulating the conduct of attorneys. *Id.* The firm's dormant commerce clause attack fared no better. Kaplan held that since the law did not differentiate between New York attorneys and other attorneys, it was not unconstitutional. *Id.* at *10. At least, for now, the prohibition of non-attorney ownership of law firms remains good law. Jacoby & Meyers has said it plans to appeal to the Second Circuit.

Canadian Bar Association Futures Initiative

1 Flexibility in Business Structures

Lawyers should be allowed to practise in business structures that permit fee-sharing, multidisciplinary practice, and ownership, management, and investment by persons other than lawyers or other regulated legal professionals

4 Alternative Business Structures

Non-lawyer investment in legal practices should be permitted, but only on a carefully regulated basis as follows: A business or not-for-profit corporation should be eligible for registration as an alternate business structure (ABS) within which the fee sharing rule would not apply. An ABS should be permitted to deliver legal services on the following basis: (a) the ABS itself would have fiduciary and legal ethics obligations in respect of clients receiving legal services through the ABS. The legal advice should be provided to clients solely in the interests of the client and not in the interests of the ABS or its owners; (b) the ABS would be subject to law society entity regulation; (c) the ABS would be subject to other existing FLSC Model Code rules, such that: (i) the confidentiality rules apply; (ii) the conflicts rules apply, including where other services are offered by the ABS to clients receiving legal services; and (iii) the candour rule applies, including with respect to any conflicts of interest that may exist. (d) the lawyers working within an ABS should continue to be regulated persons; (e) the provision of legal services would be required to be carried out by lawyers or other regulated legal professionals as permitted, or provided by legal or nonlegal professionals who are effectively FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA supervised and controlled by lawyers; (f) material owners of ABS shares should be deemed to be clients for the ABS for the purpose of applying the conflicts rules; (g) privileged information should not be accessible for purposes of the ABS, including by the management and directors of the ABS, without informed express client consent and then only for the benefit of the client; (h) the ABS would be required to purchase insurance covering claims from clients in respect of legal services with current per claim coverage and with aggregate limits being no less than currently required for lawyers but increasing with the size of the ABS.

5 Fee-sharing with and Referral Fees to Non-Lawyers

The FLSC Model Code Rules should be amended to permit fee-sharing with nonlawyers and paying referral fees to non-lawyers, subject to the following: (a) the conflict rules apply; (b) the confidentiality rules apply and privilege must be protected; (c) the candour rule applies, meaning full disclosure of the shared fee and of the nature of the relationship with the entity with which the fee is shared must be made to the client; (d) the referral fee must be fair and reasonable and fully disclosed; (e) shared fees may not be contingent on the revenue or profitability of specific matters or as the result of such matters; (f) the lawyer shall not accept the referral unless the lawyer and the client discuss any client expectations arising from the referral and mutually agree on the basis of the retainer; (g) an accounting record is required of referral fees paid and received indicating the amounts and counterparties to each

payment; and (h) referral fees shall not be accepted where the lawyer is aware that the referral is exploitive.

6 Delivery of Non-Legal Services by MDPs and ABSs

MDPs and other forms of ABSs should be permitted to deliver non-legal services together with legal services on the basis that the rules should require protection of privileged information by requiring that nonlawyers, including partners/owners, not have access to privileged information except with express informed client consent. The rule or the commentary should provide that: (a) the confidentiality rules apply and privilege must be protected; (b) the conflicts rules apply, including where other services are offered by the MDP to clients receiving legal services; and (c) the candour rule applies, including with respect to any conflicts of interest that may exist. Breach should attract entity and individual sanction. If the public interest demonstrably requires that some non-legal services should not be provided together with legal services, the rules should so provide. Otherwise there should be no restrictions.

United Kingdom Legal Services Act of 2007

PART 1 THE REGULATORY OBJECTIVES

1 The regulatory objectives

(1) In this Act a reference to "the regulatory objectives" is a reference to the objectives of— (a) protecting and promoting the public interest; (b) supporting the constitutional principle of the rule of law; (c) improving access to justice; (d) protecting and promoting the interests of consumers; (e) promoting competition in the provision of services within subsection (2); (f) encouraging an independent, strong, diverse and effective legal profession; (g) increasing public understanding of the citizen's legal rights and duties; (h) promoting and maintaining adherence to the professional principles.
(2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).
(3) The "professional principles" are— (a) that authorised persons should act with independence and integrity, (b) that authorised persons should maintain proper standards of work, (c) that authorised persons should act in the best interests of their clients, (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and (e) that the affairs of clients should be kept confidential.
(4) In this section "authorised persons" means authorised persons in relation to activities which are reserved legal activities.
PART 5 ALTERNATIVE BUSINESS STRUCTURES

Introductory

71 Carrying on of activities by licensed bodies (1) The provisions of this Part have effect for the purpose of regulating the carrying on of reserved legal activities and other activities by licensed bodies. (2) In this Act "licensed body" means a body which holds a licence in force under this Part.

72 "Licensable body" (1) A body ("B") is a licensable body if a non-authorised person— (a) is a manager of B, or (b) has an interest in B. (2) A body ("B") is also a licensable body if— (a) another body ("A") is a manager of B, or has an interest in B, and (b) non-authorised persons are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A. (3) For the purposes of this Act, a person has an interest in a body if— (a) the person holds shares in the body, or (b) the person is entitled to exercise, or control the exercise of, voting rights in the body. (4) A body may be licensable by virtue of both subsection (1) and subsection (2). (5) For the purposes of this Act, a non-authorised person has an indirect interest in a licensable body if the body is licensable by virtue of subsection (2) and the non-authorised person is entitled to exercise, or control the exercise of, voting rights in A. (6) In this Act "shares" means— (a) in relation to a body with a share capital, allotted shares (within the meaning of the Companies Acts); (b) in relation to a body with capital but no share capital, rights to share in the capital of the body; (c) in relation to a body without capital, interests— (i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or (ii) giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up; and references to the holding of shares, or to a shareholding, are to be construed accordingly

Law Council of Australia

National Profession Taskforce Multidisciplinary Practices Working Group Issues Paper
MULTIDISCIPLINARY PRACTICES: Legal Professional Privilege and Conflict of Interest September 2000

1.1 Purpose of this Paper

The purpose of this paper is to examine the application of conflict of interest and legal professional privilege to multidisciplinary practices (MDPs) in the context of the development and implementation of the Law Council's policy on MDPs (see section 1.4 below). The paper adopts the following methodology: * an examination of the current law; * a discussion of how the law would be likely to be applied to MDPs; and * a set of recommendations for statutory intervention or other action to overcome perceived difficulties.

This paper does not seek to examine other issues that may arise with MDPs, nor does it discuss suggestions that have been made for regulatory intervention in other areas. These issues will be dealt with in the future work of the MDP Working Group. The paper examines case law from Australia, the United Kingdom, Canada and the United States. Appendix A contains the Law Council of Australia's MDP Policy Statement. Appendix B includes extracts from the Law Council's Model Rules of Professional Conduct and Practice and the New South Wales Legal Profession Act 1987 and Solicitors' Rules. Appendix C provides an overview of the current rules and recent policy

developments relating to MDPs in a number of overseas jurisdictions. Appendix D contains draft rules developed by the Federation of Law Societies of Canada (FLSC) for regulating conflicts of interest and legal professional privilege within an MDP. Appendix E contains a bibliography of international materials and case law. The laws discussed in this paper are current as at 31 August 2000.

1.2 What is a Multidisciplinary Practice?

In essence, an MDP is a business in which members of more than one profession or occupation provide a combination of services for clients. 1 For the purposes of this discussion, it involves lawyers and members of at least one other profession practising together. An MDP is more than merely a legal practice employing people qualified in other fields to provide adjunct services: this can and does already happen. The key to MDPs is that they allow lawyers to share the profits of legal practice with non-lawyers. This is generally prohibited under State and Territory laws regulating the legal profession and at this stage, only NSW has legislated to allow a legal partnership to share profits with non-lawyer partners.2 Commentators generally agree that the demand for MDPs has largely arisen from the increasing complexity of taxation law and consequent synergy between tax accountants and legal advisers.3 However, there is no reason why MDPs should be limited to these professions. The Law Society of New South Wales4 has identified the following potential MDP arrangements: * solicitor/surveyor/architect; * solicitor/accountant/financial consultant/investment consultant; * solicitor/patent attorney/computer analyst/software programmer; * solicitor/consulting engineer/patent attorney; * solicitor/accountant/mortgage broker; * solicitor/title and document searcher/surveyor/property inspector; * solicitor/commercial agent/financial consultant/accountant; * solicitor/migration agent/translation service; * solicitor/superannuation consultant/insurance consultant; * solicitor/town planner/surveyor/engineer; and * solicitor/mediator/counselling service. Seen in this context, MDPs offer a potential increase in the range of choices available to consumers by combining existing professional services and by effectively creating new ones. The convenience of integrated service provision in a transaction requiring advice/input from more than one professional can reduce transaction costs and duplication of services. It should also be noted that MDPs are not merely for the "big end of town". The American Bar Association has received strong support for MDPs from such diverse groups as the American Association of Retired Persons and the American Corporate Counsel Association. Much of the demand for MDPs may arise in smaller towns and regional centres that may not have sufficient demand to maintain a range of separate professional practices. In these circumstances, the opportunity to share overheads through an MDP structure would allow regional areas to support a wider range of services.5

1 The Union Internationale des Advocats (UIA) proposes that MDP be defined as "any multidisciplinary practice (and not only a multidisciplinary partnership) or mixed services firm where other professionals cooperate with lawyers and where other professionals have a substantial and continuing economic incentive related to, or interest in the financial results of, the lawyer's practice or that lawyer's firm (other than an interest as a creditor in the ordinary course of business) or

control the lawyer's firm directly or indirectly, or use the same name as that used by the lawyers to describe their firm."

2 A legal practitioner's family may also hold shares in an incorporated practice in Victoria, South Australia, Tasmania, New South Wales and the Northern Territory.

3 3 See for example, Huefner and Kellog "Attorneys and CPAs: Co-operation or Confrontation?", The CPA Journal, June 1999; Judd, "Accounting Firms are Gobbling up Law Firms Abroad", Florida Bar News, 15 March 1999. The preamble to the UIA MDP policy also specifically refers to the international interest in forms of integrated cooperation between lawyers and accountants.

4 4 See New South Wales Legal Profession Advisory Council, Report on Multidisciplinary Partnerships, 1997, p4

5 5 M Brown, "Accounting for Change", Law Institute Journal, Vol 73, No 10, October 1999, pp30-31; T Thomas, "Laws Shape up for Disciplined Blend", Business Review Weekly, 1 September 2000, p95

What form do Multidisciplinary Practices take?

While this paper concentrates on examining MDPs in the form of either a partnership or incorporated body, there is no particular business structure that an MDP should take. For example, joint ventures, referral arrangements and other commercial alliances between separate firms are also forms of MDP. However, by retaining completely separate business structures issues of the type examined in this paper will not arise. In Australia, regulatory regimes have separate rules regarding incorporated legal practices and legal partnerships. Some jurisdictions6 currently allow incorporation of a legal practice on an unlimited liability basis with strict controls on who may be directors and shareholders. Only NSW currently allows lawyers to practice in multidisciplinary partnerships.7 In June 2000, the (then) NSW Attorney General introduced a Bill8 that would allow incorporation of legal practices under the Corporations Law, including limited liability and public listing. The Bill requires at least one director to be a solicitor with an unrestricted practising certificate, with the solicitor director(s) being generally responsible for the management of legal services. While the corporation itself would not be subject to licensing, solicitor directors and solicitor employees would remain subject to the Solicitors' Rules and professional obligations in providing legal services. The Legal Profession Act and regulations would also prevail over applicable corporate law (including the constitution or other constituent documents of the company) to the extent of any inconsistency. While existing provisions permitting incorporation of legal practices limit the incorporated practice to providing legal services, the NSW Bill provides that the corporation can provide any other service/business except a managed investment scheme. By allowing a legal practice to combine with other services and simultaneously opening ownership of these corporations beyond practitioners and their families the NSW Bill goes considerably further than any other existing regime.

6 New South Wales, Victoria, Tasmania, South Australia and the Northern Territory

7 7 NSW Solicitors' Rules, Rules 39 & 40 (See Appendix B)

8 8 Legal Profession Amendment (Incorporated Legal Practices) Bill 2000 (NSW)

Australasian Lawyer

Clients' search for value and commercial capability is driving fresh disruption through the Australian legal sector according to Tony O'Malley, the recently appointed head of PWC Australia's corporate advisory legal services group.

O'Malley, the former managing partner of King & Wood Mallesons, will be one of the headline speakers at the Chilli IQ 8° Managing Partner conference being held in Queensland next February, where he is set to explore the resurgence of multidisciplinary professional services firms in Australia.

The public have grown very confident with the concept of multi-disciplinary practice over the past 10-15 years, O'Malley told *Australasian Lawyer.*

"The concept of being in an environment where you've got people with different functional expertise is something that people are very comfortable with, so extending that to legal is a natural move...The idea that a firm can provide a more integrated holistic solution appeals to them."

The market is also fundamentally different compared to the early 1990s, which was the last time that the large professional services firms attempted to carve themselves a niche of the legal market.

O'Malley says clients are now seeking greater value, are less concerned about law firm branding and long standing relationships, and more focused on whether firms can deliver quality services in a commercial and business relevant fashion.

They are far more sophisticated and savvy, he says.

"Right down to almost what individuals can do for them as opposed to large firms. They've seen the legal sector fragment across Australia and New Zealand over the past 10 years. Many of the initial suppliers have merged or changed, and [clients are] not really sure what any of it means."

Accounting firms are also operating very differently today, says O'Malley. In the early 1990s when they first tried to take a slice of the legal pie, they were substantially smaller than today and relied heavily on audit and assurance work.

Now, however, they are much larger multidisciplinary organisations with tax, consulting and deals practices standing alongside audit and assurance.

O'Malley is leading the charge into the legal market alongside Tim Blue, also a former KWM managing partner.

At present, PWC is home to an Australian legal partnership of six, with ambitions to increase to 20-25 partners over the coming three to five years, and $100 million of legal service revenues.

By carefully constructing legal groups with a good cultural and practice fit, O'Malley believes that multidisciplinary firms would be able to compete effectively with long established and even global law firms.

He sees a huge opportunity to provide legal services as part of an integrated and tailored commercial offering.

"For example, in an M&A transaction, we can provide the legal documentation and advice, transactional support - including the commercial and financial due diligence - and the tax structuring in one seamless service.

"We want to be a top 20 global law firm in the next five years. PWC already has around 200 lawyers and $500 million of legal service revenues. We want to more than double that in five years."

However, O'Malley doesn't necessarily believe that the entrance of the Big Four into the legal space in itself is a dangerous threat to the profitability of traditional law firms.

Instead, he thinks those firms will probably just see PWC and others as offering a different value proposition.

"These large corporate and commercial firms in Australia and New Zealand are excellent at what they do. The question is, as they deal with the same pressures of change, can they actually change their model quick enough to deal with it?

"What we're doing is saying 'where it's logical for us to have a highly competent legal service, we will be a player in that space'."

And as the former managing partner of a giant law firm, O'Malley says he's certainly noticed the cultural difference at his new multidisciplinary firm.

His general observation is that the Big Four are looking over the horizon, rather than just in the rear-view mirror.

"I think what that means for us in the legal group is we have the opportunity to avoid the traditional model...We are constantly in that white space where our clients are, and we're trying to find and understand opportunities," he says.

"It's early days. There is a lot of activity going on here, and we're very busy recruiting. You get the sense that the whole business is excited about going back into the legal market, and playing the role of disrupter."

The 8° Managing Partners Forum provides an opportunity for a frank exchange of views among senior leaders of the nation's leading law firms. It will be held on February 27-28, 2015.

Select USA

The United States is the world's most desired location for professional services firms.

In today's integrated global environment, businesses find it critical to access the talent, institutions, business processes, and client base offered in the United States. Additionally, the educational and research infrastructure present in the United States is an important asset for domestic and international professional services firms.

In 2012, the U.S. professional services industry comprised about 760,000 firms with combined annual revenues of $1.5 trillion. The industry employed 7.8 million Americans.

The world's leading professional services companies locate in the United States to serve the large and dynamic U.S. corporate sector. The United States features a transparent, stable regulatory environment, strong intellectual property rights protection and enforcement, and a reliable judicial system. Together with a highly skilled workforce and intellectual leadership from the boardroom to the classroom, the United States generates a greater and more stable demand for professional services than any other country.

Industry Subsectors

Accounting: Firms in this subsector generated $131.6 billion in revenue in 2012. Firms provided payroll services, financial auditing services, tax preparation services, and other consulting services for individuals and corporate clients.

Architectural services: This subsector accounted for more than $62.5 billion in revenue in 2012, with the majority of that revenue generated from non-residential construction. This sector includes firms primarily engaged in planning and designing residential, institutional, leisure, commercial, and industrial buildings and structures. As with engineering firms, many architectural firms are small niche companies that complement the work of larger U.S. firms that have a more global footprint.

Engineering services: This subsector posted $184.1 billion in revenues in 2012. Industrial and manufacturing engineering contributed most significantly to total revenue. Other contributors included commercial and institutional architecture, transportation infrastructure, and power generation and distribution activities. This subsector includes firms primarily engaged in the design, development, and utilization of machines, materials, instruments, structures, processes, and systems. Engineering services include the preparation of feasibility studies and preliminary and final plans and designs; the provision of technical advice and assistance during the construction or installation phase; and the inspection and evaluation of engineering projects.

Legal services: Legal services generated $270.6 billion in revenue during 2012. Firms in this sector provided a variety of legal services including litigation support, general corporate services, plaintiff and defense work for individuals and companies, patent agent services, paralegal services, and process serving services.

Management consulting: This subsector accounted for $171.9 billion in revenue during 2012. Firms provided consulting services in administrative and general management; human resources; marketing; process, physical distribution, and logistics; environmental; and other scientific and technical services.

Industry Associations:
American Bar Association
American Council of Engineering Companies
American Institute of Architects
American Institute of Certified Public Accountants
American Marketing Association
American Planning Association
American Society of Civil Engineers
Association of Management Consulting Firms
Financial Accounting Standards Board
Institute of Management Consultants USA
International Lawyers Network

National Council of Architectural Registration Boards
National Council of Examiners for Engineering and Surveying
National Society of Professional Engineers
Industry Publications:
ABA Journal
Accounting Today
Advertising Age
American Lawyer
Architectural Record
Consulting Magazine
Engineering News Record (ENR)
Journal of Accountancy
GreenSource
Kennedy Consulting Research and Advisory

REPORT – LIMITED SCOPE REPRESENTATION – "UNBUNDLING"

Limited-scope representation – also known as "unbundled legal services" – allows attorneys to represent clients in discrete tasks. This concept is valuable to those with limited means who cannot afford the traditional, full-package legal representation. Limited-scope representation can include a wide range of services, including legal research, legal advice, settlement negotiations, drafting papers, and discovery-related tasks. But delivering these services unbundled present certain challenges. A system that includes training materials, practical guidance, and unambiguous regulations would address these challenges and promote effective representation in limited-scope arrangements.

To provide increased access to justice, the State Bar of Michigan should adopt a recommendation to amend ethical and procedural rules governing legal practice which would facilitate limited-scope or unbundled legal representation.

An ABA task force concluded that practitioners by and large agree that revisions to ethical rules provide certainty to lawyers who have legitimate concerns about providing "unbundled" legal services.[1] The report below discusses three major concerns relating to limited-scope representation and potential solutions.

Requiring "Informed" Consent

The American Bar Association's model rule 1.2(c)[2] promotes limited-scope representation, and many jurisdictions have adopted versions of the model rule. Currently, Michigan Rule of Professional Conduct 1.2(b) provides: "A lawyer may limit the objectives of

[1] Handbook on Limited Scope Legal Assistance (ABA 2003)

[2] MODEL RULES OF PROF'L CONDUCT R. 1.2(c), *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html ("A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."). *See also* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 07-446 (2007).

the representation if the client consents after consultation." Unlike the ABA's model rule, MRPC 1.2(b) does not require "informed" consent, a requirement that could ensure that clients understand the risks of and alternatives to a limited-scope arrangement. To provide additional guidance, commentary notes could include a preference for "written" consent as well.

Defining the Scope of Representation

A legitimate concern is potential confusion about the scope of the legal representation. A clear engagement letter or retainer agreement is crucial. Some state bars, such as the Illinois State Bar Association, publishes sample limited-scope agreements online.[3] Other jurisdictions, such as Maine, attach a sample agreement as part of the professional conduct rules.[4] Providing templates and resources for attorneys and clients will encourage clear communication and reduce confusion. At the very least, an agreement should include: (1) identification of the legal problem the attorney is retained to address; (2) a description of the remedial measures the attorney will take; and (3) identification of the services the attorney will provide.[5]

To reduce confusion about the scope of the legal representation in matters pending in the court systems, standardized court forms offer a potential solution. For instance, California publishes standardized forms online for limited scope representation in civil matters.[6] Of course, the contours surrounding the use of standardized forms will raise additional issues to be resolved – such as whether filing such a form with the court is mandatory or permissive where there is limited-scope representation. Termination of appearances, or withdrawals, can be addressed by streamlined processes and standardized forms as well.

[3] http://www.isba.org/practiceresourcecenter/limitedscope
[4] http://www.courts.maine.gov/rules_adminorders/rules/index.shtml
[5] Handbook on Limited Scope Legal Assistance (ABA 2003)
[6] http://www.courts.ca.gov/formname.htm

Communications with Opposing Party

Whether an attorney should treat a party in a limited-scope arrangement as an unrepresented party is another confusing matter. Many jurisdictions, including Colorado[7] have permitted attorneys to communicate with an opposing party as if he/she is unrepresented unless informed otherwise. Other jurisdictions, such as Florida, include writing requirement.[8] Adopting a rule or commentary specifically addressing this issue would provide valuable guidance to practitioners.

Malpractice Concerns

In a growing age of legal malpractice claims, "unbundling" could add new issues, along the lines of where a lawyer's responsibility begins (if at all) and ends. Adding to the concern here is the fact that the persons taking advantage of "unbundled legal services" may lack the level of sophistication necessary to understand that the lawyer's role may be more limited than he/she may otherwise believe. While some of these concerns can be addressed in a written engagement letter, it may be advisable to seek added levels of protection for attorneys who provide these services, by virtue of legislative action which would either limit the statute of limitations for claims arising out of these services, heighten the standards for duty of care for those providing these services, limit the liability of those providing the services, or all of the

[7] Colorado Rule 4.2, comments ("A pro se party to whom limited representation has been provided in accordance with C.R.C.P. 11(b) or C.R.C.P. 311(b), and Rule 1.2, is considered to be unrepresented for purposes of this Rule unless the lawyer has knowledge to the contrary.")

[8] "An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of the time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation." Florida Rule 4-4.2

above. Providing practitioners with these assurances may increase their willingness to participate in the process.

I. Status Quo

Currently, limited legal licenses are not recognized by the SBM. A small number of other states now either recognize or have begun looking at the prospect of limited legal licenses to enable certified individuals to provide limited, discrete legal services to consumers in defined legal subject matter areas.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

A. Permit limited legal licenses

Washington and California are two states that have recently examined the utility of allowing limited legal licenses permitting an individual to provide limited, discrete legal services to consumers in certain subject matters. These states looked at this option as addressing an unmet need of the poor in accessing legal services. In both of these states, the proposal was controversial. In Washington, at least one commentator described it as a ten-year hard fought process. It appears that Washington is the only state where limited legal licenses are sanction by the state bar association.

B. Do not permit limited legal licenses

Some opponents argue that offering limited legal licenses will open the door to fraud in the provision of these services. Other opponents have argued that allowing limited licenses will take work away from licensed lawyers although it appears that those that have studied limited licenses believe that these paralegals or technicians will address needs of the poor not now being served by licensed lawyers.

III. Trends

The prospect of allowing limited legal licenses has been studied in a number of states and the American Bar Association over the last ten years. Washington offers a limited licensing program and more recently California has charged a task force with reviewing the prospect of offering a limited license program. Other states have looked at the prospect of offering limited legal licenses (New York, Indiana, California). In most of the states considering this proposal the thought has been that those holding a limited license could assist clients with completing forms and navigating the legal system but not appearing on behalf of those clients. Proponents see the offering of limited legal licenses as addressing those needs of individuals that would not otherwise seek the services of a lawyer primarily because of the cost of doing so. The adoption of limited licenses was premised nearly exclusively on a perceived unmet need for legal services by those of modest means particularly in consumer, housing and family law. The proponents saw the limited license as an option to deliver legal services to those without access due to economic hardship.

The American Bar Association's Task Force on the Future of Legal Education reportedly described the increasing attention to limited licensing as a positive development.

IV. Analysis needed for any option under consideration:

A. Opportunities – what's the best case scenario of the option is piloted or implemented?

There is not much existing data or experience to determine the best case scenario if limited legal licenses were offered. Theoretically, the offering of a limited legal license would allow the offering of a

narrow range of legal services to the poor in discrete areas at a low cost. It would also offer a limited legal license to individuals that are not graduates of a law school and not now licensed to practice law. The offering of a limited legal license would allow for a group of "practitioners" to pursue a career in offering legal services without pursuing a law degree or passing a bar examination.

Offering a limited legal license might provide some additional revenue to the SBM from licensing these new practitioners. In addition, the limited license individuals might take advantage of SBM's many programs and offerings.

B. Risks – what's the worst case scenario if the option is implemented or piloted?

The biggest initial risks are likely the resistance from members that the proposal would generate and the cost of implementing and monitoring those holding limited legal licenses. The offering of a limited legal license is not a new concept but it has proven to be controversial in those jurisdictions where it has been offered and studied. The biggest risk of all, of course, is that the offering of a limited legal license does not address the need to which it is matched; offering legal services at a cost affordable to those that now cannot afford them. It may also be more difficult to police the unauthorized practice of law if limited legal licenses are adopted.

C. Unanswered Questions and Unknowns – do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

There is little if any experience from other states to determine whether it would be a good decision to offer limited legal licenses. In five to ten years there may be some/enough experience with the concept in other states to determine whether this is a good option for the SBM. It is not yet known whether the offering of limited legal licenses addresses the need most identified by proponents for its implementation. There has been little discussion or demand for limited legal licenses in Michigan to date. It is an interesting concept and might be worth watching but may not be something to pursue at this time. In the future there may be some experience in other states where a limited license is being offered to determine whether it has utility in Michigan.

D. What is innovative about this option?

The option allows for those not holding a degree to provide discrete legal services to legal consumers. It would allow paralegals or technicians to assist consumers with legal needs theoretically at a lower cost than a licensed lawyer. This option could be a "game changer" if it truly meets the need most identified for its consideration. The offering of low-cost legal services to a market that is not now purchasing those services could assist these individuals with those unmet legal needs but might also result in a more efficient and effective system of justice. Every lawyer has heard anecdotes about the individuals that try to go it alone in our court system or go it alone in transactions where legal services are traditionally needed. The proposal might open up a new market for paralegals to offer services outside their typical role of working under the supervision of an attorney in a traditional firm setting.

The purpose of making simple, routine, legal services available and affordable to those unable to afford attorneys' fees is an interesting one, although there is little actual experience to go by to determine whether the offering of a limited license will address that purpose.

E. What resources will be necessary to implement this idea?

A framework would have to be created to develop criteria and/or testing for the admission of those individuals seeking a limited legal license; identify the areas of practice that would be open to limited license holders; and to monitor and administer the ongoing licensing of these individuals. Likely, the structure would parallel to a degree the existing structure for lawyers already in place.

F. Are there any language access barriers that need to be addressed?

We have no data on point but presumably a large number of individuals not now being serviced by lawyers for their unmet legal needs are nonnative English speakers. Presumably, services would be more accessible if they were offered by those speaking Spanish or other common non-English languages used by populations of low income individuals.

G. Implementation Strategies

1. Potential supporters and potential allies

No significant supporters and allies are known at this time. It is possible that our educational providers (undergraduate institutions as well graduate programs and law schools) would develop curriculum to match the criteria for limited legal licenses. Current paralegal programs could be modified to provide the education needed for one to apply for admission to practice with a limited legal license. In Washington it appears that some community colleges have offered new curriculum designed to meet the criteria for becoming licensed.

2. Potential opponents and potential obstacles

SBM existing members might be the most obvious and vigorous opponents. SBM members might see this as an encroachment into their practices. While many lawyers are doing well financially, the average income of a Michigan lawyer is relatively low and has largely remained flat. Meanwhile, many new lawyers graduate and are admitted to the SBM each year. Despite the fact that the number of lawyers is great and increasing, it appears that the number of lawyers has had little impact on those that cannot afford the services provided by these members. Many members would likely believe that the new practitioners would divert business from price sensitive legal consumers that might otherwise be delivered by fully licensed lawyers. Many lawyers would not agree with the proposition that the new practitioners would only be servicing a group of clients not now serviced by any lawyer. In short, these new practitioners would be viewed as low-priced competitors not needing to meet the rigorous educational criteria and examination passed by lawyers, thus providing the limited license holders a strategic and tactical advantage over traditional lawyers.

Currently, there appears to be a surplus of lawyers, particularly those entering the traditional practice of law in the typical firm. Large numbers of recent graduates are now either unemployed or working in jobs not requiring a law degree. The cost of attaining a degree have increased and so large numbers of lawyers are graduating with significant debt making the prospect of opening a solo practice less economically feasible.

3. Interested SBM entities

None known at this time.

4. Other interested stakeholders or potential partners

None known at this time. It is conceivable that legal aid organizations might be interested in the offering of a limited legal license as addressing the large clientele served by these organizations. Limited license holders might extend the reach of these organizations and increase the number of individuals served.

ICLE might be a source of continuing education for these individuals and it is possible that they could be a provider of a curriculum designed to meet the criteria for licensing.

5. What are the possibilities to increase effectiveness through technology (i.e., apps, online tools/systems)?

Technology would likely make limited license holders more effective and efficient than they might have been in the past with the advent and continuing development of online forms, documents, practice aids and materials. A limited license holder would be able to avail themselves of many low cost options to assist in offering services to their clients. Too, the state of technology would allow limited license holder to reduce the attendant overhead in delivering services and allow them to deliver many services electronically.

6. How might this intersect with or impact other justice system areas/needs?

Offering limited legal licenses might assist the judicial system more effectively and efficiently if it results in fewer pro se/pro per litigants. Unrepresented litigants must be a burden on judges and the staff of our courts and they are not equipped to dispense legal advice to those navigating the system without the assistance of a lawyer.

7. Staging

a. Does this option need experimentation or piloting?

Not likely. The piloting of this option even in a limited way would likely require all of the framework and resources that implementation would require. There is no practical way to experiment or launch a pilot to test it in a limited way. Once begun, it would be difficult to end a pilot or experiment without longer term consequences to the option. In other words, an unsuccessful pilot or experiment would make it less likely to implement it in the future. A pilot or other experiment would be difficult to measure in objective ways to determine whether it meets the needs it was intended to address.

It does appear that the State of Washington has implemented their limited license in a controlled way by offering the first limited licenses only in the area of family law. It appears that Washington may consider landlord/tenant, elder, and immigration law in the future.

b. What is the recommended timetable, if any?

There was limited interest in this option among subcommittee members. A group of “champions” would need to be found to fully develop the proposal and manage its development. The subcommittee is not recommending it at this time.

c. What is the recommended order of recommended steps, if any?

We recommend that SBM continue to monitor limited licenses in Washington and any other states that offer them in the future to determine whether the proposal addresses the need giving rise to its implementation.

8. What role should the State Bar play, if any?

The SBM should consider a stand-alone task force of interested members and others to further review the proposal. The task force should include those with an interest in the option and with experience or expertise to examine the proposal in a meaningful way. One option would be to appoint a group to study the proposal further and to monitor other states where the proposal has been implemented or is being studied.

V. Analysis needed for any option under consideration

An assessment would need to be done to determine whether the offering of limited legal licenses is a solution in want of a problem. The SBM would need to assess whether there are unmet legal needs and whether the offering of a limited legal license would address them. In other words, would those individuals forgoing the advice of an attorney now opt for the use of a technician or paralegal holding a limited legal license?

The SBM would also need to review the question of whether the offering of a limited legal license would negatively impact the market for lawyers. It is not known whether those not now seeking the advice of a lawyer would turn to technicians or paralegals holding a limited legal license. Proponents of limited legal licenses believe that services offered by those holding limited legal license would be at a cost lower than services provided by an attorney. There is not enough experience from states offering limited legal licenses to draw any conclusions about whether (1) limited legal licenses are an effective and efficient means of providing legal services to those too poor to obtain them now; (2) whether those using services provided by limited legal licenses would have otherwise obtained the same services from a lawyer.

21st Century PRACTICE Task Force

Charge 1
State Bar of Michigan should create Lawyer's specialty certification program

Reason for Charge 1 (include citations to research and data wherever relevant)

I. Status Quo

In Michigan, continuing legal education is not required and lawyers participate in continuing education on a voluntary basis. Much of this education is high-quality, but, as law firm jobs become harder to obtain and pressures on law firms accelerate, there is a growing need for effective education that helps lawyers entering practice gain the skills they need.

Furthermore, there is also no provision for acquiring a formal designation of legal specialization. Lawyers can advertise their areas of expertise, as long as that advertising is not false, misleading or deceptive. MRPC 7.1; Bates v. State Bar of Arizona, 433 U.S. 350 (1977). But this may leave clients with inadequate guidance when choosing a lawyer.

There are several existing Michigan programs that lead to a credential. Under MCR 2.411(F), to be eligible for court appointment as a mediator, lawyers must take 40 hours of experiential training from an SCAO-approved program, observe two mediations, and conduct one mediation under supervision. To remain eligible, mediators must take 8 hours of advanced mediator training in each subsequent two-year period. A number of approved programs offer this training.

In addition, ICLE offers two "certificate of completion" programs, one in Probate and Estate Planning and one in Family Law. Both require attendance at a specified number of ICLE seminars and one or two participatory small seminars. Both have attracted good participation. For more detail about their requirements, see Appendix A.

Michigan lawyers also participate in many other professional associations, both national and local, that may have requirements for membership. Many offer educational programs of value to their members but probably of less value as a meaningful credential for the public. There are also national certification programs for lawyers in fields like elder law (such as becoming a certified elder law attorney through the National Elder Law Foundation).

In short, in Michigan, there is no standard, approved approach to continuing professional legal education leading to a credential that is informative to the public.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

Features of Michigan's Legal 1: Certificate of Special Knowledge/Practice in [Legal Practice Area, such as Elder Law, Civil Trial Practice, etc.]

Goal: The goal of this program is to bring more effective practical education to a wider range of Michigan lawyers, while communicating clear information to members of the public that will assist them in choosing a lawyer.

State Bar should for a Standing Committee to create the standards for specialty certification and provide the endorsement of the specialty certification program.

Standards Set by the Standing Committee should include:

1. Participants should have a personal professional development plan.
2. Requires membership (active and in good standing) in the State Bar of Michigan for the duration of the program
3. Based on a plan of study developed under guidance from an Advisory board or panel of Michigan lawyers with in depth experience in the practice area
4. Will include a readiness self-assessment at the beginning of the program. This is designed to help the participant identify strong and weak areas in their practical knowledge of this area. It is not intended as a barrier to participation.
5. Will require completion of a specified number of learning modules (usually 6 to 10) offered by the provider. These learning modules will take varying lengths of time to complete, but will average 3 to 4 hours each including quizzes and self- testing. The programming or modules could be offered online to avoid geographic and time barriers to participation.
6. The modules will include enhanced educational features drawing on the best in new models of professional education
7. The modules will encourage active learning and collaboration between participants.
8. Will provide opportunities for networking and ongoing mentoring relationships with colleagues.
9. Credentials will include an e-credential or certificate that can be easily posted as part of the participant's online credential and presence for marketing purposes. This posting will link to information for the public about what these credentials mean and how to choose a lawyer.
10. Should include ongoing educational requirements to maintain the specialty certification.

Michigan's Specialty Certification Program should target participation by the majority of our memberships and should avoid the features of other legal specialty programs that tend to create exclusivity. Therefore the State Bar of Michigan program shall not include any of the following standards:

1. **Years of prior practice in area of specialization**
2. **Peer review and personal references**
3. **Prior continuing legal education credits (except as required in the specialty program itself)**

Annual Notice to the State Bar of Michigan. Specialty Certificate holders will notify the State Bar of Michigan annually that their specialty certification has been maintained.

How does this proposed option reflect the Task Force guiding principles? As these programs grow, they will result in more effective delivery of high-quality legal services to clients (Guiding Principle 1). They will identify lawyers' areas of expertise and help clients choose the right kind of legal advice and distinguish legal services from those offered by other non-lawyer professionals (Guiding Principle 3). Easier, consistent posting of certificate credentials with information about what they mean will also facilitate this goal.

These programs will provide a good entry for lawyers into new areas of practice, thus encouraging a more diverse bar (Guiding Principle 4). Further, by requiring meaningful updating of these certificates, they will help insure that lawyers remain current (Guiding Principle 5). They will incorporate the current best practices in professional education, they are innovative, and they will guide the lawyer on a career path that incorporates lifelong learning (Guiding Principle 7).

III. Trends

Many professions have long-established mandatory continuing education requirements or formal specialization programs that lead to credentials after passing a test. Now, however, we are at the beginning of an exciting new wave of education for professionals. Today's professionals – whether employed or in business for themselves – need to continually increase their arsenal of skills and competitiveness. They know that they can't count on a lifetime with the same company or law firm. Furthermore, the technology revolution allows for more interactive, collaborative programs delivered to a wider range of participants.

Some of the newer programs for professionals are more innovative than the traditional specialization programs. Several of these are summarized in Appendix B. Looking at models from other professions, we can identify important core features:

What core features carry weight with the public and employers?

- The granting organization is well-known and respected
- There is a clear designation of accomplishment ("letters after one's name" or item on a resume).
- The certificate program and curriculum demonstrate a clear practical understanding of what it takes to practice in the profession or perform a job.
- The expertise participants will gain is clearly specified
- The name/subject matter of the certificate succinctly conveys what the certificate holder can do
- A critical mass of professionals obtains the certificate (may take time, but clients/employers get to know the credential)

- Replaces the need to provide in-house training (for employers/firms)

Core features designed to attract the participant

- The program's target audience is clearly stated (answers the question "is this for me?")
- Educational and employment objectives are clearly and honestly stated (will this help me get a job, gain clients, demonstrate competence to an employer, develop a clearly stated skill)
- Prerequisites are specified. There usually is not a formal admission process but there may be an online "readiness self-assessment."
- Time to complete the program is clearly stated and is usually less than 1-2 years
- Cost is reasonable (under $2,500 is the norm unless the target audience is clearly ready to pay for a very expensive experience)
- Interactive features
- Will not be boring
- Will put me in contact with others (forum; profiles; collaboration)
- Will allow me to easily publicize my accomplishment
- If testing, it sounds like something I can do (often online multiple-choice)
- The certificate program often is often supported by a package of related resources from the organization
- It's stated whether the certificate should be updated and how that can be done

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

The best case scenario is that these programs attract wide voluntary participation by Michigan lawyers; that they raise the level of competence of their participants; and that clients seek out lawyers with these recognizable credentials and value the legal expertise they represent. In this best case scenario, these programs become widespread and represent an essential resource to lawyers entering practice, encouraging a more diverse bar. In addition, they serve as the focus of ongoing collegiality and mentoring relationships.

In this best case scenario, we demonstrate the effectiveness of this voluntary model—a model that other states may emulate.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

The worst case scenario is that the educational standard is set either too high or too low. If the standards are too high, participation will be low and it will be hard to correct this negative first impression with later programs. More problematically, if standards are set too low but the programs appear to have official "blessing," this may attract unscrupulous providers who essentially issue paper credentials. This would provide misleading information to the public and eventually lower the reputation of the legal profession.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

1. Level of participation, especially since we don't have MCLE in Michigan and don't have any historical data on amount of CLE MI lawyers typically take.
2. Whether market driven pricing will result in pricing that makes the program accessible to the broad membership,
3. Will the public have the information and knowledge needed regarding these programs to make informed decisions regarding their legal needs?
4. Whether a wide array of providers will offer programs that meet the requirements.

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

This program uses new and innovative educational design and technology platforms and delivery to create a certification specialty program that will be both high level and accessible and is an opportunity to set a new standard for legal specialty. It draws on the best in innovative education design.

E. What resources will be necessary to implement this idea?

1. A State Bar of Michigan Standing Committee with necessary expertise to the program standards.
2. Possible expansion of State Bar staff
3. Participation of qualified providers.
4. Substantial marketing of the program to encourage extensive member participation

F. Are there any language access barriers that need to be addressed?

1. No.

G. Implementation Strategies

1. Potential supporters and potential allies
   a) Sections, local and special purpose bar associations, potential program providers
   b) ICLE
   c) Licensed members of the Bar are potential supporters and non-supporters
2. Potential opponents and potential obstacles
   a) State Bar members

b) Developments costs for the specialty certificate programs

c) Making membership aware of availability of the program

d) Existing specialty/certificate program providers or designators (Super Lawyers, Martindale Hubbell, Leading Lawyers, AVVO, Etc.) who may see it as competition.

3. Interested SBM entities

a) Sections

b) Selected Standing Committees

4. Other Interested stakeholders or potential partners

a) ICLE

b) ABA, existing National Boards of Certification

c) Others professions with certifications in place

d) Local, affinity or specialty associations such as Bankruptcy Association, etc.

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

a) Every aspect can be improved with current technology—accessible delivery, interactivity and networking, etc.

6. How might this intersect with or impact other justice system areas/needs?

a) Not applicable.

7. Staging

a) Does this option need experimentation or piloting?

(1) Yes. The innovations ICLE is currently developing for an online, interactive elder law certificate program would be an excellent pilot.

b) What is the recommended timetable, if any?

(1) The Standing Committee should determine , but as soon as practically possible

c) What is the recommended order of recommended steps, if any?

8. What role should the State Bar play, if any?

a) See above, especially extensive publicity be with members and the public about the program and its benefits to both lawyers and the public.

REPORTING TEMPLATE: SBM Practice Committee: Business Model Non-traditional practice models (including alternative business structures)

The work of the 21CTF is initially focused on: 1) the affordable and accessible delivery of legal services, 2) building a 21st Century Practice from legal education to end of legal career, and 3) modernizing the regulation of the profession. The Task Force has established a committee in each of these three areas.

Our area is #2: "**Building a 21st Century Practice from Legal Education to End of Legal Career.**

The 21CP areas reflect the ongoing work of the State Bar of Michigan in the legal futures movement which explores profound changes within and surrounding the legal profession impacting the practice of law. In particular, my sub-group deals with the topic of: **new business structures to deliver legal services to individuals and to businesses.**

The Guiding Principles for the Work of 21CP are several. In particular, the one that my sub-group deals with is: **To meet the needs and facilitate access to justice, innovation should be encouraged in how legal services are ethically delivered and by whom.**

Finally, the title of my sub-group is "Non-traditional practice models."

Therefore, to meet the topic, guiding principle, and title of the above, I have focused my recommendation on this charge: "Encourage and facilitate the ability for law firms to operate on a **"Primary Care Attorney" model** in which one attorney primarily supports the client, while one or more other attorneys primarily attend hearings.

Charge: Encourage and facilitate the practice of law firms providing a "Primary Care Model" of practice in which they use a Primary Care Attorney and one more Litigation Attorneys to expand their practice-statewide, improve the economics of their law practice, and improve access to people in lower-income and rural counties.

A Primary Care Attorney Model of law practice is one in which there is one or more attorneys who are called (or act as) "Primary Care Attorneys", and there are other attorneys who are called (or act as) "Litigation Attorneys." The Primary Care Attorney consults with the client initially, closes the sale, manages the delivery of legal services (doc prep, filing, etc) from a central location, manages the client relationship throughout the case, negotiates the case with the opposing attorney, and perhaps even handles the final "trial," wherever it may be in the state.

The Litigation Attorneys, on the other hand, only handle the many non-evidentiary hearings throughout a case, especially family law cases, such as Referee Hearings, De Novo Hearings, Pre-Trial Hearings, Case Status Conferences, Motion Hearings, and Settlement Conferences.

The initial consultation "pitch" about how this practice works is something like this:

> "I will be your Primary Care Attorney throughout your case. That means that I will be working primarily with you to talk to you about your case, prepare all documentation, our office will file everything with the court (mail, efile, fax), serve the other party, and prepare a "hearing brief" for each hearing which describes what we want, what our arguments are, what laws/facts are primarily important to argue, what defenses we need to be ready to address, etc…"

"If there is a hearing for your case, then we will also work with a "Local Litigation Attorney" who is an attorney who handles court hearings in your area. The Litigation Attorney can meet with you personally prior to a hearing, if needed, and will represent you in court. This allows us to serve the entire state of Michigan, while using local attorneys who are more familiar with certain courts in your area. "

"I will prepare with you for your case and then I will work with the Litigation Attorney to prepare for the hearing, agreeing on the strategy and desired outcome for the hearing. Then, one week prior to the hearing, we will have a three-way phone call between me (your Primary Care Attorney), you, and the Litigation Attorney. During that call, you can ask us questions, we may both ask you questions, we will confirm the strategy and the desired outcome for the hearing, and you will exchange contact information with the Litigation attorney, and agree where and when you will meet at the court. Then, they will represent you at the hearing, and will update our Case Status with the results after the Hearing."

"After that, I will continue with you as your Primary Care Attorney, including handling any follow-up work like 7-day orders, etc. This works really well and we've handled hundreds of hearings this way. If we don't like an attorney that we've used before, we just don't use them again. And this allows us to be affordable and to help clients state-wide, while giving you a local attorney to be at hearings."

Finances: For this to work, the Primary Care Attorney generally would charge clients a set fee for non-evidentiary hearings, such as "$350 flat," and then pay out a portion of that (e.g. $250) to a Litigation Attorney to prepare for and attend the non-Evidentiary hearing. The $250 is "guaranteed" payment from the Primary Care Attorney; the Litigation Attorney can "get in / get out" of the case and "get paid"; the prep-work requires usually only reviewing the filed pleadings, having a ½ hour phone meeting with the Primary Care Attorney to discuss strategy and goals of the hearing; having a 30-minute pre-hearing phone call with the Primary Care Attorney and client; attending the hearing; and then writing a summary of the hearing.

Reason for Charge 1 (include citations to research and data wherever relevant)

I. Status Quo

The status quo in Michigan and most other states, when a client is that an attorney is expected to handle a client's legal matter from start to finish, whether unbundled or not. If it is unbundled, the attorney will perform all advice, paperwork, and other support. If it is full-representation, the attorney will also negotiate with the opposing side and attend hearings.

As a result of this model, a single-attorney's opportunity to provide services to clients is limited to a small geographic area. If the attorney must attend hearings for its full-representation clients, then they must do so within a limited driving-distance or else time and costs for handling that matter – and thus price to consumer – will become increasingly excessive.

Thus, attorney's generally locate themselves in areas where there are enough clients to support their practice. As a result of this decision, however, then rural areas that do not have high populations, or even poor areas that do not have enough higher-paying clients, end up lacking attorneys who can provide legal help to its citizens (or at least affordable legal help).
Thus, many counties only have one or a couple of attorneys, and many poor areas and rural areas are underserved.

Meanwhile, for those attorneys who remain in less populous areas, or even for attorneys who are in more populous areas but who face stiff competition from a glut of attorneys in the same area, there is not enough business to sustain their legal practice.

Rural lawyers thus cannot expand their practice to more populous areas because of distance and time, and urban lawyers cannot expand their practice to help meet the needs of citizens in more rural and poor areas, because of distance and time.

The end result is lack of access to justice for consumers and a struggling law practice for attorneys, especially solo's and small firms.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

1. The only option that I am recommending is the option to encourage and facilitate a Primary Care Attorney model for all small and solo law firms, such that it becomes easy for attorneys to practice this model, and that consumers become more aware of and comfortable with this mode of practice.

III. Trends

Trends supporting a Primary Care Attorney model are:

1. The increased use of technology to support the remote delivery of legal services, especially the use of user-friendly client portals (like Clio and MyCase) that allow Primary Care Attorneys, Litigation Attorneys, and the clients to all communicate online, view hearing dates, share and review documents online, and for the attorney to invoice the client. Other technologies that support this practice are:
    a. Cloud-based document storage, such as Dropbox.com and Box.com, which allow the remote sharing and viewing of documents, away from the office.
    b. The use of mobile applications, including calendars and mobile-versions of the client portals mentioned above.
    c. Online fax-applications, like Pamfax, which allow faxes to come in as PDFs, and to be sent from the computer or phone.
2. The increased comfort level by clients with phone meetings and phone consultations, including sometimes even video-meetings such as through iChat and Skype.
3. The use of Google to market one's practice, which allows an attorney to advertise his/her practice state-wide, with county-specific web-pages and content, which then drives consumers to a Primary Care Attorney from throughout the state.
4. The increased use of attorney-locator websites, like Avvo, and the Michigan Bar Directory, to find attorneys who may be willing to be a Litigation Attorney for another attorney.
5. The paradox of 1) a glut of attorneys overall, and yet also 2) a very high number of unrepresented litigants who cannot afford an attorney or who cannot find an attorney in their geographic area.
6. The glut of attorneys who have their own practices, and yet are struggling financially, and thus would love some "extra work" of being a Litigation Attorney for $250 per hearing on an occasional basis.
7. The increase of technology such as a mobile app to find "hearing attorneys" in other areas who can cover for your practice, such as one created by an MSU Law grad.
8. Increased use of online payment systems, which facilitates online payments from credit cards and bank accounts.

IV. Analysis needed for any option under consideration:

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

The best-case scenario is that more urban attorneys will be able to expand their practices state-wide, advertise state-wide, and therefore reach more rural and poor clients with affordable legal care, while not having to worry about excessive travel and time costs, except perhaps for a final trial/evidentiary hearing (which is rare).

Furthermore, more rural attorneys and attorneys in poorer areas will be able to expand their practices state-wide, and therefore reach more urban clients and be able to compete with lower prices, because their costs-of-living and costs-of-doing-business are so much lower attorneys in the more populous areas. Thus, they can reach lower- and moderate-income people who are not currently be served by more expensive urban attorneys.

Finally, attorneys throughout the state can get extra income by being on a list of "Litigation Attorneys" who are available for flat-fee attendance at hearings for other attorneys on an ad hoc basis. This will also increase the profitability, experience-level, and business-viability of more attorneys.

Overall, more lower- and moderate-income, and rural clients, will be able to have a greater number of attorneys, at a wider price-point, who are available to serve them, because there are no geographic limitations to them providing affordable effective legal care.

Furthermore, this model allows a Primary Care Attorney to "cover" multiple hearings on the same day, at the same time, in completely different counties across the state, while making money on every hearing, and yet not attending any of them. This allows attorneys to say "Yes" more often to clients who call with an impending hearing that is only "days" away, even if that hearing is far away and even if the attorney has prior obligations for that particular day. Thus, there is less need for getting adjournments of hearings, which promotes efficiency of justice. It also increases the number of clients an attorney can take on at a given time.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

Attorneys don't change their habits or try it, and nothing changes.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

Access Legal Care, PLLC, a Michigan law firm, has exclusively used the Primary Care Attorney Model for four years, with over 550 clients, for over 740 legal matters, including over 300 hearings, and covering 28 of Michigan's counties, including hearings in 15 of those. The firm has used over 15 different "Litigation Attorneys" for cases from Monroe to Traverse city to Alpena to St. Joe.

There is no shortage of attorneys who will cover a hearing for $250, the $350 flat rate (or whatever attorney's choose to charge) is affordable for clients, and also encourages them to somewhat work toward settlement to avoid a $350 hearing fee, and allows the Primary Care Attorney to make $100 per hearing. If the Primary Care Attorney has 3 hearings, in three disparate counties, at the same time on the same day – they can not only cover them all, but they also make $300 profit without attending any of them.

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

Very few law firms have built their practice around a Primary Care Attorney model. Access Legal Care has done so, allowing it to get significantly more clients with only 1 to 1.5 attorneys than other similarly-situated attorneys in their practices. This model expands the reach of attorneys, gives other attorneys more work, and expands access to justice to the remotest corners of Michigan.

Using this model, Access Legal Care was the 2013 Recipient of the ABA Louis M. Brown Award for Legal Access, which is given to one organization per year that shows innovative and successful approaches to providing affordable legal care to lower- and moderate-income people who do not qualify for legal aid, and yet who cannot afford typical attorneys.

E. Implementation Strategies

1. Potential supporters and potential allies

Supporters: the State Bar, remote attorneys, access-to-justice minded attorneys and organizations, small- and solo-firm attorneys, incubators who can use this model, and legal aid agencies who can use this model to expand services.

2. Potential opponents and potential obstacles

Successful law firms and attorneys in both rural and urban areas who see this as an increase in competition – both availability and price – in their backyard.

3. Interested SBM entities

Access to Justice Committee, etc.

4. Other Interested stakeholders or potential partners

The MSU Law Grad who has the "Attorney-finder application;" Access Legal Care, PLLC and its founder, Bert Tiger Whitehead.

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

a. Have a website for finding attorneys who are willing to be "Litigation Attorneys" for other attorneys.
b. Provide content on a website that describes the Primary Care Attorney model of law practice, and why it is good for both consumers and attorneys.
c. Provide more training for lawyers on how to operate this kind of practice and be Primary Care Attorneys, including training on how to use remote-access systems like client portals, online faxing, online fee agreements, online payment systems, etc.

6. How might this intersect with or impact other justice system areas/needs?

Intersects with and supports the access-to-justice initiatives which are trying to figure out how to improve accessibility and affordability of attorneys for all Michiganians, in all counties, in all areas – both remote and poor.

Intersects with and supports delivery-of-legal-services initiatives and committees who are trying to figure out ways to help lawyers get more clients and to be more efficient.

7. Staging
a) Does this option need experimentation or piloting?
b) What is the recommended timetable, if any?
c) What is the recommended order of recommended steps, if any?

a) Already has been piloted for 4 years with award-winning Access Legal Care, PLLC
b) Can be set-up relatively quickly in six months of content development and training webinars, etc.
c) Announce it to the MI Bar; develop content for training; develop add-on to MI Bar ZeekBeek Profile that allows attorneys to select if they are available for "Hearing coverage;" train lawyers on best practices.

8. What role should the State Bar play, if any?

Help with b and c above in #7, Staging.

Give list of what it takes to open this practice.

REPORTING TEMPLATE: SBM Practice Committee: Business Model Alternative Business Structures.

The work of the 21CTF is initially focused on: 1) the affordable and accessible delivery of legal services, 2) building a 21st Century Practice from legal education to end of legal career, and 3) modernizing the regulation of the profession. The Task Force has established a committee in each of these three areas.

Our area is #2: "**Building a 21st Century Practice from Legal Education to End of Legal Career.**

The 21CP areas reflect the ongoing work of the State Bar of Michigan in the legal futures movement which explores profound changes within and surrounding the legal profession impacting the practice of law. In particular, my sub-group deals with the topic of: **new business structures to deliver legal services to individuals and to businesses.**

The Guiding Principles for the Work of 21CP are several. In particular, the one that my sub-group deals with is: **To meet the needs and facilitate access to justice, innovation should be encouraged in how legal services are ethically delivered and by whom.**

Finally, the title of my sub-group is "Non-traditional practice models, including ABS"

This paper is about ABS, Alternative Business Structures.

Charge: Michigan should KEEP the current rule prohibiting Alternative Business Structures, namely: the ability for non-lawyers to invest in law firms.

There are some high-profile companies, both non-law-firms and law-firms, that are calling on U.S. states to allow ABA. Legalzoom and Jacoby & Meyers to name a couple. In Britain, ABS' have been allowed for eight years (2007). The common argument in the United States for ABS is that ABS will spur innovation and increase access-to-justice, and the proponents point to Britain to show that it's time has come. Opponents argue that ABS will undermine the professionalism of the bar and hurt consumers.

Looking at Britain's experience, now 8 years old, it appears that the neither the negative effects warned against, nor the positive effects promised, have materialized.

The Law Society of Upper Canada, in 2015, created a professional regulation committee working group to study ABS' in England and determine whether to propose changes in Canada. As a result of its study, the Law Society does "not propose to further examine any majority or controlling [non-lawyer] ownership models for traditional law firms".

The group evaluated ABSs against seven criteria: access to justice; responsiveness to the public; professionalism; protection of solicitor-client privilege, promotion of innovation; orderly transition [from the status quo]; and efficient and proportionate regulation.

On access to justice, it said: "The experiences in Australia and in England and Wales demonstrate that, while there have been ABSs which facilitate certain forms of access to justice, generally, non-lawyer ownership of law firms in those jurisdictions does not appear to have caused transformative change to facilitate access to justice…

"The regulatory changes required to permit and the consequences of permitting non-lawyer ownership, or effective control, for any and all legal practices do not appear to be justified at least from the perspective of the potential access to justice benefits."

The group was no more impressed with the evidence for ABSs delivering innovation: "While there are some more significant innovators, it is notable that most ABSs in Australia and in England and Wales are existing practices that have taken on limited non-lawyer ownership in order to innovate in ways that may be described as evolutionary rather than revolutionary…

"Although ABSs appear to be innovating more than their non-ABS counterparts, the [group] is of the view that it is too early to determine whether the levels of innovation taking place in England and Wales support a shift to majority or controlling [non-lawyer] ownership of traditional law firms in Ontario."

On the impact of external ownership on the professionalism of lawyers, the jury was still out. "[We consider] that the better course is to wait for further experience to develop in other jurisdictions before attempting to reach conclusions as to the effect of public ownership and consolidation on professionalism."

Reason for Charge 1 (include citations to research and data wherever relevant)

I. Status Quo

The status quo in Michigan is found in Rule 5.4 of the Professional Rules of Ethics, under "Professional Independence of a Lawyer." Namely (d) which says: "*A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:*

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.and most other states, is that we follow the ethics rule when a client is that an attorney is expected to handle a client's legal matter from start to finish, whether unbundled or not. If it is unbundled, the attorney will perform all advice, paperwork, and other support. If it is full-representation, the attorney will also negotiate with the opposing side and attend hearings.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

Michigan has 3 options, essentially:

1. Maintain the status quo
2. Allow for full ownership
3. Allow for limited ownership

III. Trends

Trends towards ABS are namely that Britain allows it now, Legalzoom and Jacoby & Meyers are pushing for the same rules in the U.S., and Canada has studied Britain's experience and found it not very compelling at this point.

IV. Analysis needed for any option under consideration:

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

The best-case scenario is that more money flows into innovation in legal services, and that access-to-justice is increased. That has always been the promise.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

However, in order to allow ABS, bar associations must change not only the professional rules of conduct, but they and the states must also build in a support structure to support the rule, including administrative rules-development, procedures, checks and balances, licensing regimens, and more. There will be a huge cost to support non-lawyer ownership in law firms.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

Britain has allowed ABS for 8 years now, and the jury is still out. According to the Law Society of Canada, the promised benefits of innovation and access-to-justice have not been realized to any significant extent.

On the positive side, the negatives that U.S. lawyers warn against also have not materialized.

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

There is nothing innovative about maintaining the status quo. However, Michigan would do well to focus its attention, resources, and efforts on innovative changes that are more proven to bring out greater results in broadly helping both lawyers and consumers alike.

E. Implementation Strategies

1. Potential supporters and potential allies

Supporters: Large legal-services companies that are not law firms, and large law firms that want to expand more rapidly.

2. Potential opponents and potential obstacles

Many lawyers are still opposed to a relaxing of these rules.

3. Interested SBM entities

None

4. Other Interested stakeholders or potential partners

None

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

Not applicable, whether we propose ABS, or propose maintaining the status quo.

6. How might this intersect with or impact other justice system areas/needs?

Unknown.

7. Staging
a) Does this option need experimentation or piloting?
b) What is the recommended timetable, if any?
c) What is the recommended order of recommended steps, if any?

ABS is already being piloted in the U.K. And yet, after 8 years, the benefits have not clearly outweighed the costs. There are some benefits, and there has not been any noticeable harms. However, the legal industry went through significant and costly changes to support ABS in UK. The Return-on-Investment is still not being realized.

8. What role should the State Bar play, if any?

Continue to monitor the experience of UK and see if there arises any area of ABS that is providing more promise in terms of speeding innovation and improving access-to-justice. Perhaps there will be a clear winner in terms of certain types of models, for certain types of needs, managed by certain methods, that will yield significant benefits. If that is the case, Michigan can look to loosening the ethics rules just enough to allow those types of structures, for those types of expected benefits.

21st Century PRACTICE Task Force

Charge: Alternative and non-traditional fee agreements
By Erika Davis, Ron Keefe, and Rachael Roseman

Reason for Charge (include citations to research and data wherever relevant)

I. Status Quo

The Michigan Rules of Professional Conduct prescribe a number of fee requirements with which attorneys must comply. Preliminarily, attorneys' fees must be reasonable. MRPC 1.5(a) states:

> (a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent.

Furthermore, fees should be communicated in writing at the outset of the representation (MRPC 1.5(b)), and may be contingent under certain circumstances. See MRPC 1.5(c). Finally, fees may be shared (but only with other lawyers) when the overall fee is reasonable, the client is advised of the arrangement, and the client does not object. See MRPC 1.5(d). The State Bar of Michigan periodically conducts a

statewide survey of Michigan attorneys[1]. Those findings are publicly available and have been routinely used by judges in awarding attorneys' fees.

"Traditional"[2] Billing Practices

For decades, billing clients in hourly increments was standard practice[3] for attorneys in private practice, apparently without regard to firm size or practice area. Presumably, the underlying justification for the hourly arrangement was to objectively communicate value to the client based principally upon the amount of time the attorney spent on the client's matter.

However, over time, the hourly arrangement presented challenges both to the client and the lawyer. While the client had some information on which to evaluate the fee (*i.e.*, the hourly rate), the client had no independent way of knowing how much total time a matter would take (and to be fair, attorneys did not always have this information either). Furthermore, because firms (both small and large) had a way of measuring revenue by lawyer, compensation and advancement decisions were increasingly based upon the billable hour.[4] The hourly system, while intended to create more predictability for the client and the lawyer, ended up incentivizing inefficiency to the detriment of the attorney-client relationship.[5]

The 2007-2009 U.S. economic recession[6] brought the downsides to the billable hour to the forefront as there were fewer legal dollars in the marketplace, and corporate and for-profit legal consumers began demanding more work for less money. At the same time, individual and non-profit legal consumers began to look outside the profession for help with their legal needs, turning to non-legal professionals (*i.e.*, accountants) and the internet (*i.e.*, Legal Zoom, Rocket Lawyer) for legal assistance.[7]

This change in the marketplace and in client expectations has sparked a conversation about legal fees, specifically regarding the way in which the ultimate fee should be calculated.

II. Options

Legal scholars and innovators have detailed a number of alternative billing methods that can be utilized by law firms (regardless of size) to offer predictable, cost-effective legal solutions for clients while

[1] *2014 Economics of Law Practice Attorney Income and Billing Rate Report*, STATE BAR OF MICHIGAN, http://www.michbar.org/file/pmrc/articles/0000151.pdf.

[2] What does (or does not) constitute "traditional" billing is subject to interpretation, depending upon time and context. In the early twentieth century, lawyers used a variety of billing methods, including flat fees, success fees, rough budgets, and monthly retainers. *See*, *e.g.*, Sarah Boulden, *The Business of Startup Law: Alternative Fee Arrangements and Agency Costs in Entrepreneurial Law,* 11 JOURNAL ON TELECOMM & HIGH TECH. LAW 279, 280 (2013). For purposes of this memo, the team has defined "traditional" billing as the hourly rate.

[3] *Id.* at 280-282.

[4] *Id.*

[5] Harrison Barnes, *The Real Reason There Are Fewer Law Firm Jobs (What No Attorney Wants You to Know)*, Law Crossing, posted to 21st Century Law Practice Discussion Board on July 27, 2015.

[6] United States Bureau of Labor Statistics, *BLS SPOTLIGHT ON STATISTICS: THE RECESSION OF 2007–2009 (February 2012), http://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf.*

[7] Ben Barton, *Lessons From the Rise of LegalZoom*, Bloomberg BNA (June 18, 2015), https://bol.bna.com/lessons-from-the-rise-of-legalzoom.

maintaining profitability. The goal is to enable attorneys to tailor their billing practices to the specific needs of individual clients, thereby creating a better service for clients and, hopefully as a result, happier attorneys. While the list of alternative billing methods is ever-growing, these are a few that present the easiest method for conversion and, in many cases, offer less risk to practicing attorneys.

A. Billable Hour Modifications

The most evident alternative billing model is to modify the use of the billable hour to respond to client demand. Modifications may include blended rates (a fee that is a "blend" of the rates of two or more attorneys staffed on a given matter or project); discounts (which can be based upon the stage of a business, type of business, or as an incentive for prompt payment of invoices); and fee caps (a ceiling on the total amount of billings allowed).

B. Flat (Fixed) Fees

Another option that has become more popular in recent years is flat fee billing. Flat fee billing allows the client to know up-front what the cost of legal services will be. Meanwhile, the attorney can predict revenue. Importantly, this creates an incentive for the attorney to use the most efficient procedures to complete work on behalf of the client. Likewise, it frees the attorney from living life in tenths of hours.

In some instances, firms have modified the true flat fee with different methods such as a "risk collar." [8] A risk collar is created using an estimated budget based on an hourly rate. If the firm completes the work under budget, then the client pays a "bonus." If the work is done over budget, then the client receives a discount.[9]

Another method that has gained popularity is the subscription fee.[10] A subscription fee is repetitive flat fee, collected monthly or even annually, whereby the client subscribes to the attorney's services. The attorney, then, is required to perform the services included within the subscription, which can vary as the attorney and client see fit. Years ago, the retainer was increasingly popular, where a client—usually a corporate entity—would pay a monthly fee regardless of whether legal services were performed. The fee remains the same even in busy months when the attorney's attention has to be entirely devoted to the client. The subscription method is similar, but the scope of services offered can be more tailored and limited as necessary.[11]

[8] *Id.* at 291.

[9] This method, in particular, may be a good stepping stone to move from the traditional billable hour to an alternative method. This method maintains many of the traditional methods of billing with which we are all familiar while slowly allowing for the progression to new methods.

[10] *Id.* at 292. "As a benefit to law firms, over time clients tend to pay more with subscriptions than with the billable hour method and revenue can be predicted each month. Clients can also predict legal expenses each month, which can be useful to smooth out expenses over time rather than having one large legal fee due at the beginning or end of a deal." *Id.* at 292-293.

[11] Some estate planning firms have experimented with this already. Clients can pay extra for a subscription. Under the subscription, they can ask questions of their attorney without extra cost. Many plans also include a yearly update of the estate plan and minor adjustments throughout the year.

C. Enhanced Fees or Results-Oriented Fees

Enhanced or results-oriented fees reflect the overall value of legal services and not simply the number of hours a attorney spends on a case. The billing method is typically used to reward an attorney for achieving a favorable result. So, for example, the attorney would be paid a "bonus" at the conclusion of the case if the attorney achieved a favorable result.[12]

III. Trends[13]

While there are writings about alternative fee arrangements or alternative ways to be profitable, it is important to evaluate the way we (lawyers and clients) think about the provision of legal services.

For example, many have begun discussing the idea of "project management" as it relates to law firms. Clients may now expect that we approach their legal issues as project managers—selecting the most effective and efficient individuals to work on the projects or deciding to outsource specific elements of a project to increase efficiency.

This is probably one of the biggest hurdles faced by the legal profession—particularly in larger firms. We operate as silos whether we intend to or not. We have "our" own files and "our" own clients rather than firm files and firm clients. In many cases, we do not fully understand the expertise of our colleagues. We rarely, if ever, evaluate our cases at the outset to identify the key issues and to staff the case appropriately—even if it means giving your work to another attorney.

Many attorneys shy away from the business aspects of practicing. Creating sustainable alternative billing methods is a complicated process. The financials need to be seriously evaluated and understood before a firm switches its billing methods. Unfortunately, law firms are typically run by lawyers who want to practice law—not run a business. This is a significant hurdle that we have yet to overcome.

Technology is a similar hurdle. There is a huge generational divide between seasoned practitioners and those just entering the profession. We are struggling to find ways to bridge those gaps, which, in turn, makes it difficult for us to implement new billing methods, which often involve the implementation of technology.

IV. Recommendations and Implementation:

A. General Recommendations: This subcommittee recommends that the Bar consider alternative billing methods, including the models discussed above, to meet client demands. There are a number of unknowns regarding the viability of these alternative methods, the profitability of

[12] The Michigan Supreme Court has sought feedback from the Bar on the proposal to amend MRPC 1.5 as it applies to enhanced fees in domestic relations cases. A discussion regarding the *Fryhoff* case is included later in this Report.

[13] See, e.g., Alternative Fee Arrangements: An Idea Whose Time Has Come?, http://www.hptylaw.com/media/article/77_Alternative%20Fee%20Arrangements%20An%20Idea%20Whose%20Time%20Has%20Come.pdf; Marketing Alternative Fee Arrangements, http://www.americanbar.org/publications/law_practice_magazine/2011/september_october/alternative_fee_arrangements.html; 6 Ways Firms Mess Up Alternative Fee Arrangements, http://www.law360.com/articles/576894/6-ways-firms-mess-up-alternative-fee-arrangements.

these methods, and implantation strategies or risks. As such, the subcommittee has identified a number of factors (as outlined below) that ought to be considered as we move forward.

B. Opportunities: We are at a crossroads in the legal profession. Clients and attorneys alike are looking for new ways to pay for and to bill for legal services. **We will have to adapt our profession if we intend to continue practicing law**. This gives us a great opportunity to make the practice of law more enjoyable (and profitable), while increasing client satisfaction and client perception of legal services.

C. Risks: There are always risks associated with change. Some inherent risks include loss of profitability during the transition, increased efforts to make the change to a new method, and costs associated with market analysis. However, with proper research and analysis *before* any implementation, those risks can be greatly reduced, if not eliminated.

D. Unanswered Questions and Unknowns: We don't have enough data to understand the market in different regions in the state. Clients expect different things in different areas. Without understanding that, we cannot adequately recommend new billing methods that will fit each region. Likewise, there is a lack of information about market conditions. The cost for predictable legal services is not widely known. Not only can clients not shop around intelligently, but attorneys are also unable to price competitively. Without that, it is difficult to develop a billing method that will satisfy both client expectations and needs and the practitioners' need to support him or herself.

E. What is innovative about the options presented: The alternative billing methods described above are potentially "game changers." It is no secret that clients are changing the way they think about legal services and what they expect from their attorneys. In order to adapt, we need more data to be able to recommend new billing methods, including implementation methods, that could apply statewide.

F. *In re Fryhoff*: The Supreme Court invited requests for proposed rule amendments to MRPC 1.5(d), which prohibits the collection of a contingency fee in domestic relations cases. The issue presented in *Fryhoff* was whether the use of "results obtained" or "value added" provision in the calculation of attorneys' fees in divorce cases makes the fee "contingent" under the Rules. In response, on March 7, 2014, the Family Law Section reaffirmed its recommendation to change the language of MRPC 1.5(d) to include the following language:

> An attorney and client may consent in writing to an "enhanced fee"[14] in a case, which may take into consideration the results obtained for a client, provided that such a fee is "reasonable" pursuant to all of the factors set forth in MRPC 1.5(a) and is agreed to by attorney and client.[15]

[14] Presumably, the terms "enhanced fee," "results obtained," and "value added" all refer to the same practice.

[15] The Family Law Section's letter is available at, http://higherlogicdownload.s3.amazonaws.com/MICHBAR/29647f32-d7bf-4b3b-97a7-a9359ef92056/UploadedImages/pdf/RequestforCommentinFryhoff.pdf.

Fryhoff presents an issue specifically related to fees in domestic relations cases. This subcommittee does not purport to be experts or even well-versed in billing practices in domestic relations cases. As such, the subcommittee recognizes that the Michigan rules of Professional Conduct may need to be amended address this situation. The Family Law Section has twice recommended this change, and the subcommittee defers to the Section's recommendation.

G. Implementation Strategies:

1. **Potential Supporters and Allies**: The younger generation will likely be less resistant to changes in billing practices. As such, their energy and enthusiasm should be harnessed and used to help implement new practices. Consulting firms that can help create new practice models or help develop particular models for individual clients may also be supporters.

2. **Potential Opponents and Obstacles**: There may be hesitancy and apprehension from those who have been practicing under the traditional billable hour model. Clients may also be hesitant to accept new billing models as they may be accustomed to the traditional model. Education, practical examples, and open dialog should be used to quell these concerns. Likewise, sufficient research needs to be conducted *before* a new billing method is implemented so that everyone involved can understand the risks and rewards.

3. **Interested SBM Entities**: Presumably, fees are the concern of all Michigan lawyers, and there are a number of SBM entities that would be interested in work regarding fee arrangements, including: Business Law Section, Consumer Law Section, Master Lawyers Section, Young Lawyers Section, Solo and Small Firm Practice Section, Litigation Section, and Law Practice Management and Legal Administrators Section. Committees that may provide valuable insight to this work could be: Professional Ethics, Unauthorized Practice of Law, and Justice Initiatives.

4. **Other interested stakeholders or potential partners**: As new business models continue to develop, law firms and practitioners will likely need to consult with other industries and professionals to ensure efficiency and profitability. Each of those individuals or industries should be considered potential partners.

5. **What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?** The answer to this question is entirely dependent upon what billing practices are adopted by practitioners. Given the number of different possibilities and individual client needs, it's unclear what technology would be beneficial. That being said, practitioners cannot expect to be successful without making technological advancements and utilizing technology.

6. **How might this intersect with or impact other justice system areas/needs?** Depending upon how fees are structured, there may be issues of accessibility, particularly if fee structures fail to consider (or adequately respond to) the needs of unserved and underserved populations. On the other hand, alternative billing methods, if successful, may free up additional time and resources for attorneys to spend doing pro bono work or reduced fee work for underserved clients.

7. **Staging**

a) **Does this option need experimentation or piloting?** Yes, to understand the viability of the options available, it would be helpful to collect anecdotal data from Michigan practitioners who have implemented different billing methods. It would likewise be helpful to understand the market prices for certain services. For example, if an estate plan can be done on a flat fee basis, the bar would be benefitted by studies illustrating the market prices in different areas of the state. This will not only help clients, but will also force attorneys to provide more cost-effective legal solutions. Moreover, seminars, workshops, or other informational sessions with consulting firms who can evaluate the profitability of different billing methods could be beneficial.

b) **What is the recommended timetable, if any?** The timetable for this work depends upon how quickly the data described above may be collected.

c) **What is the recommended order of recommended steps, if any?** This team recommends the collection of Michigan-specific data regarding different billing methods.

8. What role should the State Bar play, if any?

The State Bar is a perfect entity to carry out much of the necessary research and data collection. As the primary body with which attorneys' are involved, the Bar has the ability to access practitioners across the state. Likewise, the Bar has the ability to produce publications explaining the different alternative billing methods. Such publications could assist practitioners in making the change should it be necessary.

The subcommittee recommends the State Bar carry out the following functions:

1. Collect data from practitioners across the state to evaluate their use of alternative billing methods, methods of implementation, success of implementation, client satisfaction (or dissatisfaction), profitability, attorney satisfaction, risks involved, etc.
2. Produce publications explaining different methods of alternative billing models, including options for implementation, success rate (as dictated by the data collection), and risks involved to enable practitioners to make informed decisions about how and when to implement alteratives billing methods.

9. Conclusion

This subcommittee recognizes that the need for adaptability is inevitable. That does not mean, however, that every firm should change from the billable hour method. Nor does it mean that every client will wish to be charged based on an alternative billing method. Undoubtedly, though, many clients do want alternative billing methods. They want predictability. They want to be able to access their attorney without the fear of receiving an invoice for a single phone call. We are advisors. But, for many clients, our role as advisors gets lost in the billable hour. Alternative billing methods can free us to be advisors and can give many clients access that they never could have had under the billable hour method.

Practice Committee – 4. New Practice Paradigms II – Business Model Innovation and Marketing

Reason for Charge 3 (include citations to research and data wherever relevant)

Charge 3
Communicating the value of legal services using technology on behalf of the profession – by lawyers individually and/or the bar association.
(Group Members: Norman Tucker)

1. **The vast majority of Michigan citizens know little to nothing about the law, and less about lawyers. Few would know when they may need a lawyer, who to call, or how to distinguish a capable attorney from those making the omnipresent advertising and web site promises. Although technology has saturated the internet with lawyer web sites and claims of competence and results, this is of no help, and possible harm, without an objective, peer reviewed source to first educate the client to the issues, the law and the facts. Ignorance may well lead the client to services they do not need, at fees that may be unreasonable, litigation they should not pursue, or attorneys who may not be the most competent to provide the insight and legal services needed.**

   Secondly, with all due respect, the listing of attorneys on the SBM web page who say they practice and have expertise in a particular area may well be inaccurate (from my review) and; therefore, misleading to the public. Also, it provides only names and no helpful legal information about the listed topics, or the attorneys. This list appears to be the result of the attorney checking a box when paying their annual dues. I'm not aware of any SBM verification process about these claims of expertise. Therefore, the SBM may well be falsely promoting certain attorney's expertise to the detriment of clients.

2. **Presently there is no credible, objective, peer reviewed source for the lay public about Michigan law and how the system works. The SBM http://www.michbar.org/publications/fields#personalinjury has a web page that I and most had never seen before researching this topic. If I did not know about it, it is doubtful that potential clients have used it.**

3. **Although there is some information on the above SBM web site, it is not organized and does not have a consistent, searchable format.**

4. **"Communicating the value of legal services using technology" is clearly a responsibility of the SBM. The following are a few examples of the obligations the SBM and its members assumed in the State Bar Strategic Planning Committee Recommendations for 2013 – 2015[1]:**

[1] State Bar of Michigan Strategic Plan, Strategic Planning Committee Recommendations for 2013 – 2015, Reviewed by the Board of Commissioners on April 26, 2013

3. THE STATE BAR OF MICHIGAN WILL ACTIVELY WORK TO INCREASE THE PUBLIC'S TRUST AND CONFIDENCE IN THE JUSTICE SYSTEM, IN THE VALUE OF THE LEGAL PROFESSION, AND IN THE PRACTICING LAWYER

3.1 Position the State Bar with the media and the public as the central source of reliable information on legal issues in Michigan.

3.1.1 Provide substantive information and media training to bar leaders, to enable them to offer appropriate and effective written, electronic and oral responses to issues that affect the administration of justice in Michigan.

3.1.2 Employ a multi-faceted communications strategy that uses a variety of means and media to achieve this goal.

3.3 Support effective educational efforts that increase public knowledge of the legal system and the rule of law, and of the role of lawyers, judges, and citizens within our system of government.

3.7 Increase awareness of the many ways in which lawyers individually and collectively serve society, their communities, and their clients.

5. **To put the above in a historical perspective, the following are some thoughts to consider:**

Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family. Kofi Annan

We are all born ignorant, but one must work hard to remain stupid. Benjamin Franklin

Risk comes from not knowing what you're doing. Warren Buffett

I. Status Quo

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

1. **The SBM could provide considerable information on a vast list of legal topics that are of concern to the individual consumer of legal services. The SBM http://www.michbar.org/sections/home lists 40 different sections. Each section could provide statements (articles) outlining the law, legal issues, solutions, problems, examples, or when a**

lawyer may be needed, etc. To be objective and simple, the best approach would seem to be to submit this information to the appropriate SBM Section for review and approval. These could then be accessed on the SBM web site under a title such as "State Bar of Michigan Information for Consumers of Legal Services", or a similar title. Although I'm not an expert on SEO, I would think this would come up on the first page of a Google search.

2. **Like the article I circulated, *Anatomy of a Michigan Medical Malpractice Case*, each Section would post information on the top topics in their respective practice areas. As this will require considerable time and work, the SBM Section could use as an inducement, a short sentence at the end of the respective articles/posts, "Thanks to (name of the attorneys) for their contribution to this posting". This should probably include the same info as in a published article: firm name, address, phone, e-mail and web page.**

   Because some articles or information may come directly from a firm website, consideration should be given to link at the end of the article to the website. Of course, the article would have to pass scrutiny of the applicable section, but would seem to be worth the criticism that the SBM is promoting a law firm, particularly since there has been difficultly getting sections to produce such information.

3. **There should also be a section on "Tips on Hiring the Best Attorney for You and Your Issues". Selecting the right or best lawyer may be more important than the lay person understanding the law. While we all know there is a lot of lawyer noise on the internet, I don't think I appreciated the importance and difficultly the inexperienced consumer has in hiring an attorney until I read Brian Tannebaum, *The Practice, Brutal Truths About Lawyers and Lawyering* (ABA, 2014). I have already made notes for a potential article/posting of what to look for, questions to ask, and follow up investigation before hiring an attorney. The SBM does have a site http://www.michbar.org/public_resources/consumertips under resources for the public on hiring a lawyer, but I would make this more specific and include the information and questions and answers as part of each of the above Sections; hiring a PI attorney presents different issues that an Estates and Trusts attorney.**

   I was pleased to discover when doing a Google search for "how to find a good lawyer in Michigan" that the SBM web page for attorney directories with the tab "For Public" http://www.michbar.org/memberdirectory/home came up 3rd after paid advertisements. My only concern is the "For Public" link was not immediately recognizable, and less sophisticated legal shoppers may miss it. It also required some hunting to get to the questions to ask a potential attorney before hiring.

4. **The problem and the solution are the same: education of the consumer of legal services.**

5. **It does appear the SBM website has adopted a somewhat similar link https://www.zeekbeek.com/Publications. Interestingly, this did not appear with a Google search and was only discovered by one of the SBM staff after this topic was discussed.**

Accordingly, the concept seems to be approved; what needs to be done is a formal process for approval and posting. Some additional concerns along these lines were as follows:

Quality
Comprehensive while not limiting
Consistency
State Bar Policies on Information and Formatting
Review and Approval Process
Ethical implications
Updates

These would appear to be surmountable and with agreed-upon protocol for review and approval.

III. Trends

IV. Analysis needed for any option under consideration:

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

The SBM web site will be recognized as the go to site for inexperience and experienced legal consumers looking for honest, factual, and up to date information on their potential legal problems. The SBM Legal Questions and Answers will be an honest, factual, and up to date Wikipedia site that will be at the top of the search and may be the best opportunity to serve those who have had marginal access to legal services.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

If initially implemented with a few Sections and fails, like most new experiments, we will learn what can and cannot be done with technology to accomplish the stated goals of State Bar of Michigan Strategic Plan 20130-2015. If not attempted, the SBM could justifiably be criticized for failing to try.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

We know that the SBM web page in its present format on questions about selecting an attorney appears in the top five on a Google search. Additional information would logically place this site at the top. Although there are marketing gurus who would likely be willing to offer opinions, there do not appear to be any clinical trials or other programs who have tried this and a pilot project in Michigan may well be the first to provide such research information.

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

This would appear to be a new (or expanded) approach to an old problem.

E. What resources will be necessary to implement this idea?

F. Are there any language access barriers that need to be addressed?

G. Implementation Strategies

1. Potential supporters and potential allies

   a. All SBM Sections, independent legal groups, and law schools should be interested and supportive of educating the public which would or should promote better decisions, access and the reputation of the Michigan legal system and its members. There may well be opposition from those in the legal community who use the internet and social media to attract business by making claims to potential clients who have little to no knowledge about lawyers or the law. Those efforts need to be resisted and answered. As Tannenbaum suggested, "Let's become a profession again… or at least try."[2]

   b. This could be tested starting with one committee instead of all 40.

2. Potential opponents and potential obstacles

3. Interested SBM entities

   All SBM Sections

4. Other Interested stakeholders or potential partners

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

6. How might this intersect with or impact other justice system areas/needs?

7. Staging

   a) Does this option need experimentation or piloting?

      1. Select one, and no more than three, Sections for a 2 -3 year trial or test run. A pilot program saves time and money; it avoids 40 sections from making the same

[2] While Tannenbaum is often "Trump like" in his comments on the present misuse and abuse of the information on the internet, and many of us are reluctant to criticize colleagues we know, there is some truth in his observations. Referencing web sites and internet postings, he comments, "No one talks about qualifications, no one…. Stop being an Internet marketing whore, and start being a lawyer…. Let's rid ourselves of those who are receiving a free pass on the Internet… Let's become a profession again. Let's at least try." B. Tannenbaum, *The Practice. The Brutal Truth About Lawyers and Lawyering* (ABA, 2014) 141, 156,149.

mistakes. Once the effort is fine tuned, protocols and experience could be shared with the other sections. This, as in most new programs, would enhance the chances of success.

2. **The selected trial or test run Sections would form a SBM Client Information Web Page Committee with a Chair to oversee the project. If successful, each section in the future would have a Web Page Committee and Chair to implement their respective web site.**
3. **The SBM Client Information Web Page Committee for each section would work individually, based unique differences in their practice areas, but with information to be shared with the other Committees, to formulate protocols and checklists to implement their respective web pages. The protocols may include, but not be limited to (by way of example only):**
    a. **Outline of topics and subjects than minimally should be included;**
    b. **Review and approval of materials – the peer review approval process;**
    c. **Uniformity of formatting and use of links to enhance easier use and the same format to eventually be adopted by all Section's web pages;**
    d. **Protocols for soliciting submissions that would make submissions available to all qualified attorneys in the practice area; with final approval by the SBM Section Web Page Committee (SBM – SWPC);**
    e. **Given the considerable work involved in producing this content, contributing attorneys will need some inducement. There needs to be some recognition for the article and work. This should probably include: attorney's name, firm name, practice area, and perhaps a web site link. This would be much like any medical or legal journal article;**
    f. **Protocols for yearly additions and updates.**
4. **To further to encourage participation by attorneys and quality content, the best contributions may be considered for special recognition and/or an award at the Annual SBM meeting.**

b) What is the recommended timetable, if any?

Two to three year limited pilot project and expand depending on results.

c) What is the recommended order of recommended steps, if any?

See above.

8. What role should the State Bar play, if any?

The State Bar of Michigan should implement and manage this program.

Practice Committee

Charge 1
Civil Discovery Reform

Reason for Charge 1 (include citations to research and data wherever relevant)

I. Status Quo

The existing civil discovery process has been justifiably criticized as being too costly and for producing undue delay in the administration of justice. For example, certain Work Group 5 practitioners reported routine use of triple digit interrogatories in relatively straightforward family law matters.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

(a) Court Rule changes to limit interrogatories, depositions and/or the scope of discovery. Possible court rule change to more thoroughly address electronic discovery. MCR 2.302(B)(5) & (6). In August of 2013, the SBM Board of Commissioners asked the Supreme Court to appoint a special committee to review and revise the Michigan Court Rules dealing with the civil discovery process in order to address the expense and burden of civil discovery. In January, 2015, the Supreme Court responded by encouraging the bar to proceed with the project on its own initiative. This Work Group supports an effort to do so.

(b) Greater judicial oversight and active intervention, particularly in less complex cases

(c) Improved education of the bench and the bar as to appropriate use of the of the rules on sanctions to discourage unnecessary discovery

(d) Utilization of non-lawyers in discovery process

(e) Liberalize the Rules to permit greater use of technology in the discovery process

(f) Use of discovery masters/facilitators or Circuit Court Magistrates.

(g) Use of the business court model of early case conferences.

These options particularly serve TF Guiding Principles 1, 2, 5 and 6.

III. Trends

(a) The Federal Rules of Civil Procedure presently limit the number of interrogatories and depositions without leave of Court. Federal Rules changes effective December 2015 focus on improvement in the speed and efficiency of civil cases, including the scope of discovery as being "proportional to the needs of the case" in order to "encourage judges to be more aggressive in identifying and discouraging discovery overuse".

(b) Expanding use of technology in discovery.

(c) Use of business courts (not one size fits all).

IV. Analysis needed for any option under consideration:

(a) Whether the Federal Rules changes have successfully reduced the cost of discovery

(b) The success of other States in implementing civil discovery reforms, including those identified in II (a) through (f)

(c) The practicality of trial judges becoming more actively involved in managing the discovery process of their often crowded dockets

(d) The effectiveness of using non-lawyers to reduce the cost of discovery (paralegals, tech person in e-discovery)

(e) Identifying where it may be practical and effective to use technology

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

The civil discovery process will be streamlined without adversely affecting the administration of justice.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

Confidence in the judicial system would be undermined if fair and necessary discovery is unduly limited, or by civil discovery reforms that do not provide desired results.

Implementation of technology may increase the cost of discovery.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

Do we have a baseline on the cost of discovery? How do we determine improvement?

Time guidelines may provide information as to the length of time discovery takes.

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

The concept of discovery is at issue and everyone is talking about implementing the Federal Rules. It is refinement of the current practices.

E. What resources will be necessary to implement this idea?

Open minds.

F. Are there any language access barriers that need to be addressed?

None are apparent.

We do not anticipate language barriers, but there may be issues with access to technology.

G. Implementation Strategies

1. Potential supporters and potential allies

Potential supporters would include clients, many lawyers and judges, as well as the Executive and Legislative branches of government, the Supreme Court, the general public and the media.

2. Potential opponents and potential obstacles

Certain lawyers and judges are potential opponents. Protracted discovery is lucrative for many lawyers. Lawyers may also feel exposed to criticism or to malpractice claims if "thorough discovery" is not undertaken in virtually every case. Expecting increased supervision of the discovery process may place too great a burden on many judges. Active local bar associations with many small and solo practice attorneys.

3. Interested SBM entities

Every Section of the State Bar and the Representative Assembly.

4. Other Interested stakeholders or potential partners

Court Rule changes are the province of the Michigan Supreme Court.

Technology companies that provide discovery assistance, including hardware and software. ESI, predictive coding, video depositions.

Litigation support providers.

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

   (a) Remote or electronic depositions could be used selectively to reduce discovery expense

   (b) Telephonic or video conferences with the Court could be used to better manage the discovery process

   (c) Predictive coding

   (d) E-filing

6. How might this intersect with or impact other justice system areas/needs?

   Certain options may require coordination with Technology Work Group No. 2 as well as with the Task Force's Regulatory Committee. ADR Group, e-filing, access to the courts and technology.

7. Staging

   a) Does this option need experimentation or piloting?

      Yes, every option should be piloted.

   b) What is the recommended timetable, if any?

      We do not have the time or the expertise to make meaningful recommendations as to timeframes.

   c) What is the recommended order of recommended steps, if any?

      Education of the bench and bar on case managing can be implemented early and have the greatest effect.

8. What role should the State Bar play, if any?

   Providing education to the bench and bar, resources, recommend court rule changes, and take a leadership role in advancing this goal.

   The State Bar should take a leadership role in implementation of these recommendations.

Charge 2
Efficiencies to Reduce Cost of Litigation

Reason for Charge 2 (include citations to research and data wherever relevant)

I. Status Quo

Trial courts' processes do not sufficiently address the high costs of litigation. For instance, many courts schedule trial dates, but there is no realistic expectation that the trial will be conducted on that date. On motion call days, courtrooms are packed with attorneys waiting to have their cases called, sometimes waiting over three hours. Additionally, many law offices have not incorporated cost saving processes which can lower fees for clients.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

(a) Court Rule changes to limit interrogatories, depositions and/or the scope of discovery. In August of 2013, the SBM Board of Commissions asked the Supreme Court to appoint a special committee to review and revise the Michigan Court Rules dealing with the civil discovery process in order to address the expense and burden of civil discovery. In January, 2015, the Supreme Court responded by encouraging the bar to proceed with the project on its own initiative. This Work Group supports an effort to do so.

(b) Greater judicial oversight and active intervention, particularly in less complex cases

(c) Greater use of sanctions under existing Rules to discourage unnecessary discovery

(d) Utilization of non-lawyers in discovery process

(e) Use of technology in the discovery process

(f) Work with the State Court Administrative Office to develop a measure for each judge and court which tracks trial date adjournments and the number of days' notice of the adjournments provided to the parties/attorneys. Recognizing that the setting of a trial date is a valuable settlement tool, the measure should have a component which factors in whether the case was resolved prior to the setting of a subsequent trial date.

(g) Provide frequent and mandatory intensive training to judges on docket management and judicial leadership in developing court practices. Encourage staggered dockets where

practicable so as to reduce wait time in the court room on motion and pre-trial days. Encourage judges to enforce the hearing adjournment court rule (MCR 2.503).

(h) Eliminate unnecessary court conferences, and allow for the use of appearances by telephone for all pre-trial conferences unless the judge specifically orders personal appearance by attorneys and/or parties.

(i) Provide better training to attorneys on the use of virtual office tools

(j) Encourage local bar associations to develop resource sharing tools for the benefit of their members as well as clients.

(k) Encourage earlier ADR where appropriate

(l) SBM should provide technical expertise to its members on questions regarding utilization of technology

(m) SBM and ICLE should provide more training to lawyers on time management (however, see (n) below).

(n) SBM has many resources on effective time management; those resources are underutilized. SBM should increase its communication to its members on the availability of those resources.

III. Trends

Administrative Order 2012-5, adopted by the Michigan Supreme Court on Dec. 5, 2012, requires SCAO to develop a plan for the implementation of performance measures in all courts. The performance measures initiative has resulted in more timely processing of cases, and arguably has made judges and staff more cognizant of the needs of the public.

SCAO has installed Polycom units in almost every courtroom in Michigan, allowing for appearances by video.

Judges are more inclined to allow appearances by telephone.

Law offices are becoming more familiar with technological tools to enhance efficiency

It appears that the federal courts are more closely scrutinizing pleadings to determine whether a cause of action has been properly stated.

In certain business courts across the state, the time to get on a docket for a motion has increased as of late.

Increased discovery, and greater use of technology in discovery.

The increase in the number of lawyers, and the lack of corresponding increase in demand for legal services, has created an environment which compels lawyers to spend more time on a file than that which is necessary.

IV. Analysis needed for any option under consideration:

How effective is judicial training?

Have cost saving recommendations been implemented elsewhere, and if so, what was the result?

What is the cost of initiating reform, and who will pay the cost? Any possibility of grant funding?

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

Attorneys will not waste time (and clients' money) preparing for trials that do not happen. Attorneys will substantially reduce time spent waiting for cases to be called. Attorneys will not be called to court for unnecessary court conferences, and attorneys will be able to attend necessary court conferences without leaving their offices.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

Trial Date Adjournment Measure: Judges may stop setting trial dates for fear that they will score "low" on trial date adjournment measure. This will result in fewer cases being settled as a result of the setting of the trial date.

Additional Performance Measures: The quality of decision-making will diminish as judges pay more attention to meeting time guidelines, and take less time to "get it right."

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

E. What resources will be necessary to implement this idea?

Judicial Training: Funding for MJI; Judicial Time in attending training; Judicial Time in Preparing and presenting sessions

Performance Measures: Adequate funding of the State Court Administrative Office

Communication and Education tools to make more attorneys aware of the resources offered by the State Bar.

F. Are there any language access barriers that need to be addressed?

None that are unique to these options.

G. Implementation Strategies

1. Potential supporters and potential allies

   Michigan Supreme Court, SBM, Judicial leaders, legislature, governor, DOC, DHHS, attorneys, Chamber of Commerce, the public and those who consume judicial resources.

2. Potential opponents and potential obstacles

   Judges and attorneys are potential opponents. Some of them lack of understanding of the need for change, and simply do not care about the need to improve service to the public

3. Interested SBM entities

   All

4. Other Interested stakeholders or potential partners

   Tech companies, training entities, National Judicial College, ICLE

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

   Webinars from SBM, NJC, MJI, and ICLE

6. How might this intersect with or impact other justice system areas/needs?

7. Staging

   a) Does this option need experimentation or piloting?

      Yes. The tracking of trial adjournment measures should be piloted

   b) What is the recommended timetable, if any?

   c) What is the recommended order of recommended steps, if any?

      Communication and education are step one

8. What role should the State Bar play, if any?

Charge 3
Alternative Dispute Resolution Analysis

Reason for Charge 3 (include citations to research and data wherever relevant)

V. Status Quo

The existing system uses a myriad of processes to attempt to resolve matters short of trial. There appears to be no uniformity. Those processes are:

(a) Negotiation – The parties directly or through counsel attempt to resolve their differences on their own and without help. Once considered an important form of ADR before lawyers forgot how to do it effectively.

(b) Conciliation – lacks formal process. Process can be designed to fit the dispute. Generally used where no suit filed. For example, resolution of work group conflicts. Third party neutral facilitates discussion between parties

(c) Mediation – Sometimes confused with facilitation. A lawsuit need not be filed, but process used in civil, probate and family law situations. Third party neutral attempts to bring parties to agreement through a variety of methods. Since 2000, Michigan judges have had the power to order cases into mediation (MCR 2.410, 2.412 for civil); but within the judge's discretion. ADR Section currently considering new court rule making mediation mandatory.

(d) Community Dispute Resolution Program – Offers mediation services, generally at no or low cost, supported by the Supreme Court. Nineteen such centers around the state.

(e) Mediation/Arbitration – New innovation. Could be used in civil and family cases. A third party under conditions worked out in advance with the parties attempts resolution through mediation, failing that, mediator becomes arbitrator and moves forward to a binding ruling under the terms of the resolution agreement. Referred to as "Med/Arb." Arb/Med also available: parties arbitrate the case, the neutral makes a decision but before announcing it attempts to bring the parties together for a settlement.

(f) Early Neutral Evaluation – Parties are brought together very early on in the court process or, sometimes, even before filing. The idea is to force the parties to consider resolution before they initiate a costly, time consuming and contentious discovery process by default or without thinking.

(g) Case Evaluation – used in civil only. Mandatory in state court, voluntary in federal. Sometimes known as "Michigan Mediation." Governed by MCR 2.403. A third attorney panel assesses case and makes non-binding evaluation. Sanctions for rejecting evaluation if rejecting party

fails to obtain result 10% better. Once considered effective, the resolution rate now hovers near 15%. SCAO has work group to consider abolishing the process.

(h) Offer of Judgment – used in civil only. Governed by MCR 2.405. Considered ineffective and should be removed from the rules.

(i) Arbitration – The original most common form of ADR. Parties retain or hire a private arbitrator or judge to decide their dispute. Originally popular because considered cheaper and quicker than litigation. Many commercial contracts require resort to arbitration in the event of dispute. Arbitrator hears argument, testimony and reviews documents and submissions. Limited right of appeal. Over the years, arbitration has become increasingly like litigation and is no longer considered as quick or inexpensive as it was. As a result, the Business Law Section successfully lobbied for the creation of a Business Court in Michigan. All commercial disputes now must be assigned to the Business Court Judge. Business Court Judges are ordering these cases into early mediation. In Family, record not necessary unless custody involved.

(j) Mini Trial – Judge to hear limited argument and testimony of parties only. Issues advisory decision

(k) Summary Jury Trial – Same as previous except jury. There is a program in South Carolina where the decision is binding without appeal. A pilot program has begun in Oakland and Macomb Circuit Courts. It is similar to the South Carolina program, but as of the date of this report, only one case has come to trial.

(l) Settlement Day [Week] – Court brings in several attorneys and attempts to resolve old cases.

(m) Collaborative – used in family only. Prior to filing, parties attempt to resolve matter with 3rd party neutral and attorneys that may not take case to court. All agree that if the dispute cannot be resolved, neither counsel nor the experts can be used in court. Cost of hiring new experts and new litigators discourages desire to have trial.

VI. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

(a) Make MCR 2.403 case evaluation simply one ADR process from which to choose rather than a mandatory part of every law suit. The effectiveness of case evaluation under MCR 2.403 has declined dramatically over the years. Case evaluation should no longer be mandatory, but simply one process among many – mediation, arbitration, med/arb, summary jury trial – to consider when determining whether a case is ready for ADR.

(b) Invest in training for judges to better understand ADR processes, which process is best suited for a dispute, when is the right time to send a matter to ADR, which disputes

are best suited for each process, and what can the judge do to create the best climate for resolution.

(c) Encourage the Bar in learning ADR advocacy and how it is distinguished from litigation advocacy.

(d) Increase awareness of the ADR Benchbook and how to make best use of it.

(e) Educate the bench concerning Community Dispute Resolution Centers around the state that offer effective and inexpensive ADR processes. Establish a collaboration with Community Dispute Resolution Centers around the State together with the ADR Section of the State Bar to enhance the use of ADR processes.

(f) Educate the bar on pre-filing dispute resolution utilizing ADR.

(g) Create an ADR reporting requirement to address:

1. **Whether a case was resolved through that process**
2. **When in the process the case was sent to ADR**
3. **whether the process saved the parties money**
4. **whether the parties were satisfied with the outcome**

VII. Trends

Mediation/arbitration appears to be the newest trend. It allows the attorneys and 3rd party neutral to agree on a process that limits discovery, testimony and costs - if the matter does NOT settle, the process continues to a decision. Collaborative practice leads to agreements between parties in which the parties are vested causing better post-divorce relations.

On order of the Michigan Supreme Court, the Court of Appeals has been authorized to implement a mediation pilot project. As indicated in Administrative Order No 2015-8, selection for mediation before an outside mediator would be by order of the Court of Appeals and parties could request to have their appeal included in the program or removed from the program. The program is intended to afford parties an efficient and economical means of resolving their appeal. This pilot project is established to study the feasibility and effectiveness of appellate mediation. The program will begin October 1, 2015, and will remain in effect for 12 months. The Court of Appeals will track participation in, and effectiveness of, the program and will report to, and make such findings available to, the Michigan Supreme Court.

ADR is also being used in Delinquency cases.

Online mediation is gaining attention, especially where the parties are unable to be together. Many traditional mediators are opposed to this process, believing cases settle only when every one is face-to-face.

AAA is adopting new streamlined processes to return Arbitration to a day when it was cheaper and quicker. See, for example, Discovery protocols for employment disputes - similar to mandatory disclosures in federal court.

MCR 2.403 is one form of ADR, but not mandatory – facilitative mediation is much more effective.

Communication and education of attorneys and judges is a trend.

VIII. Analysis needed for any option under consideration:

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

As many disputes cannot settle until the parties have the information needed to make good judgments about resolution, when is the best time for ADR? Who should be making decisions as to timing and how should they be made?

Courts need to require that some form of ADR be considered early on. This would apply to all cases except criminal.

If any of these become a necessary part of the process, it should reduce the time to resolve a matter. It could also reduce cost. It would also reduce the burden on the trial court. However, absent use of Community Dispute Resolution Centers, small dollar disputes cannot be resolved in ADR privately because mediators and arbitrators charge market rates.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

Since some of these procedures limit or eliminate court involvement, agreements need to be carefully worded to resolve all questions. ADR is also private and confidential. There can be an impact on development of the law, application of community standards to dispute resolution and other consequences. It can create an additional layer of discovery. Parties may feel forced into settlement agreement. ADR could increase costs as it involves an additional layer of expense. There is a Constitutional issue since all have a right to trial.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

Review results from jurisdictions where some of these have been implemented. Federal court, for example, has adopted numerous limitations on civil discovery. Michigan recently adopted the Uniform Arbitration Act or RUAA, MCL 691.1691. The RUAA addresses discovery on a case-by-case basis. According to Mary Bedikian at MSU College of Law in a recent issue of the State Bar Journal:

> **The operative premise in arbitration is that discovery is limited and of deliberate design to protect the efficiencies of process. However, the growing complexity of**

disputes submitted to arbitration has diminished the viability of this premise. The revised act recognizes that parties in arbitration may require a mechanism by which discovery can occur, without compromising the goals of arbitration. Section 17 authorizes arbitrators to order pre- hearing discovery when "appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceed- ing and other affected persons…and the desirability of making the proceeding fair, expeditious, and cost effective."21 Section 17(7) allows parties to secure necessary information in an arbitration involving persons located outside the state. Currently, enforcing a subpoena or a discovery-related order requires two separate legal actions. This section provides for a single enforcement action in the state where the arbitration occurs.

It should be noted that the Appellate Courts have been very deferential to ADR decisions.

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

The most innovative are med/arb and collaborative practice. Both are relatively new. The med/arb is very innovative inasmuch as it allows the parties to set up their own process. They can agree on the issues, how to proceed, what documents, if any, will be provided the mediator and then the arbitrator. They can limit witnesses and discovery as necessary. The Collaborative is promising since it gives the parties a more vested interest in the solutions. In family, the more vested in the solution, the less likely for there to be problems later on.

E. What resources will be necessary to implement this idea?

Statistics on the use of various methods would need to be developed to determine what is and is not successful.

F. Are there any language access barriers that need to be addressed?

Yes. If one or more parties has limited English skill, translators will be necessary and the ADR provider should be trained in cultural issues.

G. Implementation Strategies

1. Potential supporters and potential allies

   Judges, current mediators and arbitrators and the ADR Section of the Bar.

2. Potential opponents and potential obstacles

   There will be lawyers who believe in the necessity of discovery. Some judges may see this as allowing judges to assign away their responsibility.

3. Interested SBM entities

ADR Section, SCAO

4. Other Interested stakeholders or potential partners

   Supreme Court; legislators; business community; trial lawyers. ICLE and MJI. There will be need for education of Judges and Attorneys.

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?

   Mediation arbitration and the like may be done remotely using skype, hangouts and other programs. Currently, this is considered controversial.

6. How might this intersect with or impact other justice system areas/needs?

   Software may need to be developed to assist. Also, this would increase the need for 3rd party neutrals. There would need to be a review of training provided and qualifications.

7. Staging

   a) Does this option need experimentation or piloting?

      Analysis of use of these options already existing should be conducted by gathering statistics.

   b) What is the recommended timetable, if any?

   c) What is the recommended order of recommended steps, if any?

8. What role should the State Bar play, if any?

Charge 4
Applying Business and System Analysis Expertise to Court and Law Practice Applications

Reason for Charge 4 (include citations to research and data wherever relevant)

I. Status Quo

The current management and operation of courts, and law offices do not lend themselves to the efficient, productive and timely administration of justice. A tension exists between the "bottom line" and the ethical, efficient delivery of legal services.

II. Options (for each option, indicate which TF Guiding Principles are served and, if relevant, prioritize options or indicate recommended options)

(a) Implementation of performance measures relative to the delivery of legal services by lawyers and ancillary staff (paralegals, admins, secretaries, etc.)

(b) Implement training programs administered by the law schools to prepare new lawyers for the practice of the law, such as internships, "apprenticeships," and on the job training.

(c) Develop and implement uniform systems (i.e. e-filing) for use by all courts throughout the state to promote the efficient and timely delivery of legal services.

(d) Implement user-friendly and uniform protocols for use by litigants, attorneys and the courts.

(e) Identify expert(s) who are able to select and refine those systems and protocols best suited to meet client needs and facilitate the efficient and timely delivery of legal services.

III. Trends

(a) Every court has its locally funded case management system. Impossible to implement a uniform system. Does the cost justify the benefit?

(b) Inefficiencies are rewarded under the billable hour system.

(c) In addition to the courts and lawyers, the county clerks, sheriff and prosecutor impact efficiencies.

(d) SCAO creates management assistance projects throughout the State. (How might these studies benefit the task force?)

(e) Inordinate wait times exist for conferences, pre-trials and other court proceedings. e.g. trial not going as scheduled requiring multiple appearances. Query what is the impact on lawyers and the public? How can these wait times be reduced?

(f) Certain jurisdictions give the appearance of production-line justice which is perceived as undermining access to justice and due process.

(g) The focus on computer systems, time management, budgets, cost containment and efficiency has resulted in the alienation of practitioners and the public from the courts.

IV. Analysis needed for any option under consideration:

(a) Identify consultants from the community at large and SCAO (Daniel W. Linna, Jr.), who can provide input and direction for improving the delivery of services to the public and user friendly systems for practitioners.

(b) Undertake an inventory of the legal profession in Michigan relative to the delivery of services to the community and the guiding principles of the Task Force.

(c) Do the private and public sectors have resources, tools and experts to facilitate transitioning the legal profession to the 21st Century?

(d) Identify jurisdictions which have implemented effective systems and protocols which might be adaptable to a state wide initiative.

A. Opportunities – what's the best case scenario if the option is piloted or implemented?

Note: Must first identify the best option(s) available to the Task Force.

B. Risks – what's the worst case scenario if the option is piloted or implemented?

Will depend on the option selected.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?

(a) Are we treating the symptoms or causes of the decline of the profession?

(b) Are all stakeholders identified?

D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)

Michigan devotes more resources to measuring court performance than any other state. Michigan not only measures performance, it publishes the results on-line, and sends experts to each court annually to go over data, and discuss ways to improve performance.

E. What resources will be necessary to implement this idea?

F. Are there any language access barriers that need to be addressed?

Depends on options considered.

G. Implementation Strategies

1. Potential supporters and potential allies

(a) Law schools

(b) At large community

(c) Law enforcement

(d) Litigants

(e) Ancillary legal entities – Friend of the Court, Parole Board, on and on.

2. Potential opponents and potential obstacles

(a) Michigan Supreme Court

(b) Michigan Prosecutor Association

(c) Michigan Lawyers

3. Interested SBM entities

(a) State Bar Sections

(b) State Bar Administration

(c) State Bar Staff

4. Other Interested stakeholders or potential partners

(a) Michigan Department of Corrections

(b) Federal Courts and Agencies

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?
6. How might this intersect with or impact other justice system areas/needs?
7. Staging
   a) Does this option need experimentation or piloting?
   b) What is the recommended timetable, if any?
   c) What is the recommended order of recommended steps, if any?
8. What role should the State Bar play, if any?