

**2016**

**REPORT AND RECOMMENDATIONS**

of the

ILLINOIS STATE BAR ASSOCIATION'S

**TASK FORCE ON THE FUTURE OF**

**LEGAL SERVICES**



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(October 4, 2016)

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## **Task Force on the Future of Legal Services**

**Timothy E. Moran, Chair**  
**Chicago**

**Lisa M. Nyuli, Vice-Chair**  
**South Elgin**

**Thomas Bruno**  
**Urbana**

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**Oak Forest**

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**Springfield**

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**Crystal Lake**

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**Chicago**

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**Wheaton**

**Marron A. Mahoney**  
**Chicago**

**Mark Marquardt**  
**Chicago**

**Gerald W. Napleton**  
**Chicago**

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**Arlington Heights**

**Hon. Jessica A. O'Brien**  
**Chicago**

**Mary T. Robinson**  
**Chicago**

**Richard L. Turner**  
**Sycamore**

**Angelica W. Wawrzynek**  
**Mattoon**

**Charles J. Northrup, Reporter**  
**ISBA**

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## **EXECUTIVE SUMMARY**

The Task Force on the Future of Legal Services was conceived and implemented by Presidents Felice and Davi in response to nationwide developments in the legal services marketplace. Its portfolio was broad. It has examined relevant aspects of a changing legal services marketplace such as the impact of technology on access to, and delivery of, legal services. It also reviewed judicial processes, changing consumer attitudes, nonlawyer legal service providers, and alternative business structures for law practices. What is clear to the Task Force is that it has just scratched the surface of the changes occurring with legal services. The pace of technological change that is driving so much of the developments in the legal services marketplace is rapid. By the time this Report is published, there will likely be new data to consider, new lawyer (and nonlawyer) business models to examine, and new ideas taking root. Notwithstanding that it is a snapshot of legal services in 2016, the Report will hopefully serve to educate the membership and to position both the membership and the Association to address and be successful in a new and changing legal services landscape.

Section II of this Report asks the question of where we are as lawyers in the legal services marketplace. It answers it broadly by introducing and discussing some of the core challenges, developments, and impacts affecting the legal profession. It addresses the economic challenges facing lawyers; it notes the reluctance of consumers to employ lawyers; and it addresses the technological change that is transforming the courts and the delivery of legal services. Above all, it stresses the importance for lawyers to adapt to the changing marketplace.

Section III of the Report provides detailed support for many of the challenges, developments, and impacts addressed broadly in Section II. The information in this Section not only informs the ultimate recommendations of the Task Force, but also serves to educate the membership about trends in the legal services marketplace which may not be readily apparent to lawyers busy practicing law. The available data presents a picture of an evolving legal services marketplace where the need and demand for legal services is on the rise, but demand for lawyers is not. It presents a description of consumer attitudes changed by the Internet and mass marketing of lawyer and judicial alternatives. It discusses alternative business models for both lawyers and nonlawyers. But it also recognizes the importance of traditional lawyer and judicial roles and expertise, and notes that legal services consumers value those roles and expertise. Although some of the data and information presented may be sobering, the Task Force believes it represents trends that appear likely to continue. The Task Force also believes it represents opportunities for lawyers and the Association to thrive and be successful.

Section IV presents a number of specific and realistic recommendations to be considered by the Association. Recommendations include: promoting a robust online consumer presence including a member directory that can be used by consumers to locate, review, and retain Association members; creating consumer education and resources about the law, lawyers, and judicial processes and resources; promoting continuing lawyer education and practice resources, particularly on technology and marketing issues; preserving and championing lawyer value in the

broader legal services marketplace; supporting greater efficiency in judicial processes for both consumers and lawyers; and establishing an Association Standing Committee on Future of Legal Services. The intended effects of these recommendations are multifaceted, but they include: ensuring or increasing consumer access to legal services; promoting the availability of Association members to provide a diverse range of legal services; enhancing consumer education about legal and judicial services; enhancing lawyer education and efficiency; and preserving the ability of the Association to monitor, assess, and quickly respond (if necessary) to new developments in the legal services field.

Finally, the Report concludes by recognizing that the legal services marketplace has changed, but that the Association is in a good position to help its membership thrive and succeed.

## I. INTRODUCTION

*“I don’t know what the future may hold, but I know who holds the future.”* Ralph Abernathy.

It seems that given the many challenges which confront our esteemed profession, perhaps the above statement is no longer true. Or less true than it used to be. The legal profession is confronted with diminished revenues, increasing student debt, fewer lawyer jobs, increasing competition from nonlawyers, and rapidly developing technology which may possess the capacity to eliminate some of the roles currently filled by lawyers.

So, “who holds the future” for us? With determination, proactive thinking, business acumen, innovation, and our continued commitment to access to justice, we can continue to hold our future in our own hands. What it may look like is a different question.

The ISBA Task Force on the Future of Legal Services has been asked to explore various issues facing the profession now and in the foreseeable future and, where possible, to provide recommendations to deal with them. In this report we attempt to do just that. However, to do so requires that we balance the historic distinction between the provision of legal services as a ‘profession’ with the growing and perhaps inescapable need to adapt our operating procedures to those of the enveloping business community. This is not to suggest that we are willing to surrender our identity as lawyers. Far from it. But we must recognize that changes in areas such as technology, efficiency and business development are changing the landscape of the profession. By acknowledging those changes and taking proactive steps at this juncture, the future may hold promise to sustain and perhaps even expand lawyers’ ability to earn a living.

## II. WHERE WE ARE (Part 1 – The Big Picture)

**A. The Legal Profession is Facing Unprecedented Economic Challenges.** According to IRS data, the income of solo practitioners has plummeted over the past generation. While lawyers in certain sectors of the legal economy do well, too many lawyers struggle with unemployment, unstable employment, and under-employment. Law schools are graduating more new lawyers than the current legal economy can absorb. Law school debt is limiting the number of career paths that are economically viable for new graduates. Technology and alternative legal services providers are reducing demand for lawyers who serve the general public. Corporate clients continue to exert pressure on law firms to increase efficiency and lower costs through methods such as insourcing, off-shoring, and automation.

**B. A Significant Share of the Population is Reluctant to Use Traditional Legal Services When Faced with a Legal Problem.** Ironically, at a time when many lawyers are looking for clients, a significant number of individuals, families, and small enterprises resist seeking the services of a lawyer or pursuing formal legal remedies. While costs (and fears about costs) are prohibitive factors for many, others simply do not understand that their problem has a legal dimension. Even for those who do understand the legal nature of their problem, large numbers express a preference to resolve it through informal means, to take no action at all, to

seek help from a non-attorney third party, or to represent themselves in court. In the aggregate, this group is often referred to as the “latent legal market.”

**C. The Courts Are Being Transformed by Litigants Without Lawyers.** The judicial system was built on an adversarial model of two parties, two lawyers, and one judge. However, the number of self-represented litigants has grown rapidly and shows every sign of continuing to grow. In many Illinois courtrooms, it is much more common to have two self-represented parties than two parties represented by lawyers. The court system is being compelled to take steps to level the playing field for self-represented litigants (*e.g.*, through use of standardized, plain language forms and process simplification), not only in pursuit of justice but as a matter of self-interest and self-preservation. As a result, the courthouses, courtrooms, and court processes of the future could look very different than those of today.

**D. Technology is Reshaping the Delivery of Legal Services, and the Pace of Change Will Continue to Accelerate.** Technology – specifically technology supporting the aggregation, organization, and transmission of information – has changed the way people work, shop, buy, sell, learn, socialize, travel, and recreate. Because much of the traditional work performed by lawyers is based on the aggregation (*e.g.*, libraries, case law databases, and law school coursework), organization (*e.g.*, books and journals), and transmission (*e.g.*, advising clients, drafting legal documents) of legal information, it is inevitable that the demand for legal services and the role(s) of the legal profession will change. Advances in artificial intelligence (*e.g.*, IBM’s Watson) are already having an impact on the delivery of corporate legal services. As these systems become better and cheaper – a common pattern for emerging technologies – they will create new opportunities for lawyers and law firms to reduce costs and increase productivity. These technologies likely will also lead to the automation of more tasks traditionally performed by lawyers.

**E. New Actors are Reshaping the Legal Marketplace.** The mechanisms inherent in our free market economic system are relentlessly efficient at finding needs and filling gaps like the one between the traditional players in the legal profession (*e.g.*, solo and small-firm practitioners) and consumers who are reluctant to use them. Non-lawyer, for-profit companies that offer alternative ways of obtaining legal information, provide do-it-yourself legal solutions, and allow comparison-shopping for legal services (*e.g.*, Legalzoom, Avvo, and hundreds – perhaps thousands – of others) are in business to make money by exploiting a perceived need in the market. To the extent that the need is real and these new entities are able to meet consumers’ demands for convenience, price-transparency, and “good-enough” solutions, they will become increasingly competitive with lawyers providing traditional legal services.

**F. Adaptation to the Legal Economy of the Future Requires Skills Law Schools Don’t (Often) Teach (Yet):** The traditional path for lawyer success by getting a good legal education, learning how things are done from established practitioners, working hard, and building a book of business and positive reputation through word-of-mouth, networking, and personal connections may no longer be the sole or most effective approach. To adapt to a rapidly changing legal landscape, successful lawyers must have a working knowledge of **marketing** (to reach new clients); **technology** (to evaluate and use effective tools); **process analysis** (to increase efficiency and profitability); **data analysis** (to evaluate successful strategies and

accurately price services); and **supply-chain management** (to outsource tasks to lower-cost vendors), among a range of other interpersonal and business skills. Entities such as bar associations need to make these skills a focus of continuing legal education efforts.

### **G. The Legal Profession Must Do More to Understand Its Potential Customers.**

Businesses succeed by understanding their customers. While individual lawyers get to know individual clients, the institutions of the legal profession – bar associations, law schools, research institutions – need to expend more time, attention, and resources, to understanding and disseminating knowledge about the needs, hopes, fears, likes, and dislikes, of their existing and potential clients. These efforts must be multi-disciplinary, incorporating existing knowledge and research tools from economics, sociology, psychology, marketing, advertising, and user-experience (“UX”) research to create better value propositions for potential clients through new engagement and service strategies.

## **III. WHERE WE ARE (Part 2 – The Details)**

### **A. Current Legal Environment in Broad Context**

Most lawyers today practice as lawyers have practiced for centuries. It is often referred to as a “bespoke” practice: a practice that produces highly customized products or services crafted specifically for individual clients.<sup>1</sup> This type of practice is often expensive for the client, and the number of clients served is necessarily limited by a lawyer’s finite availability. The advent of new technologies, new consumer attitudes, and alternative legal services providers make the bespoke tradition of legal services delivery no longer the only available model for consumers.

If a “bespoke” practice represents all that is traditional, good, and valuable about lawyers’ services, “commoditized” legal services represents the opposite. Respected legal commentator Richard Susskind explains that commoditized legal services are at the opposite end of an evolutionary scale beginning with traditional “bespoke” services. Commoditized legal services are an IT-based product readily available in the marketplace from a variety of sources at highly competitive prices and available for direct use by an end user, most often on a “do-it-yourself basis.”<sup>2</sup> The current legal services marketplace is replete with examples of alternative legal services providers providing commoditized legal services. Such providers are increasingly advertised to the public through mass media. Lawyers’ antipathy toward commoditized services is natural: it seems to devalue the practice of law, and it will drive the price of legal services down.<sup>3</sup>

Another term describing the movement of legal services away from lawyers is “decomposition.” The decomposition (or deconstruction) of legal work is based upon the idea that representing a client or handling a case is made up of hundreds of individual tasks. As commentator Susskind observes: “Sometimes, by decomposing legal work and viewing it with the eye of a systems analyst...some fairly fundamental reconfiguration or reorganization of the tasks can be introduced which of itself might bring greater efficiency.”<sup>4</sup> Many large law firms have turned to automation (*e.g.*, *document review*, *e-discovery*), outsourcing (*to cheaper labor markets or non-lawyer providers*), “insourcing” (*i.e.*, *handling more matters internally*) and

other strategies to increase efficiency and reduce costs at the insistence of their business and corporate clients. The occurrence of decomposition is more than academic theory or anecdote. The 2016 Georgetown Report on the State of the Legal Market notes that: “The increased market share of outside vendors reflects a proliferation of non-traditional providers of legal and legal related services. [...] such non-traditional providers have now established a firm foothold in several service areas once dominated exclusively by law firms.”<sup>5</sup> Although often seen as a “big law” issue, the key point widely applicable to all lawyers is that lawyers’ actions in “handling a case” are being subjected to a kind of analysis and reworking that would have been inconceivable a generation ago, made possible in part by advances in information technology, globalization, and analytical capabilities.

Finally, a term describing the plethora of changes affecting the legal profession and legal services marketplace is “creative disruption.” Creative disruption, a term not particularly endearing to those being disrupted, describes a legal marketplace where “lawyers will increasingly face competition not only from other lawyers, but from nonlawyer providers.”<sup>6</sup> Professor Laurel Terry, notes that “[A]mong other things, this theory [of creative disruption] posits that ‘disruptive’ new entrants are likely to come into a market when consumers are underserved (because they cannot afford the existing services or product) or overserved (because they are paying for more product or services than they want or need).”<sup>7</sup>

The above concepts, while broad, provide some context for developments and trends in the legal services marketplace. They are supported by available data, which is discussed in detail below.

## **B. Statistical Observations/Support**

### **1. Legal Services Need and Demand**

Legal services remain a necessary and essential element of an ordered society founded on the rule of law. Most of society’s personal, business, and governmental relationships are tempered by law. Experience shows that as long as business and personal relationships continue to be governed by orderly processes of law, as long as conflicts and disputes continue to arise, and as laws become more complex, there will be a need for legal services and lawyers.

Recent social science research has attempted to quantify legal needs. The American Bar Foundation’s 2013 Community Needs and Services Study found that 66% of a random sample of adults in a middle-sized American city (population 350,000 to 450,000) reported experiencing at least one civil justice situation in the previous 18 months.<sup>8</sup> These civil justice situations mostly dealt with issues involving employment, money, insurance, and housing.<sup>9</sup> The statistics reflect legal needs from across the socio-economic spectrum, although the need for such services was less for higher income individuals.<sup>10</sup> These statistics on legal needs are borne out in an earlier study of low income Illinoisans as well. The 2005 study, *The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans*, found that 49% of low income Illinois households reported one or more legal problems in 2003.<sup>11</sup> According to that Study, that 49% extrapolated to approximately 383,000 households experiencing over 1.3 million legal problems in 2003.<sup>12</sup>

Quantifying the actual *demand* for legal services is more difficult than identifying the *need*. One indicator of demand for legal services is reflected by the actual expenditure of resources on legal services. (As touched on above, the difference between the societal need for legal services and what is actually spent for legal services is a reflection of unmet legal needs, sometimes referred to as the “latent legal market” or the “justice gap.”) According to the US Census Bureau, in 2013 Americans spent \$255 billion on legal services.<sup>13</sup> Of this amount, roughly sixty-six percent or \$169 billion was spent by businesses, although this business spending figure comes with a caveat. According to the 2015 Georgetown Report, this figure represents an inflation adjusted drop of 25.8% in business spending on legal services for the ten years between 2004 and 2014, although in actual dollars such spending increased during that period from 159.4 billion to 168.7 billion.<sup>14</sup> The 2015 Georgetown Report notes that the law firms surveyed expect the trend to continue as work is shifted in-house and to non-law firm vendors.

Demand for legal services is also reflected in consumers’ use of nontraditional legal services providers such as LegalZoom. Reliable statistics may be difficult to come by for this usage, but according to figures published in 2011 SEC filings by LegalZoom, it had served 2 million customers.<sup>15</sup> According to those same 2011 filings, LegalZoom customers placed 490,000 orders for legal services in 2011.<sup>16</sup> Another entrant in the legal services marketplace is Avvo, which claims to have answered 7.5 million legal questions.<sup>17</sup> It is important to note that these entities are perhaps the most widely known examples of nontraditional service providers, and that many, many others are seeking to gain a foothold in the legal services marketplace. Online providers in the aggregate have doubled their revenues since 2006.<sup>18</sup>

*Demand* for legal services also is reflected in case filings. As detailed below, hundreds of thousands of legal matters proceed through the Illinois courts every year. In addition, demand for arbitration services remains high and continues to grow. The largest non-profit provider of arbitration services in the US claims 150,000 to 200,000 filings a year, with filings growing from 203,084 in 2013 to 223,751 in 2014.<sup>19</sup> MODRIA, an online dispute resolution platform, claims to have resolved 60 million disputes, 90% through automation.<sup>20</sup>

Finally, another measure of demand for legal services that should not be overlooked is the extent to which legal aid organizations are handling cases and providing legal services. This type of demand is also likely reflected in the pro bono efforts of the Illinois bar, which in 2015 totaled 2,055,987 hours (a slight increase from 2014, but less than the hours reported in 2011, 2012, and 2013).<sup>21</sup>

## **2. Lawyer Demand**

In contrast to widespread need, and healthy overall demand, for legal services, the demand for lawyers is falling. Indicia of lawyer demand can be found in many sources.

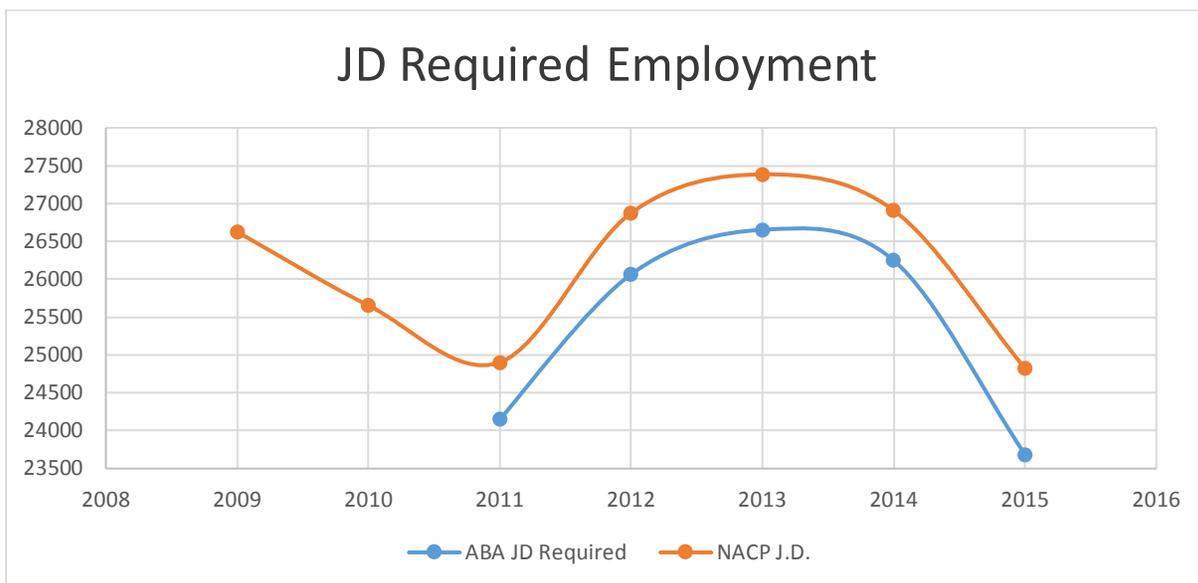
### *a. Lawyer Employment Data*

The US Bureau of Labor Statistics’ job outlook for legal jobs between 2014 and 2024 estimates a 6% growth rate (roughly 43,000 jobs) during that 10 year period.<sup>22</sup> However, this

number may be somewhat suspect, as the economy has continued to absorb approximately 26,000 law school graduates a year in jobs requiring a J.D.<sup>23</sup> Also inconsistent with the Bureau's statistics, according to the 2016 Georgetown Report, the number of lawyers at responding firms grew by 1.4% in 2014 and 1.5% in 2015.<sup>24</sup>

Statistics from the National Association of Law Placement and the ABA over the last six years show an uneven hiring history. According to the NALP, full-time jobs requiring a J.D. increased in 2012 and 2013, but were down in 2010, 2011, 2014, and 2015.<sup>25</sup> The average number of JD required jobs obtained per year over these five years was 26,168.

ABA statistics show similar new lawyer placement data for the last five years as well as the same trends. According to its statistics, full-time long-term jobs requiring a JD increased in 2011, 2012, and 2013, but decreased in 2014 and – significantly – in 2015.<sup>26</sup> The average over these five years is 25,360 JD required jobs.



### *b. Law Firm Services*

The 2016 Georgetown Report, albeit a survey of the nation's largest lawfirms, reports demand for law firm services remained flat in 2015 after very modest growth (0.5%) in 2014.<sup>27</sup> In addition, the 2016 Georgetown Report also notes that demand in law firm services has remained flat since 2009.<sup>28</sup>

### *c. Lawyer Productivity*

Demand for lawyers can also be seen in statistics reflecting lawyer productivity and income, most often evaluated through data on billable hours. From the 2016 Georgetown Report, the productivity trend measured in billable hours has been generally downward for five plus

years.<sup>29</sup> In addition, firm realization rates (defined as the percentages of work performed at a firm’s standard rates that are actually billed and collected from clients) have also continued to decline since 2005.<sup>30</sup>

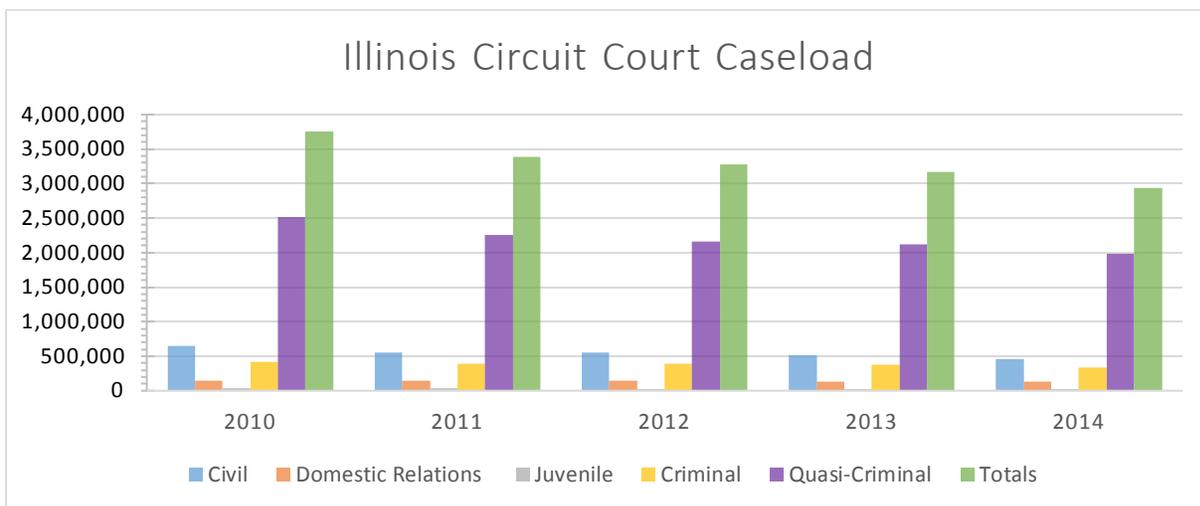
Illinois specific statistics on lawyers’ billable rates and income remain imprecise. Based upon two ISBA surveys, one in 2004 and a second in 2014, median income for lawyers has essentially remained flat or even decreased. According to the ISBA’s 2004 Membership Law Firm Economic Benchmarking Survey, the median income range of solo practitioners was \$80,000 to \$89,999.<sup>31</sup> In the ISBA’s 2014 Compensation and Benefits Survey, the base salary for solo practitioners was \$70,000.<sup>32</sup> Comparison of other law practice categories reflected the same generally flat income growth.

### 3. Courts

#### a. Filings

Lawyers and the courts exist in a symbiotic relationship. A healthy and well respected judicial system reflects well upon lawyers, but it also provides lawyers the natural base in which to practice their trade. Respect and use of the judicial system is an obvious source of potential work for lawyers.

According to the Annual Reports of the Illinois Courts from 2001 through 2014, case filings have experienced an overall decline, albeit not a steady one. There were 4,071,743 cases filed in 2001, compared to 4,455,546 cases filed in 2007; 3,757,112 filed in 2010; and 2,930,986 in 2014.<sup>33</sup> There has been virtually no shift in the types of cases filed over that same time span, meaning that each type of case has seen comparable reductions in filings. According to the 2014 Annual Report, there were 457,444 civil cases filed in 2014, down from 643,740 in 2010.<sup>34</sup> Domestic Relations filings were 133,641 in 2014, down from 147,642 in 2010.<sup>35</sup> There were 22,058 Juvenile cases filed in 2014, down from 30,602 in 2010.<sup>36</sup> Criminal cases decreased to 338,313 in 2014, down from 418,812 in 2010.<sup>37</sup> There were 1,979,530 Quasi-Criminal cases filed in 2014, down from 2,516,286 in 2010.<sup>38</sup>



Echoing Illinois' court statistics, the 2016 Georgetown Report described demand growth in litigation (about 1/3 of all practice activities) as negative in 2015, as it has been since 2009.<sup>39</sup> The Report attributed the reduction in litigation to e-discovery and the use of nontraditional providers for discovery work. (Conversely, the Report noted modest growth due to a resurgence of transactional activity, mostly in corporate, tax, and real estate.)

*b. Self-represented litigants*

The number of Illinois residents appearing in court without a lawyer continues to grow, surpassing one million litigants last year. The increase in the number of self-represented litigants is not unique to any one circuit, county, or case type. In fact, in 2015, over half of Illinois' 24 judicial circuits reported that 70% or more of litigants in civil matters were self-represented. Data collected by the Administrative Office of the Illinois Courts also shows that in five different case types—Dissolution, Municipal, Small Claims, Orders of Protection, and Family—50% or more of litigants statewide are self-represented.<sup>40</sup> Order of protection cases were the most likely to have a self-represented litigant (88%), followed by Family (75%) and Small Claims (73%).<sup>41</sup> Civil cases above \$50,000 (Law cases) were the least likely to involve a self-represented litigant (31%).<sup>42</sup> Preliminary data listed in the 2014 Annual Report of the Illinois Courts indicated that 66% of all disposed cases involved at least one self-represented litigant and that 72% of all persons reported to be self-represented were defendants.<sup>43</sup>

A comparison of preliminary data compiled by the Court Statistics Project from preliminary Illinois Circuit Courts data suggests that Illinois may be among the states with higher rates of Self Represented Litigants ("SRL"). Examples include:

- Compared with 5 other unnamed states, Illinois' 88% rate of SRLs for Order of Protection cases is second
- Compared with 5 other unnamed states, Illinois' 31% rate of SRLs in Law cases appears the highest
- Illinois' 66% rate of SRLs in all Civil Cases is higher than Indiana, Missouri, and Texas
- While there is no comparison state, Illinois' 73% rate of SRLs in Small Claims cases appears to be significant

While there are no specific comparison numbers for Illinois, the average of 5 unnamed states for Dissolution and Divorce cases at 49%. Illinois shows a SRL rate in the related category of Family cases at 75%.<sup>44</sup>

#### **4. Consumer Attitudes and Expectations**

The objective data above does not exist in a vacuum. Unfortunately, the risks of speculating or attributing undue importance to anecdotal evidence makes determining the causes or contributing factors difficult. Nevertheless, some information and analysis about the legal services marketplace provides reasonable insight for the objective data discussed above. This

information and analysis helps lay the foundation for the Task Forces' recommendations to the Association.

*a. Consumer Attitudes*

As noted above, there is a continuing consumer demand for legal services but that demand does not seem to be fueling demand for lawyers. Studies show that consumers prefer to avoid seeking out third-party assistance for personal or business problems. The 2013 American Bar Foundation's Community Needs and Services Study found that 69% of respondents facing a "civil justice situation" employed self-help or turned to their own social network.<sup>45</sup> Similarly, according to a 2015 study by the National Center for State Courts, 56% of consumers noted they would prefer to handle a legal problem on their own without a lawyer.<sup>46</sup> These studies are borne out by very large percentage of self-represented litigants appearing in Illinois courts, which, as noted above, ranges from 66% in all civil cases, including 75% in family cases.

Why such a large percentage of consumers avoid third-party assistance is instructive. According to the 2013 American Bar Foundation Study, 46% of those respondents who had experienced a civil justice situation saw no need for third-party assistance, 24% believed assistance would not help, 17% felt it would cost too much, and 9% didn't know where to seek out help.<sup>47</sup> Consistent with the 2013 American Bar Foundation study, perceptions of cost reported in the 2005 Illinois Legal Needs study on low income respondents reported that 26% of respondents felt lawyers would cost too much.<sup>48</sup> In addition, the 2015 NCSC Study reported that 33% of respondents agreed with the statement that "hiring a lawyer is usually not worth the cost."<sup>49</sup>

For those amenable to seeking assistance from a third-party, the issue of cost is an important, but nuanced, one. Some consumers are willing to sacrifice "bespoke" quality service for an inexpensive and convenient alternative.<sup>50</sup> However, such attitudes are not universal. As reflected above, only roughly a quarter of respondents cited cost as a factor in not seeking out legal services. At least one study from 2007 found that consumers were willing to pay a premium for quality service (based upon consumer ratings – see discussion below).<sup>51</sup> While it may be that consumers are becoming increasingly comfortable with nonlawyer legal information solutions at lower prices, consumer decisions about legal services will likely be dependent on a variety of factors such as the ability to pay, but also the service's perceived importance and quality.

What may be more determinative than cost in consumers' attitudes about purchasing legal services is convenience and consumer knowledge. Here too, the Internet and mobile applications have changed existing consumer patterns for the selection, purchase, and delivery of just about every conceivable good or service: books (*Amazon.com*), movies (*Netflix*), restaurants (*Yelp*), hotels (*Hotels.com*), personal transportation (*Uber*), garage-sale items (*Craig's List*), household services (*Angie's List*), tax-preparation services (*TurboTax*), groceries (*Instacart*), friendship (*Facebook*), networking (*LinkedIn*), news (*Twitter and other aggregators*) – the list goes on and on and on and will likely never stop. For lawyers, commentators Richard Granat and Stephanie Kimbro note: "The proliferation of 'lawyerless' legal services underscores the

importance to the legal community of identifying, and responding to, what consumers want from lawyers. The dominant theme of extensive research on that question is better customer service.”<sup>52</sup>

Commentators Granat and Kimbro note additionally that “From the consumers’ perspective, the system for delivering legal services must be redesigned to...creat(e) a new value proposition” that involves services offering them convenience, flexible hours, multiple channels of communication, faster completion of services, fixed fees, and more control.<sup>53</sup> One stand-out example of this new consumer reality is a move toward online reviews. The 2007 study cited above noted 79% of respondents reported that online consumer reviews had a significant influence on purchases in the legal field.<sup>54</sup> More recent data supports consumer buying habits tied to the internet. According to Lawlytics, 81% of consumers perform online research before they make a purchase, 85% read online reviews, and 79% say they trust online reviews.<sup>55</sup> Although this research is not legal specific, Task Force members confirm prospective clients’ use of reviews and other online resources before meeting with lawyers.

#### *b. Attitudes about Lawyers*

In contrast to what is probably an understandable consumer preference to avoid third-party assistance in legal matters, are the clear benefits consumers believe lawyers can bring to a legal problem. According to research conducted by the National Center for State Courts, 91% of respondents believe that if you have a lawyer you will win your matter, 80% believe if you have a lawyer you may not need to go to court, 75% believe lawyers can help you save time and money by resolving issues quickly, and 87% are confident they can find a good lawyer if needed.<sup>56</sup>

#### *c. Attitudes about the Courts*

In general, the courts remain well respected. According to the 2013 American Bar Foundation study, 85% of respondents believed the courts are an important means to enforce rights and 80% believed they are fair.<sup>57</sup> These high marks are reflected in the Illinois Supreme Court’s own 2015 Circuit Court User Survey, which showed 78% of circuit court users felt judges made sure people’s rights were protected.<sup>58</sup> Perceptions of fairness and trust were somewhat lower. That same Study showed 60% left the courthouse with more trust in the courts, and 67% trusted the courts to reach a fair result for all involved.<sup>59</sup>

Consumers’ positive perceptions about the courts’ protection of rights and fairness are not entirely reflected in perceptions of court efficiency. In both the America Bar Foundation and National Center for State Courts studies, approximately 55% of respondents felt that courts should only be used as a last resort.<sup>60</sup> According to the National Center for State Courts, 55% of those with direct experience of the courts believed they were inefficient, intimidating, and expensive.<sup>61</sup> Notably, Illinois courts fared better on efficiency issues than is reflected in the national surveys. For example, 72% of respondents felt that their business was completed in a reasonable amount of time and approximately 75% felt that necessary forms were available and easy to understand.<sup>62</sup>

## 5. Alternative Legal Services Providers

### *a. Legal Services*

Perhaps the most visible change in the legal services marketplace over the last five to ten years has been the explosion of nonlawyer legal service providers. New, Internet-enabled companies are emerging to take advantage of gaps and inefficiencies in the traditional legal services marketplace. According to commentators Granat and Kimbro, in a marketplace where the consumer preference is not to seek out third-party assistance “a legal information solution can often substitute for the work of a lawyer. Intelligent legal documents and smart web advisors often provide a low-cost, just-good-enough solution to many legal problems without the need to incur higher legal fees. This is the new reality that the legal profession faces.”<sup>63</sup>

These nonlawyer legal services providers aspire to serve as the vital connectors between legal consumers and legal information (and sometimes lawyers). They attract legal services consumers by meeting their needs and expectations, offering features like free or low-cost legal consultations; fixed and transparent fees; do-it-yourself legal documents; on-demand assistance from a lawyer; and referrals for extended legal services to independent lawyers who may be pre-screened and subjected to user reviews. Prominent examples include: Avvo, which claims on its web-site to offer immediate access to legal advice to help the client understanding the nature and severity of their legal problem, clarity as to potential costs of consulting with a lawyer (“Advice session \$39;” “Document Review starting at \$149.”), and quality assurance via “1 million client and peer reviews” for the lawyers in their directory; LegalZoom, which began as a do-it-yourself document preparation site, and offers consumers the opportunity to complete legal documents for a set price, and, like Avvo, offers access to attorneys to provide additional or follow-up services “at a price you can afford;” and RocketLawyer, whose web site claims that its services have helped generate “3,000,000+ legal documents,” answered “30,000+” legal questions, and served 900,000 businesses. As the Task Force can attest, these are just a few of the better known and advertised services currently available to consumers.

These new Internet enabled companies augment, organize, and fill gaps in the existing legal services marketplace, and possess many commercial advantages compared to lawyers in the traditional retail legal marketplace. They exist on a national scale; are aggressively marketed via mass media; have the resources to create highly recognizable brands; have access to massive amounts of (non-lawyer) capital; have expertise in marketing, IT, design, user experience, data analytics; and remain unregulated. Although specific companies may come and go, these advantages will likely remain and they will contribute to these companies influencing the legal services marketplace.

### *b. Dispute Resolution*

Consumers also hold positive views of alternative dispute resolution, especially in relation to the courts. According to the 2015 National Center for State Courts survey, 55% of respondents believe that alternative means of dispute resolution, like mediation, are faster, cheaper, and more responsive than the courts to the needs of the people being served.<sup>64</sup> In addition, the NCSC survey revealed that respondent’s “first impulse is to choose ADR over the

court system by a margin of 64% to 30%. Women, younger, wealthier, and college educated Americans appear much more likely to choose ADR, with college educated women preferring ADR by an astounding 52 percentage points (72 to 20 percent).<sup>65</sup> Perceptions that ADR is a valuable alternative and less burdensome than court litigation is borne out in Illinois, albeit court-annexed ADR. According to two surveys conducted by the Illinois Supreme Court’s Alternative Dispute Resolution Coordinating Committee, 56% of judges found court-annexed mediation to be very helpful in achieving settlement while 60% found that mediation expedited resolution of cases.<sup>66</sup> Similarly, a survey of lawyers found that 52% felt mediation was helpful in achieving settlement and expediting resolution of the case.<sup>67</sup>

Given the attitudes expressed above, dispute resolution is likely being impacted by the same growing consumer expectations for cheaper, faster, and “just as good” as are impacting lawyers.

**C. Technology**

At the center of the change affecting the legal services marketplace is rapidly developing technology. It is driving consumer expectations as well as efficiencies within law practices, the courts, and nonlawyer legal services providers. It is proving to be disruptive but it is also providing opportunities for many lawyers. Understanding these technological developments is critical if the legal profession wishes to capitalize on those opportunities and to avoid or minimize uncontrolled and unaddressed disruption.

**1. Technological Change & the Legal Profession**

The extent of the technological transformation the legal profession will experience in the next 20 years is difficult to predict. One way to get a sense of that potential is to look backwards. Consider the case of a lawyer who was admitted to practice in 1996 and will retire in 2036. The chart below captures the primary technologies this lawyer has had at her disposal at the different stages of her career. The *known* changes to the technological context have already allowed for her to increase the speed and accuracy with which she aggregates, organizes, and transmits information. While some may feel wistful for a simpler time, few lawyers would voluntarily forego the convenience and power offered by the tools currently at their disposal.

1996	2016	2036
<ul style="list-style-type: none"> <li>✓ Telephone</li> <li>✓ USPS &amp; Overnight Shipping</li> <li>✓ Voicemail</li> <li>✓ Books &amp; journal articles</li> <li>✓ Personal computer</li> <li>✓ Laptop computer</li> <li>✓ Word processing software</li> <li>✓ Computer “bulletin boards”</li> </ul>	<ul style="list-style-type: none"> <li>✓ Smartphone + apps</li> <li>✓ Email</li> <li>✓ Sharing PDF documents</li> <li>✓ Texting</li> <li>✓ Tablets</li> <li>✓ 100% Internet connectivity</li> <li>✓ Automated documents</li> <li>✓ Online legal research tools</li> </ul>	?

✓ Paper files	✓ Knowledge management systems ✓ Case management systems ✓ E-filing ✓ Firm-wide filesharing systems	
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## 2. Moore’s Law and Exponential Changes in Computing Power

The rapid increases in computational power enshrined as “Moore’s Law” are a key driver of technological change. Named for pioneer semiconductor researcher Gordon E. Moore, Moore’s Law “reflects the regularity that the number of transistors can be fitted onto a computer chip doubles every eighteen months to two years. For over forty years, computers have been growing at a similarly exponential rate.”<sup>68</sup> Intel, the largest computer chip maker, “has projected that Moore’s Law will extend until at least 2029,” at which point methods such as optical computing or quantum computing can continue to allow for similarly rapid progress.<sup>69</sup> Researchers have determined that “the computing capacity of information, which they define as the communication of information through space and time guided by an algorithm, is growing by approximately 58% a year” – or doubling close to every 18 months.<sup>70</sup> The “spatial capacity for storage” of information has been growing at 23% per year, or doubling every 40 months.<sup>71</sup>

To put these numbers into context for a layperson, all of this means that “the computational power in a cell phone is 1,000 times greater and a million times less expensive than all the computing power housed at MIT in 1965.”<sup>72</sup> This trend shows no sign of slowing: “[a]ssuming that computers continue to double in power, their hardware dimension alone will be over two hundred times more powerful in 2030.”<sup>73</sup>

## 3. Sustaining vs. Disruptive Technologies

The hypothetical lawyer admitted in 1996 has seen the application of this increasing computational power in action. Most lawyers have had similar experiences in their professional lives dealing with the technologies listed in the “2016” column. Many of these technologies are sustaining – i.e. technologies that support existing processes but in ways that are more efficient or less costly. Microsoft Word has replaced the IBM Selectric. Telephones now fit in a pocket. Online research saved a trip to the library. Email replaced snail mail.

The legal profession is also experiencing the effects of disruptive technologies – “those technologies (or systems, techniques, or applications) that do not simply support or sustain the way a business or sector operates; but instead fundamentally challenge or overhaul such a business or sector.”<sup>74</sup> One of the disruptions the law has already begun to see is the movement toward greater commoditization of legal services, discussed earlier. Writing in 2010, Paul Kirgis predicted that “[t]ransformative change in the legal profession will come with widespread commoditization of actual legal guidance, as opposed to static information or rote processing.”<sup>75</sup> This disruptive transition to technology-powered provision not just of legal information, but also sophisticated legal guidance, is already underway.

#### 4. Watson, Esq.: The Implications of Advances in Artificial Intelligence

Artificial intelligence (AI), or cognitive computing, “refers to computers learning how to complete tasks traditionally done by humans. The focus is on computers looking for patterns in data, carrying out tests to evaluate the data and finding results.”<sup>76</sup> This means that “[w]hat makes artificial intelligence stand out is the potential for a paradigm shift in how legal work is done.”<sup>77</sup>

Many think of Watson when they hear about AI. IBM’s Watson became famous in 2011 when it defeated the best human players on *Jeopardy*. Watson is an artificial intelligence system that takes advantages of the increasing speeds and capacity in hardware and software, and has the added advantage of “connectivity,” allowing it to search vast stores of data available through the internet. Law professors John McGinnis and Russell Pearce observe that “*Jeopardy* is a game of complexity and breadth, requiring players to disentangle elements that seem unique to human understanding, including jokes, rhymes, and language games.”<sup>78</sup>

The fact that Watson was able to outperform humans at a game like *Jeopardy* has profound implications for its applicability to more serious tasks. Indeed, Watson is currently being used in fields as diverse as medical research, financial planning, retail, and national security. The technology, which IBM describes as a “platform that uses natural language processing and machine learning to reveal insights from large amounts of unstructured data,” can help computers learn “to think, read, and write. [Machine intelligence is] also picking up human sensory function, with the ability to see and hear.”<sup>79</sup> A recent story in the *Guardian* reported that computer-generated copy is being used to generate sports and businesses reports that are indistinguishable from those written by human journalists.<sup>80</sup> Not only does machine learning allow for computers to perform tasks typically assumed to be only capable of completion by humans, but “algorithms can now analyze . . . data quickly and efficiently, gleaning patterns and lessons that a human would not be able to discern.”<sup>81</sup>

How has AI impacted law? At a recent competition on how to make use of Watson, the winning entry centered on the legal field, using Watson to search for relevant evidence in data and predict how helpful the evidence will be to winning the case.<sup>82</sup> Watson-like systems and tools are already being deployed to assist law firms and their clients with new levels of information and analysis. Lex Machina “mine[s] litigation data, revealing insights never before available about judges, lawyers, parties, and patents, culled from millions of pages of IP litigation information. [They] call these insights Legal Analytics®, because analytics involves the discovery and communication of meaningful patterns in data.”<sup>83</sup> Counselytics offers “cognitive augmentation. [Their] aim is to tackle the entire cognitive genome, enabling enterprises to process and manage large amounts of legal content in fast, efficient, and cost-effective ways.”<sup>84</sup> And Ravel Law, a legal search, analytics, and visualization platform, “enables lawyers to find, contextualize, and interpret information that turns legal data into legal insights. Ravel’s array of powerful tools – which include data-driven, interactive visualizations and analytics – transforms how lawyers understand the law and prepare for litigation.”<sup>85</sup> Machine learning has helped

outside of the law firm context as well, allowing self-represented litigants to solve disputes on their own with the assistance of AI technologies in both Australia and Canada.<sup>86</sup>

It is important to recognize that while automated systems may not be able to perform a particular task or answer a particular question today, there is no assurance that it will not be able to do so in five or ten or twenty years. “Intelligent machines will [continue to] become better and better, both in terms of performance and cost. And unlike humans, they can work ceaselessly around the clock, without sleep or caffeine. Such continuous technological acceleration in computational power is the difference between previous technological improvements in legal services and those driven by machine intelligence.”<sup>87</sup>

Overall, Watson’s ability to understand natural language queries, search all relevant sources of information (statutes, judicial opinions, law review articles, other case-related documents, etc.), and use its predictive powers to provide the most relevant answers/information will have profound implications for the role of lawyers in the future. Ubiquitous devices with Watson-like capabilities could be the Siri of the next generation, and they could very well populate the “2036” column in the hypothetical lawyer’s toolbox.

## **5. What Computers Can’t Do**

Despite the increasing sophistication of machine learning, human lawyers will continue to play the prominent and indispensable role in the legal system. In their role as client counselors, lawyers provide emotional reassurance as well as experience- and knowledge-based professional guidance. Negotiation and litigation are also areas in which human lawyers are not easily replaced by even the most sophisticated technologies.

It is also important to note that the legal profession plays a critical role in the larger social context. As Canadian lawyer and futurist Jordan Furlong has written: “[Lawyers] serve critical functions in society: we provide dispassionate representation and advocacy in dispute resolution; we facilitate countless significant social and business transactions; and we’re capable of providing tremendous and unique value to clients of all stripes — value that commands a premium price.”<sup>88</sup> Lawyers act as “highly esteemed servants of the community and the building blocks of a meaningful and civilized society. No one is going to outsource or automate a way around that.”<sup>89</sup>

## **6. Implications of Technology-Driven Legal Services**

One major consequence of the technological innovations described above is that regulating the legal marketplace, including preventing the unauthorized practice of law (UPL), becomes more complicated. As Furlong describes:

First, as market regulators and UPL enforcers, we find ourselves stymied by the unconventional nature of new providers. Some are based outside our physical jurisdiction (LPOs), some are arguably not “practicing law” (e-discovery providers), and some meet latent market needs to an extent that we might find

politically risky to shut down entirely (LegalZoom). Mostly, though, there are just too many new entities to deal with all at once. It was one thing for a regulator with limited funds to prosecute a single paralegal or self-help publisher at a time; it proves another to take on entire, multi-jurisdictional, investor-powered industries.<sup>90</sup>

Beyond these initial questions, regulators also face other practical quandaries in enforcing UPL regulations. If in ten years it is possible to create an “app” (or whatever such tools will be called in 2026) on a portable device with a Watson-like ability to distill the world’s knowledge to answer a series of legal questions based on specific facts, who would be committing the unauthorized practice of law? Would it be the company that built the app or the company that built the underlying technology? What if both of those companies were based in Moldova?

While a natural reaction from lawyers and the organized bar may be to attempt to throw up as many regulatory barriers as possible to prevent new technologies from infiltrating the legal marketplace, such efforts are likely to have limited utility in the long run. First, lawyers will want to make use of these technologies in their own practices to promote greater productivity and reduce costs. Second, McGinnis and Pearce argue, “the global nature of machine intelligence will continue to put pressure on the U.S. market for legal services, regardless of the laws of the United States. The message here is that the machines are coming, and bar regulation will not keep them out of the profession or much delay their arrival.”<sup>91</sup>

The legal profession faces a future in which machines will not only be able to access and analyze unlimited amounts of information, but may also be able to “think” and to recognize and respond to human emotional cues. With respect to the later possibility, the Task Force would certainly seriously question the utility, benefit, and especially wisdom of machine generated legal advice or administration of justice. Someday, someone will have to decide those questions, but it is not today and it is not the Task Force. For now we need only realize that these advances will certainly shape the work of lawyers in 2036.

#### **D. Lawyer Value**

In a world of commoditized legal services, decomposition, alternative legal service providers, and even AI, the commercial reality remains that high quality legal service charged at reasonable prices will be in demand by many consumers.<sup>92</sup> As such, it is incumbent on the legal profession to embrace its own virtues. Lawyers have a special role in the provision of legal services to the public, and with good reason. Whether it is a lawyers’ education, training, mandated professional responsibility, or legal judgment, lawyers have value. Lawyers should not be reluctant to weigh in when business trends or regulatory proposals undermine the legal profession’s role of protecting the rights of the public. However, lawyers must recognize the changes occurring in the legal services marketplace and accommodate these changes when consistent with the virtues and values of the profession.

#### **1. Officers of the Court**

Only lawyers may practice law. This is a right granted solely by the Supreme Court and rightfully guarded by the legal profession. Its purpose is to safeguard the public from “the mistakes of the ignorant and the schemes of the unscrupulous,” as well as the protection of the judicial system itself in the administration of justice.<sup>93</sup> Although many who seek to profit from the provision of legal services may contend otherwise, the restrictions placed on the practice of law do not exist as a protective measure to serve the parochial interests of the bar.<sup>94</sup>

A threshold issue, made increasingly blurry by technology and the ready access to legal information, is defining the practice of law. That, however, is not easy. In Illinois, there is no rule or regulation or statute that defines it. The Court itself often notes that there is no “mechanistic formula” for defining what is, and what is not, the practice of law.<sup>95</sup> The same is true in many other jurisdictions. Nevertheless, some common principles can be identified:

1. Acting in a representative or advocacy capacity in connection with legal proceedings
2. Drafting documents intended to affect or secure legal rights
3. Negotiating legal rights or responsibilities for a specific person or entity
4. Expressing or preparing legal opinions
5. Providing professional legal advice or services where there is a client relationship of trust or reliance
6. Applying of legal principles and judgement with regard to the circumstances or objectives of another which require the knowledge and skill of a person trained in the law.

See Appendix

Given its importance in protecting rights of citizens, either through representation of clients or as a vital part of the justice system, the practice of law is appropriately and highly regulated by the Court. All facets of the legal profession are regulated, ranging from law school admission and curriculum, to character & fitness and passage of the bar examination. Upon licensure too, all aspects of a legal practice, from competency to business practices, from conflicts of interest to advertising, are subject to strict and enforceable ethical rules. All of these have the single purpose of protecting the public and ensuring the proper administration of justice.

## **2. Public Protection**

At the core of lawyer virtue and value are the protections lawyers provide to their clients through adherence to the Rules of Professional Conduct. In turn, these ethical duties owed by lawyers to clients and the courts play an important role in analyzing what services and activities should be reserved to only those licensed to practice law. The more vital the protection, the more important it is to restrict authorization for performing the service to licensed attorneys, or, at minimum, to implement regulatory measures that would impose and enforce comparable duties for those who will be authorized to enter the field.

### *a. Client Protection*

The evidentiary attorney-client privilege allows clients to talk to their lawyers frankly and openly, without fear that someone will be able to force the lawyer to reveal what the client has shared. The purpose of this privilege is to enable a person to consult freely and openly with an attorney without any fear of compelled disclosure of the information communicated.<sup>96</sup> The privilege has been described as being essential “to the proper functioning of our adversary system of justice.”<sup>97</sup> The privilege is available only if there is an attorney-client relationship. The importance of the protection of the privilege may vary depending on what service the attorney is providing, from a criminal defense to a spouse seeking custody of his or her children to a real estate closing. But if authorization to perform certain legal services is not accompanied by adoption of measures that would protect communications, clients who use the services of those not licensed as attorneys will have to be exceedingly careful how much they reveal to the non-lawyer.

Whether or not the attorney-client privilege applies, those who are licensed to practice law owe their clients a very broad duty of confidentiality that will not encumber those who do not have the license. Unlike the privilege, which protects only communications between lawyers and clients made for the purpose of providing legal services and intended to remain confidential, the professional duty of confidentiality generally precludes lawyers from revealing any information relating to the representation of the client except as necessary to carry out the representation or as authorized by the client.<sup>98</sup> Information covered by this rule is not limited to matters considered private or confidential. It includes all information learned, with very limited exceptions (e.g., disclosure which is reasonably necessary to prevent the commission of a crime or reasonably necessary to defend charges made against the lawyer).<sup>99</sup> The attorney-client privilege protects against others forcing an attorney to reveal communications made in confidence. The professional duty of confidentiality prevents lawyers from voluntarily revealing or using what they have learned in representing a client. When considering whether non-lawyers should be allowed to perform services typically performed by lawyers, it is crucial to identify exactly what duties of confidentiality will apply if the service is performed by someone not bound by the Rules of Professional Conduct and whether the scope of those duties will sufficiently protect clients’ interests.

The conflict rules governing lawyers severely restrict a lawyer’s ability to undertake representations actually or potentially adverse to a client or a former client.<sup>100</sup> There are many facets to the application of those rules, but for purposes of this Report, it is sufficient to observe that lawyers are required to keep careful records of who their clients are, to look for potentially diverging interests, and to be fully forthcoming with clients about the potential of adversity when proposing to continue a representation once a concern has been identified. Conflict rules are particularly important in protecting the interests of clients in adversary proceedings, but they are often equally important in transactional matters where an agent could favor the interests of one client over another in guiding both through a structuring of terms or resolution of differences. Also important to clients is the principle that lawyers must use independent judgment, and when retained or paid by persons or entities other than the client, lawyers must take direction only from the client.<sup>101</sup> Moreover, as with other fiduciaries, lawyers may not benefit themselves to the detriment of a client in conducting any representation or in otherwise interacting with clients.<sup>102</sup>

The above protections are especially important in the provision of legal services in many consumer oriented fields. Lawyers must look to the clients’ needs, without regard to whether a

particular legal option will lead to additional revenue to the lawyer or a business associate. In unregulated undertakings by nonlawyers, a pervasive concern is that the nonlawyer recommended solutions (e.g., a living trust, loan modifications) are often made without regard to the particular circumstances of any individual consumer and without knowledge or consideration of whether other options would be more advantageous to the client, but rather are made because it is in the best interest of the nonlawyer.

*b. The Courts*

As with the ethical duties owed to clients, lawyers' ethical duties to tribunals are critical in preserving the integrity of adjudicatory proceedings. The importance of those duties must be weighed in considering the wisdom of authorizing others to provide representation in such proceedings, and/or in structuring regulatory measures if such authorization is granted.

Lawyers have elevated duties to courts, and the smooth administration of the justice system depends in large part on lawyers honoring those duties. They include the obligations to avoid presenting claims that are not grounded in fact or law, to expedite litigation, to be truthful in all statements to the court, to avoid presenting evidence that is false, to take reasonable measures to remediate upon learning that evidence previously presented or statements previously made were false, to obey procedural rules, and to comply with obligations under discovery rules and orders.<sup>103</sup> The duties apply equally in court proceedings, in proceedings before administrative tribunals, and in arbitrations.<sup>104</sup>

From one vantage, those obligations might appear clear and obvious, basic obligations that anyone could and would be expected to abide. However, lawyers who regularly engage in litigation recognize how many nuanced and difficult choices have to be made to properly balance their duties to the court with their obligations to clients. Moreover, lawyers are painfully aware that their duties to courts will be enforced rigorously, not only by the courts, but by disciplinary authorities. Typically, false statements to a tribunal will result in some suspension of a lawyer's license.<sup>105</sup>

To the extent that nonlawyers are allowed to participate in some fashion in providing legal-related services, the effective administration of justice and the goal of evening the playing field requires that there be measures in place sufficient to hold non-lawyer representatives to the same norms as lawyers. Tribunals must be able to expect the same dedication to candor and willingness to abide by rules and procedures for proceedings to be conducted efficiently and justly, and fairness demands that all sides in a dispute operate under the same expectations and face the same consequences for failure to obey.

As demonstrated above, as a public trust, the practice of law is highly regulated. For a profession with the ability to affect the rights (and sometimes liberty) of others, this substantial level of regulation is necessary and welcome. As such, ideals like professional independence, safeguarding client information and materials, and restrictions on the extent to which a lawyer may allow self-interest to influence interactions with clients have real and important meaning which must be accommodated in any discussion of altering the forms of lawyer practice or allowing non-lawyers to provide services traditionally deemed to involve the practice of law.

### 3. Alternative Business Practices

As the legal environment evolves, many commentators have suggested changes to various aspects of legal services regulation, addressed to both lawyers and nonlawyer legal service providers. For lawyers, new ideas about firm management and funding, and forms of practice abound. For nonlawyer legal service providers, the essentially unregulated marketplace has allowed various form of providers to flourish. For the Task Force, specific analysis of all these developments was well beyond its scope and resources. Nevertheless, some of the more salient developments are outlined below.

#### *a. Alternative Business Structures for Lawyers*

Many bar associations are examining “Alternative Business Structures” (ABS) as a response to futures challenges. Because the Association has previously commented on such structures, the Task Force does not feel compelled to take a position in this Report. It is nevertheless an important and controversial issue that the Association needs to be aware of and continuously monitor.

ABS generally refers to: active investment, management or ownership of law firms by non-attorneys; passive investment in law firms by nonlawyers; or operation of a law practice as a multi-disciplinary practice (MDP), allowing provision of non-legal in addition to legal services. To date, only two jurisdictions in the United States allow any form of ABS: the District of Columbia, which allows a nonlawyer who performs professional services for a law firm to hold a financial interest in it and to exercise managerial control; and the state of Washington, which allows Limited License Legal Technicians to own a minority interest in law firms.<sup>106</sup>

Outside of the United States, ABS’s can be found in varying forms. Law firms may be owned by nonlawyers in several European nations, with restrictions in some. Italy limits the percentage of non-attorney ownership in law firms to 33% and Spain limits it to 25%.<sup>107</sup> England places no limitation on the percentage on nonlawyer ownership of law firms, but non-lawyers who wish to be owners must pass a “fitness to own” test, and firms must show that they have effective systems in place to comply with rules of professional conduct.<sup>108</sup> MDP’s are permitted in Australia, where firms may incorporate, share receipts and provide legal services with others who are not legal practitioners.<sup>109</sup> Wales also permits MDP’s, as do some Canadian provinces.<sup>110</sup>

Proponents of ABS’s emphasize that being able to tap into additional sources of capital will bring benefits such as: modernization; increased cost-effectiveness; and introduction of innovative management structures. The purpose of ABS’s, like many alternative service providers argue, is to ultimately increase access to justice.

The ‘increased access to justice’ argument was raised in the case of *Jacoby & Meyers, LLP v Presiding Justices of the Appellate Divisions of the Supreme Court of New York*, decided July 15, 2015, wherein New York’s RPC prohibiting non-attorney equity ownership in law firms was challenged on first and fourteenth amendment grounds.<sup>111</sup> In this case, plaintiff argued in favor of nonlawyer investment in its law firm to raise capital to expand operations, hire

additional staff, and acquire new technology, etc., all designed to pioneer efforts to provide “quality legal services at a reasonable cost to economically challenged individuals who would otherwise have no access to the legal system.”<sup>112</sup> Plaintiff argued further that the traditional avenues of capital – partner contributions, retention of earnings, and commercial bank loans - have become too expensive, and thus prohibiting outside investment jeopardized plaintiff’s commitment to providing low-cost legal services to the poor. In rejecting the challenge, the court ruled that the law did not restrict ‘speech’ as alleged, but instead dealt with conduct. “Rather, J&M seeks nonlawyer equity investors as a means to commercial end... to engage freely with non-lawyers in conventional commercial conduct – conduct that ‘manifests absolutely no element of protected expression.’”<sup>113</sup>

Those who oppose nonlawyer investment, ownership or management of law firms by nonlawyers dispute both that, the current avenues for raising capital are in fact too expensive or are in some way outmoded, and that there is any direct connection between raising additional capital and increasing low cost services to address the affordability gap.

More importantly, opponents of ABS’s emphasize the potential impact on “core values” of the legal profession, including that non-attorney investment, ownership, or management will bring pressure to a law practice to ensure an appropriate return on investment, or generate greater profit, that may not be consistent with a lawyer’s best judgment of what may be the most appropriate service for the client. The impact of this pressure may be less individualized care, less professional loyalty to the client, a reluctance to take on unpopular causes on behalf of a client, a reluctance to perform pro bono work, or even the provision of substandard or incomplete service.

Finally, opponents of nonlawyer investment, ownership, or management may, at some point in the future, bring increased non-Court regulation of the legal profession, further eroding the independence of the legal profession as a whole.

### *b. Unbundling*

Unbundled legal service is a lawyer’s provision of legal services on a single or limited portion of a client’s matter. It can take the form of: advising a client on discrete aspects of a transaction or proposed course of conduct, advising a client how to respond to proposals or the arguments of an adverse party, reviewing or drafting pleadings to be filed by the client, or attending and participating in depositions or court hearings. It contrasts with a traditional representation where a lawyer handles all aspects of a client’s matter.

Many states’ futures efforts recognize unbundling (or limited scope representation) as one opportunity for lawyers to successfully navigate the changing legal marketplace.<sup>114</sup> Providing unbundled services satisfies consumer needs and expectations while also allowing lawyers to provide high value services to a broader market of legal consumers. Clients engaging with lawyers on an unbundled basis may even foster more traditional representations. The availability of unbundling may also have a positive impact on court efficiency by having better prepared self-represented litigants appear in court.

As far back as 2011, when it was the subject of a joint ISBA, CBA, and IJA Report and subsequent rule proposal filed with the Illinois Supreme Court, a number of compelling needs supported unbundling.<sup>115</sup> The primary reason was the growing nation-wide trend of self-represented litigants in the trial courts. At that time the trend was attributed to a number of things including: an inability of legal consumers (including middle class consumers) to afford lawyers, decreasing funds for government legal aid, and a preference for self-representation encouraged by the availability of non-traditional legal assistance such as online legal information and forms. Since that time, the numbers of self-represented litigants is being better documented and has grown. Studies confirm a consumer preference to handle matters on their own without the assistance of lawyers (and even without the courts when possible). In addition, the pressure from, and apparent success of, alternative providers who purport to offer do-it-yourself forms and information also continues to expand.

Fortunately, Illinois was an early adopter of rules designed to facilitate unbundled legal services. In June 2013, the Illinois Supreme Court amended a number of procedural and ethical rules to facilitate unbundling. The amendments address such issues as appearances, withdrawals, client agreements, signature requirements for pleadings, and communications between opposing lawyers and clients.<sup>116</sup> Since adoption of the rules, the use of unbundled services remains a bit unknown. From earlier studies it seems clear that the public is interested in using such services and that it was important for lawyers to offer the option.<sup>117</sup> In addition, as of 2014, approximately 46% of Illinois lawyers reported that they had realized some revenue from unbundled services.<sup>118</sup>

#### *c. Illinois Supreme Court Rule 711*

Another example of expanding the availability of legal services may be accomplished under Association proposed amendments to Supreme Court Rule 711. The Task Force fully supports the Association's proposal.

Currently, S. Ct. Rule 711 enables certain law students to perform services for legal aid bureaus, legal assistance programs, certain organizations, certain clinics, public defenders, and public (governmental) law offices. Under the rule, law students are permitted to perform services, much like a lawyer would perform for a client, including appearing in the trial courts, courts of review and administrative tribunals.<sup>119</sup> The Association's proposed amendments to Rule 711 would enable law students to engage in private practice, much like their counterparts who are able to engage in practice through legal aid or public practice. These amendments will enhance the chance for those who pass the bar exam following graduation from law school to be *practice-ready*, to benefit the handling of cases in Illinois courts and the people who rely upon the disposition of those cases. In addition, allowing law students to engage in many practice related activities, under the supervision of a licensed lawyer, will potentially help provide legal services to underserved communities across the state.

#### *d. Courthouse Facilitators*

Facilitating access to lawyers and encouraging them to explore alternative ways of practicing is clearly not the sole means to meet consumer need and demand for legal services. The

ability of individuals facing family, housing, financial and personal safety crises to access the legal system and understand and safeguard their rights is vital to achieving economic self-sufficiency and promoting community stability. The Task Force recognizes that doing more to help people who need to resolve important civil legal issues but who don't have lawyer representation is an obligation in service to the public interest.

In this regard, the U.S. Department of Justice established the Office for Access to Justice (ATJ) in March 2010. In addition, the Illinois Supreme Court Commission on Access to Justice was created by the Illinois Supreme Court in June 2012 to "promote, facilitate and enhance equal access to justice with an emphasis on access to the Illinois civil courts and administrative agencies for all people, particularly the poor and vulnerable."<sup>120</sup> A simple but important aspect of this access is ensuring the practical ability of consumers, unfamiliar and likely intimidated by the courthouse and its procedures, to navigate their local courthouse. The Task Force applauds such efforts and highlights a few examples below.

#### i. Illinois JusticeCorps

Self-help centers frequently serve as the sole point of access for court users navigating the court system on their own. One aspect of access to justice is providing procedural and navigational assistance to people without lawyers, in the courthouses. In 2009, the Chicago Bar Foundation ("CBF") started the Illinois JusticeCorps as a pilot program at the Daley Center in Chicago. In 2014, the CBF transitioned the program to the Illinois Bar Foundation ("IBF") for administration. It is a program through which trained college and law students act as guides to make courthouses more welcoming and less intimidating for people without lawyers. It is funded by a grant from AmeriCorps, the Access to Justice Commission, the IBF and the CBF.

Currently, JusticeCorps members are working in courthouses in: Bloomington-Normal, Champaign-Urbana, Chicago, Edwardsville, Galesburg, Joliet, Kankakee, Markham, Rockford and Waukegan. JusticeCorps assistance allows people to accomplish the purpose of their visit more efficiently. Members receive thorough training, including about the activities in the courthouse, available resources and the difference between legal information and advice.

Full-time JusticeCorps Fellows make a 1700-hour commitment. Student volunteer positions require a 300-hour commitment over the course of the academic year. Benefits to the members are that they are members of AmeriCorps, a national network of service programs that recruit and train volunteers to meet critical community needs while they earn money for education; Illinois JusticeCorps Fellows receive a modest living allowance and may be eligible for healthcare and childcare assistance; after completion of the hourly commitment, volunteers will receive an Education Award for education expenses or loan repayment; and great professional skills development, work experience and professional references

The Task Force believes that gaps in service provide an opportunity for Illinois lawyers, particularly newly licensed lawyers, to expand the JusticeCorps model; i.e. to provide certain, basic legal services for the individuals in the courthouse setting.

#### ii. Lawyer In The Lobby (or Library)

In some counties, lawyers volunteer in a clinic type setting in the courthouse, to provide consultations to members of the community in a variety of civil legal topics, including collections, bankruptcy, landlord/tenant matters, wills, probate, small claims, and child support matters. The lawyers are located in the courthouse at a designated time and place, and will offer free assistance.

In some counties, the assistance is available only to litigants who meet low income guidelines; in others, the service is available to anyone. Here too, this is an example of types of programs that the Task Force believes can meet a number of legal service issues with benefits extending to lawyers and consumers.

*e. Limited License Legal Technicians (LLLT's)*

If this Task Force owes its genesis to any single event, it would be the Washington State Supreme Court's authorization of LLLT's. This event was viewed, rightly or wrongly, as an attack on lawyers' traditional roles and economic livelihoods. In brief, the program seeks to vest specially trained nonlawyers with some of the powers previously reserved to lawyers in an effort to achieve greater access to justice for the underserved. A number of states are reportedly looking at the concept, and representatives of the Washington State Bar Association addressed the Association Assembly in June, 2015. Because of its central place in the formation of the Task Force, the Task Force, in conjunction with the Association's Family Law Section Council, reviewed the LLLT program.

However, in many ways the focus on LLLT's seems to be a distraction from other issues and programs that are likely more significant in terms of improving the overall legal services marketplace. In contrast to a LLLT program, similar but more viable nonlawyer alternatives already exist in Illinois in some fashion. Many Illinois law schools have established legal clinics that use law students to provide forms of legal assistance (document preparation and some limited courtroom assistance), so a group of individuals performing LLLT like functions currently exists in many parts of the State. In addition, with the assistance of the IBF, law schools have created legal internships, providing funding for new lawyers to assist indigents and gain valuable practice experience. Also, although not discussed in depth in this Report, there are numerous well-trained paralegals from a number of respected programs, under the supervision of lawyers, already in use throughout the state. Are these types of programs the complete solution to access to justice and legal marketplace issues? Clearly not. Certainly more needs to be done and more can be done.

Moreover, the the LLLT program does not appear to be a good solution to the challenges facing the legal profession or legal marketplace. There appears little empirical support at this time to believe that adding another "low cost," nonlawyer layer of legal services will achieve the intended goal of providing greater access to legal services to an underserved population. The needs of the underserved who cannot afford to pay for legal services are likely not going to benefit from the implementation of a for-profit LLLT program. It also appears that the impetus behind the Washington State program is in part due to the absence of lawyers in more remote parts of the state. Illinois does not share that issue to the same extent given the geographic diversity of population centers with large legal communities and even law schools. In addition, given the rise of internet based alternative legal services that provide forms and do-it-yourself

services (both for-profit and non-profit), the economic viability of LLLT's may be in doubt. Finally, the Task Force believes there is a real possibility for consumers to be misled by unsupervised LLLT's attempting to perform services they are neither qualified nor authorized to perform. As such, the resources of the Association can best be used to concentrate on improving already-existing types of legal services delivery methods, rather than supporting new for-profit and unsupervised programs such as LLLT's.

#### **IV. WHERE DO WE NEED TO BE (AND HOW DO WE GET THERE)?**

The data, information, and trends outlined above do not spell the end of lawyers. Far from it. Demand for legal services is high. Consumers also recognize the value of lawyers for certain legal services. But lawyers are facing greater competition from nonlawyer legal service providers. Traditional practice will survive, but for many consumers a traditional practice is becoming less and less of what they want and, perhaps more importantly, what they are willing to pay for.

The Task Force believes that the current and future legal services marketplace presents opportunities for lawyers. In order for lawyers to thrive, and provide the services and important public protections that the public demands, the Task Force recommends that the Association educate, engage, and compete as follows. It must educate the public and its members about the availability, benefits, and downsides of various forms of legal services. It must engage in the promotion of a healthy and efficient legal services marketplace. And finally, it must be ready to leverage its unique position and status to compete with others in the legal services marketplace for the benefit of its members and the public. While the Task Force is not Pollyannaish about the Association's resources, the bar is nevertheless in a position to influence a changing legal services environment. With those broad objectives in mind, the Task Force believes the Association should embrace the following goals and recommendations:

**A. *Embrace and Capture the Latent Legal Market:*** Each year tens of millions of Americans face legal problems and either do nothing or attempt to help themselves without professional advice. Much of this reluctance to seek out professional advice is based upon consumer beliefs about cost, convenience, and even the existence of a legal problem. Lawyers and the organized bar need to use emerging technologies to educate, grow, and ultimately serve these potential customers. To meet this goal, the Task Force recommends the Association:

1. Establish a robust online presence for consumers through the Association's website. Components of the consumer website should include the already existing Lawyer Referral Service, but also an online consumer member directory (currently under construction). The consumer website (or specifically designated webpages on the Association website) should include consumer education, information, and resources about the law, lawyers, and judicial processes. It could also act as a potential clearinghouse for pro bono lawyers and otherwise inform members of the public about existing legal aid and self-help resources.

2. Promote the availability of lawyer services (including unbundled services) through consumer education and outreach via the consumer website or other appropriate media, potentially including expansion of the “Ask a Lawyer Day” service, kiosks, and the availability of simple flat fee services.
3. Educate members about new forms of providing legal services (such as unbundling) as well as changing consumer preferences, expectations, and needs.
4. Support the availability of lawyer supervised legal services that may provide a more cost effective alternative to traditional lawyer services, such as the use of 711’s, paralegals, law school clinics, and others.
5. Develop and support community partnerships whereby legal services are made known and available to consumers with particularized need.
6. Consider the development of, and support for, broader cost effective consumer access to legal services such as “legal services plans,” for example, prepaid legal service plans or legal insurance.
7. Consider legislative efforts to provide consumers’ cost relief for the purchase of legal services such as tax deductions.

**B. Preserve and Champion Lawyer Value:** Often lost in the changing legal services marketplace is lawyer value in terms of the services they offer: quality legal information, client protections, and individualized legal advice. While not demonizing the place or value of nonlawyer supported legal services for some legal consumers, the benefits of these services should be promoted to legal consumers. To meet this goal, the Task Force recommends the Association:

1. Educate and promote lawyer value to consumers through the Association’s consumer website as well as other forms of mass and social media as appropriate.

**C. Support Technological Efficiency:** In today’s law practice environment, lawyers must be technologically competent. Technological competence impacts all aspects of practice management, marketing, document preparation, litigation services, and client communication. The organized bar is in a unique position to keep its membership apprised of new developments in technology and their benefits. To meet this goal, the Task Force recommends the Association:

1. Provide meaningful continuing legal education programs to Association members on technological developments in the areas of business practices, marketing, and other law related activities.
2. Provide, or otherwise make available, to the membership law practice management resources and services.

3. Support and promote the use and availability of appropriate technology to facilitate remote legal services and long distance client collaboration and communication.

**D. Support Public Protection in the Area of Legal Services:** The legal profession and the organized bar have long held a prominent place in protecting the public from those who would prey on it in the delivery of legal services. To meet this goal, the Task Force recommends:

1. Educate the public through the Association's consumer website (or specifically designated webpages on the Association website) about the legal marketplace, including any restrictions (regulatory or practical) on the types of services available from lawyers and nonlawyer service providers.

2. Continue to provide an online avenue for consumer complaints about nonlawyer service providers, to work with regulatory agencies, and to take judicial and legislative action in the public interest where appropriate.

**E. Monitor and Utilize Regulatory Processes:** The organized bar is well positioned to bring information, insight, and perspective to discussions and activities shaping the legal services marketplace. The bar should recognize this position and seek to have its voice heard through applicable regulatory processes whenever appropriate to serve the interests of its members and the public. To meet this goal, the Task Force recommends:

1. Monitor developments in the legal marketplace, particularly those related to alternative legal service providers, lead generators, the availability of court sponsored legal forms and information, and other matters.

2. Take all appropriate action when developments affecting the legal profession or legal marketplace may have an impact on the Association membership.

**F. Support Judicial Efficiency:** The legal profession and the courts exist in a symbiotic relationship. Consumer perceptions of a court system that is inefficient, expensive, and burdensome reflects poorly on the legal profession. As the availability and popularity of alternative dispute resolution mechanisms grow, and the rise of self-represented litigants continues, the organized bar should help change any negative perceptions of the courts, as well as support the courts in addressing systemic barriers to greater public use. To meet this goal, the Task Force recommends:

1. Continue to support an independent judiciary and full funding of the courts

2. Support and promote the judiciary's use of teleconferences and videoconferences for routine matters in order to save time and resources for lawyers and litigants.

3. Support and promote statewide e-filing in civil cases.

4. Support and promote the availability and use of standardized forms developed by the courts and not-for-profit organizations.

5. Support and promote the use of courthouse facilitators or informational kiosks, under the supervision of the courts or lawyers, to assist self-represented litigants and other legal consumers.

6. Consider and support the establishment of specialty courts to expedite less complex legal matters.

7. Educate the public through the Association's consumer website (or specifically designated webpages on the Association website) about the availability of resources for self-represented litigants, including information on limited scope representation, use of standardized court forms, courthouse navigators, specialty courts, and technology.

***G. Recognize and Support Adaptation***: The greatest danger to the legal profession is the failure to adapt. The ability to adapt requires lawyers to recognize that the forces reshaping the legal marketplace are the same forces that are reshaping much of our economy and our society – the rapid pace of technological change, globalization, and new channels for information. The Association is uniquely positioned on behalf of its diverse members to observe, evaluate, and to provide insight, response, and leadership concerning the changing profession and marketplace. To meet this goal, the Task Force recommends:

1. Establish a Standing Committee on the Future of Legal Services. The purpose of the Standing Committee would be to monitor developments and activities in the legal marketplace, including both the private and public sector as well as the actions of other bar associations. It would continue to consider such issues as ABS's and opportunities to partner or leverage nonlawyer legal service providers. The Standing Committee would monitor the Association's compliance with Report goals and recommendations and provide a forum for member comments and concerns. The Committee would be responsible for a quinquennial survey on the membership's economic, marketing, and business health. The Committee would be made up of no more than 10 members (including one Association officer), plus a chair, with representatives from the judiciary, legal aid, corporate in-house, law firms of all sizes, solo practitioners, and others as may materially contribute to the work of the Committee. The Committee should meet no less than three times a year and report to the Board and Assembly every year on its activities and matters of interest.

## V. CONCLUSION

The Task Force on the Future of Legal Services hopes that this Report has raised the awareness of its readers about the realities and opportunities facing the legal profession now and in the future. The Task Force strongly believes in the importance of lawyers in American society as guardians of individual rights and the justice system, as well as lawyers' obligations to ensure public access to that system and the full protection of its laws. The Task Force further believes that the Association is well positioned to help its members continue to provide valuable and important services to the public. Finally, the Task Force hopes that the recommendations laid out in the Report will serve the interest of the public, the Association, and its members in the changing legal services marketplace.

## VI. APPENDIX

### Interpreting the Practice of Law

CASE NAME/CITATION	TYPE OF ACTION	FINDINGS	ELEMENTS OF UPL
<i>People ex rel ISBA v People's Stock Yards State Bank</i>  <b>1931</b> IL Supreme Court 344 Ill 462 <i>Bank</i>	Original proceeding seeking contempt of court for UPL	Bank which, through its legal department, manages estate matters, conducts real estate transactions, drafts wills, prepares deeds, etc. in engaging in UPL	Practicing as an attorney or counselor at law, according to the laws and customs of our courts, is the giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill
<i>People ex rel CBA v Barasch</i>  <b>1961</b> IL Supreme Court 21 Ill2d 407	Original proceeding seeking contempt of court for UPL	Non-attorney attempting to settle personal injury matter for another, and who operates service providing real estate transactions, handling traffic fines, etc. is engaged in UPL	The practice of law involves not only appearance in court in connection with litigation, but also services rendered out of court, and it includes the giving of advice or the rendering of any service requiring the use of legal skill or knowledge
<i>CBA v Quinlan &amp; Tyson</i>  <b>1966</b> IL Supreme Court 34 Ill2d 116	Suit to enjoin UPL	Real estate brokerage firm is not engaged in UPL by filling in the blanks on 'preliminary or earnest money' contract, as this coincides with the job the broker was hired to do. However, it is engaged in UPL if it draws or fills in deeds,	The legal problems often depend upon the context of in which the instrument is placed, and only a lawyer's training gives assurance that they will be identified or pointed out. Drafting and attending to the execution of instruments relating to real estate titles are within the practice of law, and the fact that standardized forms are usually employed does not detract from this.

		mortgages or other legal instruments	
<i>Herman v Prudence Mutual Casualty Co</i>  <b>1969</b> IL Supreme Court 41 Ill2d 468	Suit for damages and injunctive relief UPL	Sufficient allegations that employees of insurance company advised insured not to consult attorney, and fraudulently explained consequences of release, stated cause of action for UPL	The State requires minimum levels of education, training and character before granting a license to practice law. Its purpose in doing so is the protection of the public, not primarily for the protection of attorneys
<i>Kittay v Allstate Insurance Co</i>  <b>1979</b> IL App Ct, 1 <sup>st</sup> Dist 78 IllApp3d 335	Class action seeking damages and injunctive relief for UPL	No UPL where insurance company utilizes employee-attorneys to defend insureds.	Statute prohibiting corporations from practicing law makes an exception in the case of any litigation in which the corporation may be interested by way of the issuance of any policy of insurance
<i>In re Yamaguchi</i>  <b>1987</b> IL Supreme Court 118 Ill2d 417	Disciplinary proceeding for aiding UPL	Aiding UPL where attorney allowed his signature to be placed on blank complaint forms used by non-attorney to file assessment appeals.	It is not the tribunal involved (e.g., a court or administrative agency), but the character of the work which is determinative of whether the practice of law is involved. The completion of form valuation complaints did not involve mere factual data, but instead, was setting forth the results of legal analysis of the facts which he deemed justified a tax reevaluation
<i>In re Discipio</i>  <b>1995</b> IL Supreme Court 163 Ill2d 515	Disciplinary proceeding for aiding in UPL	UPL where attorney engaged disbarred attorney to interview potential clients, and execute medical authorization forms. Respondent previously worked with now-disbarred attorney, and his relation continued after disbarment	The definition of “practice of law” defies mechanistic formulation. It is the character of the acts themselves that determine the issue. The focus of the inquiry must be on whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent. While the forms might be handled by a clerk under other circumstances, in this case, it is reasonable to expect that the disbarred attorney was called upon by potential clients to explain statutory references therein
<i>Perto v Board of Review</i>  <b>1995</b> IL App Ct, 2 <sup>nd</sup> Dist 274 IllApp3d 485	Allegation of UPL in Unemployment Compensation case	No UPL where employer’s non-attorney agent replied to Dept of Employment Security	The legislature has authorized the representation of participants in proceedings before the department by any duly authorized agent. However, in IL only licensed attorneys are permitted to practice law, and the legislature has no authority to grant a non-attorney

			the right to practice law even if limited to an administrative agency. The ultimate authority to regulate and define the practice of law rests with the supreme court. Holding is limited to the facts of this case, where the fact-based response did not necessitate legal knowledge or skill, and thus was not the practice of law
<i>In re Howard</i>  <b>1999</b> IL Supreme Court 188 Ill2d 423	Disciplinary proceeding for engaging in UPL while suspended	UPL where suspended attorney met with clients, accepted fee advances, exercised professional judgment with regard to cases, and advised the clients	The practice of law encompasses not only court appearances, but also services rendered out of court, and includes the giving of any advice or rendering of any service requiring the use of legal knowledge. It is the character of the respondent's activity that determines whether the practice of law has occurred, not the reasoning behind it
<i>U.S. v Johnson</i>  <b>2003</b> U.S. Ct of App, 7 <sup>th</sup> Circ 327 F.3d 554	Rule to show cause for UPL	UPL where paralegal service marketed certain courses of action to criminal defendants, and thus interfered with attorney-client relationship	Considering the serious threat that the unauthorized practice of law poses both to the integrity of the legal profession and to the effective administration of justice, resort to the court's inherent authority to sanction for conduct which abuses the judicial process is warranted. In IL, the practice of law includes, at a minimum, representation provided in court proceedings along with any services rendered incident thereto
<i>Colmar, Ltd. V Fremantlemedia North America</i>  <b>2003</b> IL App Ct, 1 <sup>st</sup> Dist 344 IllApp3d 977	Action to vacate arbitration award for alleged UPL violation	No UPL where out-of-state attorney represented defendant in arbitration action	The context in which out-of-state activities are performed by a lawyer must be analyzed, because proper representation of clients often requires a lawyer to conduct activities in other states, and such activities should be permissible so long as they arise out of or are otherwise reasonably related to the lawyer's practice in the state of admission. While there is a procedure for out-of-state attorney to obtain <i>pro hac vice</i> permission to appear in court, there is no corresponding procedure for representation in arbitration proceedings.
<i>King v First Capital Financial Services</i>	Class action under the Attorney Act and Consumer	No UPL where mortgage company prepared documents	Issue of first impression. <i>Pro se</i> exception to corporation practice of law applied where mortgage

<p><b>2005</b> IL Supreme Court 215 Ill2d 1</p>	<p>Fraud and Deceptive Practices Act alleging UPL</p>	<p>for use in its own mortgage business, and charged a fee therefor</p>	<p>company prepared documents for its own use, regardless that a fee was charged. No claim that any harm was suffered by improper preparation of documents; no claim that fees were not fully explained; no claim that borrowers believed mortgage company was acting as their attorney. Exception does not apply to third party document preparers not a party to the transaction. No private cause of action for damages exists under the Attorney Act</p>
<p><i>Downtown Disposal v City of Chicago</i></p> <p><b>2012</b> IL Supreme Court 2012 IL 112040</p>	<p>Action to dismiss petitions for administrative review signed by non-attorney corporation officer as violation of UPL</p>	<p>“Nullity Rule” whereby UPL violations automatically result in dismissal of an action should not be applied automatically. Reversed and remanded to allow corporation to obtain counsel.</p>	<p>The filing of the petitions for administrative review by a non-attorney is UPL. It is not the simplicity of the form that is important, but the fact that an appeal was pursued on behalf of a corporation. A corporation must be represented by an attorney to mitigate the problems which arise when the interests of stockholders or officers do not mesh. However, before applying the “nullity rule”, the court should consider whether the non-attorney’s conduct is done without knowledge that the action was improper, whether the corporation acted diligently in correcting the mistake by obtaining counsel, whether the non-attorney’s participation is minimal, and whether the participation results in prejudice to the opposing party.</p>
<p><i>People v Contractor’s Lien Services, Inc.</i></p> <p><b>2013</b> Cir Ct of Cook County, Chancery Divn 08 CH 46900</p>	<p>Action for injunctive relief for violations of the Consumer Fraud and Deceptive Business Practices Act as UPL</p>	<p>Consent Order entered enjoining defendant from engaging in UPL</p>	<p>Prohibited acts of UPL: offering or providing legal advice regarding the preparation of mechanics lien or mechanics lien notice on behalf of another person or entity for a fee; offering to prepare a mechanics lien or notice for a fee; preparing a mechanics lien or notice for a fee; reviewing, prior to recordation, a mechanics lien or notice for a fee; offering to foreclose a mechanics lien for a fee; foreclosing a mechanics lien for a fee; originating, owning, operating, maintaining, or controlling any website that offers to</p>

			prepare a mechanics lien or notice for a fee
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## ENDNOTES

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- <sup>8</sup> Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, American Bar Foundation, p. 4 (2014).
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- <sup>11</sup> The Legal Aid Safety Net: A Report on the Legal Needs of Low Income Illinoisans, p. 14 (2005).
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- <sup>20</sup> [www.modria.com/platform](http://www.modria.com/platform) (last visited October 3, 2016); <http://modria.com/product/>.
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- <sup>23</sup> See ABA and National Association of Law Placement data below in notes
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- <sup>25</sup> See National Association of Law Placement website and specific employment data by class, for example <http://www.nalp.org/uploads/NatlSummaryClassof2015.pdf>.
- <sup>26</sup> See American Bar Association, Section of Legal Education and Admissions to the Bar, Law Graduate Employment Data.
- <sup>27</sup> 2016 Report on the State of the Legal Market, Georgetown Law Center for the Study of the Legal Profession, p. 3, and 2015 Report on the State of the Legal Market, Georgetown Law Center for the Study of the Legal Profession, p. 3.
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- <sup>33</sup> For years 2014 and 2010 see 2014 Annual Report of the Illinois Courts, Administrative Summary, p. 33; for year 2007 see 2007 Annual Report of the Illinois Courts, Administrative Summary, p. 27; and for year 2001 see 2001 Annual Report of the Illinois Courts, Administrative Summary, p. \_\_\_\_.
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- <sup>57</sup> Sandefur, *Accessing Justice in the Contemporary USA*, American Bar Foundation, p. 15, 2014.
- <sup>58</sup> Results of the 2015 Illinois Circuit Courts Court User Survey, developed by the Illinois Judicial Conference Committee on Strategic Planning and the Administrative Office of the Illinois Courts p. 12.
- <sup>59</sup> *Id.*
- <sup>60</sup> National Center for the State Courts, National Survey 2015, p. 2 (prepared by gerstein/bocian/agne strategies (November 17, 2015).
- <sup>61</sup> *Id.*
- <sup>62</sup> Results of the 2015 Illinois Circuit Courts Court User Survey, p. 11.
- <sup>63</sup> Richard Granat and Stephanie Kimbro, *The Future of Virtual Law Practice in The Relevant Lawyer: Reimagining the Future of the Legal Profession*, 89 (Paul Haskins, ed., 2015).
- <sup>64</sup> National Center for the State Courts, National Survey 2015, p. 3 (prepared by gerstein/bocian/agne strategies (November 17, 2015).
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<sup>65</sup> *Id.* at p. 3.

<sup>66</sup> 2014 Annual Report of the Illinois Courts, Administrative Summary, p. 8.

<sup>67</sup> *Id.*

<sup>68</sup> McGinnis & Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, Fordham Law Review, May 2014, 3043.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 3044.

<sup>73</sup> *Id.*

<sup>74</sup> Richard Susskind, *The End of Lawyers?*, p. 99.

<sup>75</sup> Paul F. Kirgis, *The Knowledge Guild: The Legal Profession in an Age of Technological Change*, 11 Nev. L.J. 184, 190 (2010).

<sup>76</sup> *Id.*

<sup>77</sup> Julie Sobowale, *How artificial intelligence is transforming the legal profession*, ABA Journal, April 1, 2016.

<sup>78</sup> McGinnis and Pearce, 3045.

<sup>79</sup> Shivon Zilis, <https://medium.com/@shivon/the-current-state-of-machine-intelligence-f76c20db2fe1#.ofseopnrx>.

<sup>80</sup> <http://www.theguardian.com/technology/2015/jun/28/computer-writing-journalism-artificial-intelligence>.

<sup>81</sup> Ethan Katsch and Colin Rule, *What we know and need to know about Online Dispute Resolution*, South Carolina Law Review, 329, 330 (2016).

<sup>82</sup> McGinnis & Pearce, p. 3045.

<sup>83</sup> Lexmachina.com.

<sup>84</sup> counselytics.com.

<sup>85</sup> ravellaw.com.

<sup>86</sup> Stefanie Garber summarized these innovations in a recent article in Lawyers Weekly called “Artificial intelligence poised to close justice gap.”

<sup>87</sup> McGinnis & Pearce pp. 3041 – 3042.

<sup>88</sup> <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-4/>.

<sup>89</sup> *Id.*

<sup>90</sup> <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-2/>.

<sup>91</sup> McGinnis and Pearce p. 3042 – 3043.

<sup>92</sup> Susskind, *The End of Lawyers?* Oxford University Press p. 32 (2008).

<sup>93</sup> *Downtown Disposal Services v. City of Chicago*, 2012 IL 112040, ¶ 14.

<sup>94</sup> Ill. S. Ct. Rules of Prof. Cond., Preamble, Comment [12].

<sup>95</sup> *Downtown Disposal*, 2012 IL 112040, ¶ 15.

<sup>96</sup> *Consolidation Coal Co. v. Bucyrus–Erie Co.*, 89 Ill.2d 103 (1982); *In re Marriage of Decker*, 153 Ill.2d 298, 309 (1992).

<sup>97</sup> *United States v. Zolin* (1989), 491 U.S. 554, 562, 109 S.Ct. 2619, 2626, 105 L.Ed.2d 469, 485.

<sup>98</sup> Ill. S. Ct. Rules of Prof. Cond., 1.6.

<sup>99</sup> Ill. S. Ct. Rules of Prof. Cond., 1.6(b) and (c).

<sup>100</sup> Ill. S. Ct. Rules of Prof. Cond., 1.7 and 1.9.

<sup>101</sup> Ill. S. Ct. Rules of Prof. Cond., 5.4(c).

<sup>102</sup> Ill. S. Ct. Rules of Prof. Cond., 1.8

<sup>103</sup> Ill. S. Ct. Rules of Prof. Cond., 3.1 through 3.5.

<sup>104</sup> Ill. S. Ct. Rules of Prof. Cond., 1.0(m).

<sup>105</sup> See discussion in *In re Schwartz*, No. 98 CH 60 (Report and Recommendation of Review Board, at 17-20.

<sup>106</sup> District of Columbia Rules of Professional Conduct 5.4(b); Wash. APR 28 (Limited Practice Rule for Limited License Legal Technicians). In addition to these adopted rules, the Indiana State Bar Association’s Future of the Provision of Legal Services Committee recently recommended to the Bar’s House of Delegates that it support allowing nonlawyers to own a nonvoting share of as much as 49% of a law firm. This recommendation was rejected.

<sup>107</sup> American Bar Association ABA Commission on the Future of Legal Services, *Issues Paper Regarding Alternative Business Structures*, p. 2 and 6 (April 8, 2016).

<sup>108</sup> *Id.*, p. 6.

<sup>109</sup> *Id.*, p. 5.

<sup>110</sup> *Id.*

<sup>111</sup> *Jacoby & Meyers, LLP et al v. Presiding Justices*, 118 F.Supp.3d 554, 2015 U.S. Dist LEXIS 92041.

<sup>112</sup> *Id.*, p. 9.

<sup>113</sup> *Id.* p 20-21.

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<sup>114</sup> See Futures Commission of the State Bar of Utah, Recommendation 1.C. (2015); Minnesota’s Challenges to the Practice of Law Task Force, p. 16 (2015); State Bar of Michigan 21<sup>st</sup> Century Practice Task Force, p. 24 (2016); The Vermont Joint Commission on the Future of Legal Services, p. 47, (2015); ABA Report on the Future of Legal Services in the U.S. p. 30 (2016).

<sup>115</sup> See Limited Scope Legal Representation, Final Report, Findings and Recommendations, *Prepared by the Joint Task Force on Limited Scope Legal Representation* (May 19, 2011).

<sup>116</sup> Ill. S. Ct., M.R. 3140 (eff. July 1, 2013); Ill. S. Ct. Rs. 11( e), 13( c)(6),(7), 137( e), Ill. S. Ct. Rules of Prof. Cond., 1.2, 4.2, and 5.5 (eff. July 1, 2013).

<sup>117</sup> Ed Finkel, *Limited Scope Representation: Tales from the Trenches*, Ill. Bar J., (December 2015.)

<sup>118</sup> *Id.*

<sup>119</sup> Ill. S. Ct. R. 711 (eff. May 27, 1969).

<sup>120</sup> Illinois Supreme Court Rule 10-100.



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