

EXAMPLES OF WAYS TO INCLUDE SPECIFIC DIVERSITY ACTIONS IN AAC RECOMENDATIONS

Diversity Recommendations for AAC Discussion Outline - October 13, 2015

1. Preliminary Working Assumptions and Considerations
civil and criminal application of ideas where possible; funding needs can be met; e-filing is implemented effectively; innovations in and beyond courtroom (“counsel” in broadest sense); holistic approach; fundamental due process and fairness rights protected; inclusion and diversity; cultural competency; low-income + moderate income focus; priorities or sequence but no arbitrary time limits; consensus decisions for next steps; opportunity to refine AAC reports after input from November TF meeting; other: ____? ____
2. WG Preliminary Recommendations: *Italics suggests possible higher need/priority;*
bold # = WG recommending; unbold #s = support or mention by other WGs
 - a. *Create Justice Innovations Guidelines: 1*
 - b. *Create online triage system and unified portal to access kind of help needed when needed in as many languages as are represented by significant populations in the state: 1, 2, 3,4*
 - c. *Create single filing portal to e-file all Michigan actions needed in as many languages as are represented by a significant population in the state: 1,3*
 - d. *Self-help centers in all counties, “gold standard” SHC guidelines, public funding, with training for and/or experience by all staff in cultural competence and staffed by persons of as many ethic groups and speaking as many languages as are spoken by significant portions of the population in the area served: 1,2,3,4*
 - e. *Expand online legal info/tools in as many languages as are represented by significant populations in the state (MLH); more outreach/education re info/tools by persons with training and/or experience in cultural competence and speaking as many languages as are spoken by significant portions of the population in the area served: 1,2,3,4*
 - f. *Standardize court practices and forms to be used statewide in as many languages as are represented by significant portions of the populations in the state: 1,3*
 - g. *Expand video conferencing and ODR options statewide in as many languages as are represented by significant portions of the populations in the state: 1,4*
 - h. *Create legal health check-up tool in as many languages as are represented by significant populations in the state and, in developing the tool, consider the kinds of questions that will address the needs of various populations and cultures: 1*
 - i. *Support MIDC (standards, plans, funding): 2*
 - j. *Initiate civil right to counsel pilot, develop funding plan, coordinate with MLH, with counsel trained and/or experienced in cultural competence and speaking as many languages as are spoken by significant portions of the population in the area served: 2, 1, 4*
 - k. *Create high quality comprehensive unbundling system: 1,2,3,4*
 - l. *Special SBM committee to propose specific LSR program: 2*
 - m. *Support work of pro bono assessment committee: 2*
 - n. *Avoid using scarce legal aid resources in incubator programs: 2*
 - o. *Amend MCR8.120(A) to allow law student pro bono: 2*
 - p. *Amend SBM Rule 3(F) to allow emeritus attorney pro bono: 2*
 - q. *Investigate statewide online pro bono advice program (coordinate w/MLH, online instate): 2*
 - r. *Expand law school clinical efforts; focus them on needs of low-income persons and include in clinical courses (and/or law school in general) education on cultural competence and diversity: 2*
 - s. *Support ATJ Fund large law firm, corporate legal departments campaign: 2*
 - t. *Apply problem-solving court principles, best practices to conventional courts: 2*

- u. SBM leadership role to promote in 2.t. above: **2**; create statewide venue specialty-courts **with staff speaking as many languages as are represented by significant portions of the populations in the area served: 3**
- v. Create new category of “lay navigator,” with training and perhaps regulation **trained and/or experienced in cultural competence and speaking as many languages as are spoken by significant portions of the population in the area served: 1,3,4**
- w. Make early mediation automatic: **3,4**
- x. Allow lawyer mediators to draft pleadings supporting judgment: **3,4**
- y. Adopt rule-based definition of practice of law: **3**
- z. Expand use of paralegals/legal assistants within current regulatory framework **(especially those who speak non-English languages spoken by significant portions of the underserved populations in the state) and provide training for paralegals/legal assistants in cultural competence: 3**
- aa. Resolve simple probate, divorce at administrative level (remove “v” from family law) **with administrative personnel in the process who are trained and/or experienced in cultural competence and who speak as many languages as are spoken by significant portions of the population in the area served : 3,4**
- bb. Create spaces in SHCs for collaborative law, holistic programs in criminal, child cases: **2,3**
- cc. Make SBM pro bono standards mandatory and police them: **3**
- dd. Explore LLLT’s after relevant experience known from other jurisdictions: **1,3**
- ee. Create domestic peace corps to provide no or low-cost legal aid services **giving training in cultural competence to lawyers in this program and/or priority to lawyers who have experience in diversity and/or speak non-English languages spoken by significant portions of the underserved populations in the state: 3**
- ff. Explore expanding MI Immigration Clerical Assistance Act so it is meaningful: **3**
- gg. Identify models from other jurisdictions to address system level “threshold questions (see WG4)” and questions of cultural and linguistic diversity: **4**
- hh. Publish LEAN WG4 project results with info for legal aid, firms, courts on how to pursue LEAN process: **4**
- ii. Assemble accessible online location for technology efficiency tools for legal aid, sole/small firms **and/or other locations in a variety of communities where the people of that community feel comfortable: 1,4**
- jj. SBM leadership role in new (post 21CTF) TF to envision, create & implement 21st Century Justice System: **1**

Executive Summary Access and Affordability Committee (AAC) Recommendations – November 3, 2015

Italics indicates higher importance. See AAC work group reports for full details.

Important Note: See separate document for examples of diversity actions in AAC recommendations.

A. Overarching Innovations

1. ***Create “Justice Innovations Guidelines” to use when considering/assessing new justice system efficiencies and innovations, including new technology, private/other vendor involvement in essential court functions: preserving fundamental rights, due process and procedural fairness; transparency and adequate oversight, and appropriate application of human judgment and/or intervention.***
2. ***Incorporate inclusion, diversity and cultural competency actions to support each recommendation (see separate document with action examples).***
3. ***Apply problem-solving court principles & best practices, including in virtual processes, to conventional legal processes, including knowledge of non-legal resources that can mitigate underlying issues and help the whole person; make court process less adversarial (especially in family law - remove the “v” from family law case titles).***
4. ***Regularly apply business process analysis, such as LEAN, for consumer-focused, evidence-based continuous improvement for courts, law firms, legal aid agencies and other justice system entities.***
5. Establish a post- 21CTF entity, with SBM in a leadership role, to continue to envision and implement a 21st Century Justice System; consider “radical rethinking” of systems, e.g. do the courts as presently constituted represent the best platform for civil dispute resolution, especially for people of limited means?

B. Continuum of Assistance (one type of help is not enough; assure 3 kinds of assistance below are available as needed)

Information and Assistance

6. ***Create online triage (via MLH) to identify and quickly link people to the kind of help they need when they need it.***
7. ***Expand MLH into more areas of law and engage in more outreach/education regarding MLH information/tools.***
8. ***Establish nonprofit self-help centers (affiliated with MLH) with lay navigator staff in all MI counties or circuits via legislation that provides public funding; use uniform gold standard self-help center guidelines to assure quality services.***
9. ***Create new professional category of “lay navigator” with training to assist members of the public with information and referrals, such as lay persons who now assist self-help center users; consider whether to regulate lay navigators.***
10. ***Standardize court practices/procedures and forms to a single, user friendly paradigm to assist centralized online information and self-help center distribution.***
11. Create online, gamified legal health check-up tool to educate users and assist them identify legal/other needs.
12. Assure that e-filing system allows a single filing portal to e-file all Michigan actions.
13. Assemble user-friendly information/links about technology efficiency tools for legal aid, sole/small firms.
14. Adopt a rule-based definition of the practice of law (and unauthorized practice).

Supportive and Limited Assistance

15. ***Create a high-quality, comprehensive unbundling system focusing on civil cases (possibly take forward via SBM committee to review/refine specific AAC recommendations – see LSR components in AAC work group 4 report).***
16. ***Expand the use and powers of paralegals and legal assistants working under the supervision of an attorney within the existing regulatory framework by increasing education in the efficient use of paralegals and legal assistants. Monitor experience from other jurisdictions that increase paralegal roles through modifying regulatory framework.***
17. Monitor and review information from other jurisdictions regarding LLLTs to see if the concept would effectively increase access in Michigan.

18. Create space in existing and new self-help centers for collaborative law efforts, and encourage other professions to use those areas.
19. Integrate legal help into social services paradigm; encourage holistic representation programs in criminal law, child advocacy and other areas (also, see recommendation A.3., above).

Full Representation

20. ***Initiate civil right to counsel pilot project in MI for all basic human needs cases; coordinate with MLH online triage (see civil right to counsel pilot project components in AAC work group 2 report).***
21. ***Investigate statewide online pro bono advice program (coordinate w/MLH, online intake).***
22. ***Amend MCR 8.120(A) to allow law student pro bono in nonprofits.***
23. ***Amend SBM Rule 3(F) to allow emeritus attorney pro bono in qualified MCR 8.120 organizations.***
24. ***Continue ATJ Fund efforts targeting large law firm, corporate legal departments; support ongoing work to implement pro bono assessment work plan.***
25. ***Support MI Indigent Defense Commission plans for standards, programs, funding, etc.***
26. Expand law school clinical efforts and focus them on unmet needs of low-income persons.
27. Monitor information to possibly consider creating a domestic peace corps to provide no or low-cost legal aid services.
28. Expand and grow opportunities for attorneys to serve in AmeriCorps or other formal local or national service programs in legal aid programs in exchange for an appropriate living stipend and loan repayment assistance.
29. Fully leverage the Michigan Immigration Clerical Act's attorney fee provisions and educate the bar about its potential to protect immigrant clients from unauthorized practice.
30. Have law schools develop/provide resources for incubator programs to save scarce legal aid resources.
31. Make SBM pro bono standards mandatory and police them.

C. Simplification and More Effective Process

32. ***Promote mediation; make early mediation automatic in most lawsuits, with a mediator/special master involved in early abbreviated discovery and allow lawyer mediators to draft pleadings supporting judgment.***
33. ***Expand use of video conferencing (now in all MI courtrooms) to link courts with each other, jails or any Internet video source; evaluate remote systems as adequate substitute for personal courtroom appearances.***
34. ***Streamline simple probate to an administrative level and raise dollar amount for unsupervised probate.***
35. ***Publish LEAN AAC project results with info for legal aid, firms, and courts on how to pursue LEAN process.***
36. ***Migrate routine low-level, non-jail offense negotiation such as ordinance or traffic violations to an online process; assure evaluation of ODR systems for effectiveness and fairness; assure human intervention can be used as needed.***
37. Develop online dispute resolution services at least initially in small claims and commercial cases up to a certain dollar amount; consider exploring i-court or online adjudication based on electronic submissions.
38. Seek input from practitioners and models from other jurisdictions regarding whether the amount of pre-trial discovery and practice should be tailored on a case-by-case basis considering the parties' financial resources and similar issues (e.g., whether length of depositions should be limited; time limits set on trials; all non-dispositive motions resolved by magistrates; initial production of documents and witnesses compelled [like FRCivP 26(a)(1)]; different tracts for different procedures created, such as for summary jury trials and administrative style tribunals; identification of types of disputes that could be removed entirely from the judicial process).
39. Establish statewide venue specialty courts (linked to single e-filing portal) in areas where a judge with specialized knowledge could create efficiencies.
40. Monitor any experience in pilot projects or other jurisdictions to guide exploring whether to allow non-judicial officers to enter (simple, no minor children) divorce decrees based on signed notarized forms.

To: 21st Century Task Force, Access & Affordability of Legal Services Committee Chairs

From: Work Group 1: Triage, Referral and Access to Online Information

Re: Summary Rationales and Recommendations on all Charges

Date: October 5, 2015

Work Group 1 rearranged our original topics and came up with 5 charges to consider, each outlined below. We also discussed some overarching concepts that will impact all of our charges. We kept coming back to these major questions as we talked about expanding uses of technology within the court system, and in rethinking our existing justice system. Our major concern is assuring commitment to the core values and rule of law. We believe that it is important to consider how to protect the hallmarks of justice as we innovate and change the justice system. It is important to preserve the fundamental rights of the public, individuals, families, and businesses as we discover new ways of using technology, develop new systems, and creatively apply the skills and judgment of human problem solvers.

As our final recommendation, we call for the development of justice innovation guidelines to apply to new efficiencies in the justice system so that the rights of those whose disputes are so resolved are respected and preserved. This concept is similar to what LSC and Richard Zorza created in 2013 with regard to e-filing. Safeguards to consider are adequate oversight, to ensure that due process remains in place and that there is application of appropriate human judgment in cases; standardized guidelines, particularly surrounding new technology and private company involvement in essential court functions; evaluation, to ensure that access to justice for all is increased, not decreased, by new technologies; and transparency, to ensure that litigants have access to an unbiased trier of fact and fundamental and procedural fairness.

CHARGE #1: LEGAL HEALTH CHECK-UP TOOL

The Vision: To create an interactive and engaging gamified tool that evaluates and increases a person's knowledge of legal issues that impact their daily lives; evaluates their preparedness for future legal problems that can be avoided/prepared for; gives the user a score and a "report card" of outstanding issues they can use to seek legal counsel or address on their own; interacts with the statewide triage system and Michigan Legal Help so users can easily learn more or take needed action steps; and encourages people to improve their legal health score by learning more or taking action. Built on the premise of a medical check-up that tells a patient if they are healthy and in what areas they could improve, this vision adds the game-based incentives so users voluntarily engage with the tool.

The Rationale: People with legal problems often don't identify them as such [cite ABA/Sandefur article] and often legal problems get worse if they are not addressed in a timely manner. This tool will help avoid these extra complications and consequences by enabling people to proactively deal with their legal problems. The game would also bring people into the system that would otherwise have their heads in the sand or be focusing on some other effect or resolution that won't solve the underlying legal

problem. The tool would help people make sense of an increasingly complex legalistic society and getting understandable information into the public's hands will translate into greater public confidence in the legal system.

The Project: The sky is the limit with a challenge like this. Michigan Legal Help proposed this challenge at a Legal Hackathon in May 2015 and three teams built prototypes; the winner build an Oregon Trail-themed game where participants answered questions and their preparedness (or lack thereof) determined their level of success in the journey. It was built on a JavaScript canvas using html5. This is but one way the tool could be designed and built. Ideally, the game would be fun and engaging and encourage the public to address their legal issues head-on and without fear. While the game could stand alone, it would be best to be linked to Michigan Legal Help and the statewide triage system so the game could provide an easy point of entry into the systems designed to assist self-represented litigants get the help they need to resolve their legal problems.

The steps needed in building this project would be: identify and recruit stakeholders; identify funding; design front end user interface; contract with programmer and graphic designer to build the tool; determine scope of a pilot and create content for a pilot; do usability testing with pilot; evaluate effectiveness; refine design and content based on findings; determine scope of complete tool; add content for complete tool; launch and publicize; continue to refine based on feedback; possibly expand scope based on success/use of tool. There are many opportunities for collaboration with various statewide partners.

This tool is different from the triage system (also proposed by WG 1) in several key ways. First, it is aimed at an audience that isn't yet engaged with the legal system or any self-help tools, while the triage system is for individuals who are already actively seeking assistance with legal problems. The goal of the legal health check-up tool is to engage people and help them realize that they have or may have problems that can be solved by the legal system, and how they can use existing tools to better situate themselves. The goal of the triage system is to first guide litigants to places that can help them solve their known legal problems, and secondarily to help them identify additional legal problems needing attention. Both systems will direct some people to resources on Michigan Legal Help, but these key differences between the two tools will impact how they work, what the user interface looks like (i.e., game vs. serious tool), and how they are marketed.

Proposed Timeline: It would take about a year to design and fully develop this tool. It may be well suited for a Technology Initiative Grant (TIG) from Legal Services Corporation, as different states could populate the game with content relevant to their laws. If LSC didn't fund the creation of this tool, perhaps Michigan could partner with other states to co-fund creation of the tool.

Priority level: While this is viewed as important, it would be most useful in conjunction with a statewide triage tool and a Michigan Legal Help website with slightly more depth of content. As such, the priority for this tool would be lower than the other projects proposed as part of Group 1's areas of exploration. Ideally, this tool would be available in the next 3-4 years.

Additional Research Needed: pros and cons of gamification as a learning tool

CHARGE #2: TRIAGE SYSTEM

The Vision: To develop a statewide online triage system to ensure that 100% of Michiganders receive the most cost effective form of legal services that is reasonably likely to provide an outcome reflecting the facts and the law of their cases. The triage system should utilize highly detailed expert systems logic trees to guide litigants to the most appropriate and cost effective resource. The system should also help users identify other problems that have not yet been recognized as legal issues. The system should be mobile friendly, work in on all major browsers and web platforms, and build upon triage systems created by other statewide SRL websites. It should be fully integrated into MichiganLegalHelp.org and interface with online intake systems where available.

The Rationale: Every person who enters the triage system will be given legal information and referrals relevant to their legal problem, ensuring that everyone who enters the system will receive some form of assistance and direction. It will mean more access for more people by connecting them with the best level of assistance based on their skills, legal problem, and available resources. The triage system will also help alert users and attorneys to additional legal problems that clients haven't yet identified.

This triage system will enable legal services programs to focus their resources on those cases and clients which most desperately need them. By using an expert system to pre-screen which cases and clients are eligible for services, then determine which clients and cases require the assistance of an attorney (i.e., are not suited for self-representation) and fall into legal services programs' priorities, Michigan's legal services field programs will be able to direct scarce resources to those clients most in need of their expertise as lawyers. The system can also help users determine if their case is so complex that they might want to consult with an attorney rather than attempt to move forward self-represented. The existence of a triage system can also encourage clients to take advantage of limited scope representation offered by private or legal services attorneys.

Finally, as more and more programs move to online intake, a triage system helps control the appropriateness of cases that come in through online intake applications which require time and attention from intake workers and attorneys. The system will also drive more people to ODR and ADR, and avoid a chain of legal referrals where clients get bounced around from one organization to another, ending at the lawyer referral service.

The Project: The triage system will collect information from users which will identify whether they are eligible for assistance from legal services; what type of legal problem(s) they have; whether they are likely candidates for self-representation; whether they have some resources available for limited scope representation; and whether their problem is one that could be resolved through mediation. Then, users will be directed to one of several local options along the legal services continuum – supported self-help through the Michigan Legal Help website; additional in-person assistance from a Self-Help Center; advice or limited assistance from the Counsel and Advocacy Law Line; advice, limited assistance or full representation from a Legal Services agency or law school clinic; a link to referral services for a private attorney for limited scope or full representation; or referral to mediation in addition to or in lieu of litigation. LiveHelp chat assistance will be available to help people navigate the triage system if needed.

Development of the logic underlying the triage system will be done with a committee of partners from Michigan's LSC funded programs and some additional non-LSC funded legal services programs, including CALL, which provides advice and intake services to about half of the counties in Michigan.

This project follows closely in the footsteps of other projects which used Drupal to build statewide triage systems in MA, CT, VT, and ME. We can build upon their code as well as their logic trees that underlie the triage system, and we can expand upon it to add other functionalities. It will be connected with Michigan Legal Help and will route appropriate users to online intake systems where they are existing in legal services programs by 2017.

Proposed Timeline: This project has been funded by a Technology Initiative Grant (TIG) from the Legal Services Corporation. The Michigan Legal Help Program will take the lead on convening the stakeholders, developing the triage tool, and connecting it to the MLH website. Work on the project is slated to begin in October, 2015; a beta version of the tool should be available by 12/31/16; and the project should be fully launched by 12/31/17.

Priority level: Given that this project has been funded, will bring an immediate benefit to self-represented litigants, clients, and attorneys in Michigan, and is ready to begin, it is a high priority.

Additional Research: continued conversations with administrators of programs that have already implemented similar triage systems to learn from their experiences; research about how to assess someone's ability to represent themselves in court; others.

Overlap/Coordination with other AC Work Groups: There are many goals set forth by other work groups that could or should integrate with the triage system envisioned here. Many of the initiatives to engage and connect pro bono attorneys recommended by WG2 (including online Justice/Internet Representation Program) are natural partners with the triage system, along with the proposal to make unbundled services a common and supported form of legal representation.

There were also several areas of overlap with the recommendations suggested by Work Group 3. Any expansion in the licensing and use of LLLTs would be added to the triage system, guiding litigants to these new resources. If any legal matters are removed from the judicial system as proposed in Axis 3, these changes would also be incorporated and reflected in the logic trees underneath the triage system. Additionally, these recommendations give rise to a concept that a separate triage system could be built and utilized by courts – one that helps assess incoming cases and determines how to most efficiently and effectively handle them (mediation/settlement track vs. trial track vs. solely administrative track). Finally, the alternate dispute resolution recommendations in Axis 6 are also natural referrals in the triage system described in this memo.

CHARGE #3: EDUCATION, OUTREACH, AND EXPANSION OF ONLINE LEGAL INFORMATION TOOLS

The vision: Make the Michigan Legal Help Program even more robust as a centralized location of legal information for self-represented litigants. Do this by adding more content areas, more content, and additional tools. Content areas should be driven by the demonstrated needs of the self-represented community. Content should be developed as quickly as possible given MLH's resources; MLH should continue to engage other lawyers to help contribute to content development. Additional tools should be created within MLH to enable even easier use of resources there (i.e., a triage system to help them find the content they need; something like "pocket" where users can highlight/save articles to read later, etc.). Usability testing should also be done periodically to ensure MLH is user-friendly and accessible.

Expansion should also include the creation of additional Self-Help Centers, as these serve as a higher level of service for self-represented litigants which are coordinated and supported (in part) by MLHP. Self-Help Centers (MLH-affiliates and others) also should strive to expand available resources. In addition to opening additional self-help centers around the state, MLH and other SHCs should incorporate additional levels of services into the centers. Ideally, a model could be developed where patrons can do one or more of the following options at each SHC: a) use computers to access online resources and get assistance from navigators (current common level of service); b) meet one-on-one with navigators, paralegals, LLLTs, or other trained legal assistants to get more in-depth and personal assistance (but not legal advice); and c) meet one-on-one with someone who can give them legal advice – a pro bono or unbundled attorney, LLLT, supervised law student, or other qualified individual. The latter two levels of service may be time limited, limited in scope, and not available for as many hours as the first level of service, but there could be time slots during which SRLs could schedule meetings.

MLH should also increase marketing and outreach efforts to attract as many users as possible. Finally, to truly realize the original vision of Michigan Legal Help, efforts could be made to stop the proliferation of bad self-help resources wherever possible, and curb duplication of efforts to assist the self-represented where they exist.

The Rationale: More and more litigants are self-represented and need a trustworthy, free place to access information and tools. MLH was created to be that resource - it is the most user-friendly, accessible resource for self-represented litigants seeking legal information and referrals. It is statewide so serves people regardless of the resources available in their jurisdiction. Other organizations once tasked with creating resources for SRLs in their jurisdiction can now use those resources for direct service (which cannot be done by MLH). For these reasons, financial resources have been primarily directed at MLH and this should continue to happen, but the resource should continue to expand to serve even more needs of SRLs. Also, because this rich resource exists, more SRLs should be directed to it through outreach and marketing.

The Project: This is, in part, a part of the future planning of the operations of the MLHP and a continuation of the need for various stakeholders to participate in the planning and executing of content development plans, marketing, and outreach related to MLH. Existing partners should be engaged in these efforts, and new partners should be sought out.

Specifically, surveys should be conducted of various stakeholders to determine what the legal information needs of the self-represented population, both English-speaking and Spanish-speaking, are; this should inform the content development plan of MLH. Targeted and new outreach should be increased and done by MLHP and others, both to reach potential SRL users and potential referrers (court staff, legal services staff, etc.). Efforts should be made (by whom?) to discourage courts and legal services offices from duplicating the efforts of MLH, and instead to encourage them to work with MLH to meet any needs they think are currently unmet by MLH. Innovative ideas for additional tools for MLH should be regularly shared with the MLHP for evaluation and possible inclusion with MLH. MLHP staff will also continue to be innovative in expanding MLH to increase MLH's accessibility, usability, and utility.

Partners should be sought to expand the services available at existing self-help centers, and to open new Self-Help Centers around the state. Funding and or staffing assistance should be sought from courts to help open and maintain the SHCs, which provide much help and efficiency to the courts in addition to providing services to self-represented litigants.

Proposed Timeline: This is an ongoing effort, although milestones should be set for various action items listed above. MLHP has obtained a marketing plan and has engaged in steps to increase marketing and outreach to potential users of MLH. A content development plan has been drafted which tries to fulfill the expressed needs of SRLs in Michigan, but can be updated and modified easily. New content is continually being created by MLHP staff, according to the content development plan. Other activities have not yet begun.

Priority level: This is a medium priority level, as much of this work will happen without extra effort by parties outside the MLHP. However, the extra effort and contribution by outside parties would greatly impact the effectiveness of MLHP's efforts to do outreach, education and expansion of MLH's self-help resources, so it should still be somewhat of a priority.

Additional Research: Keeping up to speed on emerging technologies for statewide SRL websites; marketing research; other.

Overlap/Coordination with other Work Groups: Many of the recommendations from the other work groups are things that could be done as part of the expansion of online resources and the Michigan Legal Help Program. Many of the visions of Work Group 3 involve the online resources and self-help centers: adoption of LLLTs or increasing the use of paralegals and legal assistants (Axes 1 and 2) could be integrated into the vision for expanded services at self-help centers; tools to help remove disputes from the legal system (Axis 3) could be developed by the MLHP and housed on the MLH website; and statewide e-filing (Axis 7) is something that MLHP plans to integrate with the MLH website in the future. Furthermore, the entire vision in Axis 4 is related to self-help centers and resources on Michigan Legal Help - these ideas would help guide the expansion of SHCs and the more in-depth integration and acceptance of them by courts. The vision for expanded services at SHCs is closely related to Axis 5, calling for collaborative assistance in self-help centers.

There were also several areas of overlap with the recommendations suggested by Work Group 2. Many of the recommendations related to pro bono work and unbundled legal services are relevant to the idea of expanded services at self-help centers; any of the other changes proposed that would increase access to attorneys (though a civil right to counsel) or involve new types of specialty courts would require new content on the MLH to explain the new rights/resources and how SRLs can access them.

Finally, the concepts involved in WG4's business process analysis can be applied to the systems used within the MLHP that create and support the website, as well as the systems in place in existing and new self-help centers.

CHARGE #4: VIDEO CONFERENCING AND ONLINE DISPUTE RESOLUTION (ODR)

Video Conferencing:

By the end of 2015, the SCAO expects to have completed installation of large monitors and cameras in every Michigan courtroom. The SCAO has also circulated the attached list of recommended video applications by which courts can link to each other, jails, or any internet video source. In short, courts can conduct a wide array of remote activities that reduce the need for personal courtroom appearances.

Online Dispute Resolution:

A distinction should be made between current court functions that could be managed through the internet, and entirely new functions that could provide online intermediaries or adjudicators that help parties reach a resolution of their dispute. The following options generally appear in the order of ease of implementation.

Options for migrating routine low-level offense negotiation (plea-bargaining) to an online process.

- A. Expand traffic online ticket negotiation pilot projects. Currently, four district courts permit certain persons with specific traffic violations to negotiate a reduced offense carrying fewer points. The cases are essentially "triaged" for eligibility for a negotiated resolution based on the driving record and offense type. Dollar amounts are not negotiated. While a formal evaluation will be conducted in 2016, hypothetical advantages of this service include:

To courts/funding units: fewer law enforcement costs related to officers not appearing in court; fewer hearings scheduled; staff flexibility in processing cases as they come in, not just on hearing dates; possibly higher collection rates.

To citizens: Violations can be managed conveniently from anywhere, without having to take time off from work; possible child care savings in an avoided court appearance; possibility of resolving multiple violations across multiple jurisdictions.

Plea bargaining of traffic offenses is a standard practice in courtrooms across the state. The online approach simply permits all parties to conduct the negotiation electronically at everyone's convenience.

- B. Expand online negotiation services to ordinance violations and other offenses not involving the possibility of jail time.

Assuming a successful evaluation of the ticket negotiation projects, online negotiation of ordinance violations and offenses not resulting in jail time could be piloted. Again, akin to the ticket negotiation, the online negotiation would essentially replicate discussions that currently take place in court hallways at the time of scheduled hearings. Anticipated outcomes may include: permitting prosecutors and city attorneys to manage plea arrangements at their convenience; reducing case disposition time; consolidating pleas across counties; increasing collection rates; reducing law enforcement expense in obviating the need for a court appearance; and reducing court staff time in scheduling further proceedings. From a customer service perspective, this approach may permit citizens to avoid time off from work or school, and transportation and child care issues.

Developing online dispute resolution services.

A step beyond simply replicating online negotiations that currently take place in court hallways, courts could provide a number of dispute resolution services, including both ADR and adjudicatory processes.

These processes would require an online interface similar to the online negotiation processes, however they would require more options for resolving, at least initially, small claims and commercial cases up to a certain amount.

- A. **ADR Provided by Community Dispute Resolution Program Centers.** First, in terms of mediation, self-represented litigants might select a referral to a CDRP center for resolution of low level controversies. Procedurally, if all parties agreed to use a CDRP center, court staff could simply replicate online what they currently do: refer the case to the CDRP center. Thereafter, a center would replicate online what it currently does: make an initial contact is to see if parties would like to informally resolve their dispute by staff conveying offers of settlement by telephone or email; set up a face-to-face meeting; or conduct a mediation by telephone, Skype, GoToMeeting, or other online convening application.

Much the same as online ticket negotiation, this option essentially takes the current case management process and puts it online. A number of centers already conduct mediations by telephone, particularly in domestic relations cases where one parent has moved away and postjudgment issues have arisen.

- B. **ADR Provided by Court Staff.** A number of Friend of the Court offices have staff mediators, and the Michigan Court of Appeals formerly had staff mediators, who would meet with parties in an attempt to help them resolve their dispute, or to at least to narrow the issues in dispute.

The SCAO is currently unaware of any court that provides a staff mediator to help resolve general civil disputes. If local financial resources permitted, however, courts could consider offering online dispute resolution services similar to that provided by CDRP centers.

Online Adjudication. A significant step beyond online negotiation and mediation would be courts' managing cases and issuing judgments online, based solely on the electronic submissions and appearances of the parties.

Web-based private companies, offering both online mediation and arbitration are proliferating, and even the American Arbitration Association is developing the ability to resolve disputes by electronic

submission of documents and testimony.¹ eBay claims to resolve 60 million disputes involving commercial transactions online each year.²

Courts of the future may choose to emulate the privately developing systems to be able to issue judgments in the same way that private vendors are offering arbitrated awards. Procedurally, similar to the private systems, litigants could "tell their story" in an online format, submit photos and substantiating documentation, and either participate in an online hearing via Skype or similar service, or waive the opportunity of a hearing. Any hearings would be held electronically.

iCourt. Most ambitiously, a natural progression of the online services noted above may be for the legislature to create an "iCourt" where any number of judges could be assigned to "hear" cases electronically submitted, regardless of their local Michigan jurisdiction, akin to the Court of Claims hearing claims filed from throughout the state.

A Vision from Abroad: The Multi-Tiered Court

Combining a number of triaging and online dispute resolution elements appearing above, and abandoning the assumption that a court necessarily be a physical space, rather than an aggregate of services, Great Britain's Civil Justice Council Online Dispute Resolution Advisory Group, recently issued a report calling for the piloting of triaging and online dispute resolution services in low value claims in civil actions in England and Wales.

The online court would consist of three tiers. Tier 1 would provide online evaluation of a grievance and help classify and categorize the problem, alert parties to their rights and obligations, and help parties understand their options and remedies.

Tier 2 would provide online facilitation. While not specifically denoting that facilitators must be court staff, the facilitators would review statements, photos, and papers submitted by the parties and through negotiation and mediation, whether online or through telephone conferencing, assist the parties in reaching a resolution without requiring judicial review.

Tier 3 would provide online judges who decide cases on the basis of papers submitted online and as part of a structured online pleading process. Telephone or Skype-style conferences may also be arranged.

The Advisory Group recommended piloting this structure in general civil matters up to approximately \$40,000 in controversy, and thereafter expanding the service to family matters.

Conclusion: Quite clearly, the private sector is quickly developing online dispute resolution services as an alternative to citizens' use of the traditional judicial system. Customers will increasingly expect businesses to offer neutral online dispute resolution systems, and vendors are beginning to build those services.³ As much of courts' current constituency increasingly conducts its business online, courts will need to determine whether, and to what extent, to also offer its dispute resolution forums online.

¹ See: Settlementiq: <http://www.settlementiq.com/?gclid=CPzBl8j6gscCFQEdaQodO3YJyw>; VirtualCourthouse: <https://www.virtualcourthouse.com>

² Online Dispute Resolution for Law Value Civil Claims, UK Civil Justice Council, February 2015, p.11.

³ The leading example may be Modria, a company developed by the developer of PayPal's online dispute resolution system. <http://modria.com/>

CHARGE #5: 21st CENTURY JUSTICE SYSTEM: A PROPOSAL FOR RADICAL RETHINKING

Proposal/Recommendation: That Michigan take a leadership role by creating and implementing a model for the 21st Century Justice System.

Proposal: That the State Bar of Michigan call for and take a leadership role in the creation of a Task Force to envision, create and implement a model for a 21st Century Justice System.

Summary Rationale:

The current system does not work for the majority of people. Designed for all to have full representation, the system is a complex, jargon laden, single track system that is ill suited to the legal challenges faced by ordinary people. Barriers persist around cost, accessibility, comprehensibility and usability.

It has been said that three things can be done in response to the lack of access: get people lawyers, make people lawyers or change the system. Much of the response to the access issue has been around the first two – increase pro bono, increase Legal Aid, self help centers, online self help tools, LLLT's, and limited scope representation. There are also some ad hoc efforts to change the system with projects like problem solving courts and expedited trial options.

Michigan is uniquely positioned to undertake a reexamination of how to make our justice system work for everyone. It has visionary leaders and a national reputation for innovation.

Impact on Access to Justice:

This single effort has the potential to create more access than all other efforts combined. A system that is friendly, functional, understandable, useable and works to solve legal problems efficiently and effectively while incorporating all of the core principles and protections that make justice real will be transformative in assuring that everyone has access to justice.

I. Our justice system is no longer working for a majority of people.

Estimates are that in half of all civil cases at least one party is unrepresented. In family cases that number approaches 80%, with half of all cases involving two unrepresented parties. Of the nearly 10 million people living in Michigan 40% cannot meet or barely meet their basic needs. Nationally, 1 in 5 Americans are eligible for Legal Aid. Only a fraction those eligible are able to be served. According to the 2014 SBM Economics of Law Practice Survey the average cost for legal representation in general civil matter is \$245 per hour. It has been reported that 50% of American families could not meet a \$400 expense without incurring debt or selling something. For those just able to meet their basic needs and those who are middle income, the cost of legal representation is out of reach and access to free legal representation does not exist.

In considering the challenges created by growing numbers of self represented litigants Deputy Chief Justice Faulks of Australia noted, “there are three things that can be done in relation to self-representation by litigants: one is to **get them lawyers**, the second is to **make them lawyers** and the third is to **change the system.**” Much of the effort in the Access to Justice movement is focused on the first two. To get people lawyers we must increase the funding to Legal Aid, increase the availability of pro bono representation and lower the cost of legal services. Efforts to make people lawyers include legal self help centers and reliable online legal tools. Other innovations include services provided by other kinds of legal professionals such as Limited License Legal Technicians or changing the way that legal services are provided through limited scope representation. In some places there are ad hoc efforts to change the system with problem solving courts, innovative housing courts or expedited trial options. All of these efforts feel like the proverbial finger in the dike, a valiant effort to stem a growing tide.

In the July 2015 Conference of (State) Court Justices and Conference of State Court Administrators, both groups joined in a Resolution calling for a 100% access to effective assistance for essential civil legal needs. The current Resolution references a 2001 Resolution which stated that the Judicial Branch has primary leadership responsibility in this area. They call upon their members to provide leadership and to work with their state Access to Justice Commissions to develop a strategic plan to meet this goal.

II. What if we decided to rethink how courts work? Or to put it another way, if you were designing a justice system from scratch today, what would it look like?

Our courts are designed for each person using or involved with the court to be represented by a lawyer in a full and unlimited adversarial process. Each filed case is on track toward a trial to adjudicate the various claims or charges unless the parties find a resolution in one of the currently available off ramps – mediation, arbitration, direct settlement or plea bargain. It has been said to be like a medical system where everyone who comes to the doctor’s office or emergency room is scheduled for surgery regardless of their condition.

III. The challenges facing our justice system today raise core practical and philosophical questions that determine the values on which a new system would be based.

What does it mean to be the judge? Is the judge merely an empty vessel knowing and considering only the facts and law provided to her or him by counsel? Or is the judge the smartest person in the room with an understanding of the issues, the law and the facts needed for decision making? Must the judge remain distant or fully engage? Does this depend on whether the parties have counsel? What if one does and one doesn’t? What if it will never again be true that everyone will have a lawyer?

What obligation do we have to those whose lives are impacted by the court? Are parties, represented or not, entitled to understand their rights and responsibilities, the process they are

participating in and the implications of the possible outcomes? Do we have a responsibility to see that they do? Or is it sufficient to make sure people get the right forms and turn them at the right office and show up at the right time, even if they have no real understanding of what they are doing or what it means? Are parties entitled to a simple, clear order that they understand how to follow and can follow? Should any communication to or from the court be required to be in plain, understandable language? Should only those parties who can speak the magic words be able to assert a viable claim or defense? Should mastery of hundreds of rules determine who succeeds or who fails?

Should there be many paths to legal problem solving, dispute resolution and decision making? What would a virtual court option look like and how would it work? How critical is direct human interaction to confidence in courts and outcomes? If technology is necessary, is it sufficient? How do we assure that people get meaningful notice of matters that impact their lives? How do we assure that everyone has sufficient due process? Is win-lose the only possible outcome or are there win-win solutions?

What does a future court look like? Who works there and what do they do? Are there fewer courtrooms and more conference rooms? Is part of it physical and part of it virtual? Does everyone feel welcome and included? Are answers easy to find and understand? Who is there just to help and guide? Is there free parking? Is it open on evenings and weekends? Are there remote locations?

Answers to these and other questions will uncover the values on which a workable justice system can be created. The work must start here. Without question, whatever new model is envisioned it must be transparent, simple, understandable and accessible, focused entirely on meeting the needs of the people who use it.

Bottom line, how do we make 100% access a reality?

IV. Assuring Commitment to Core Values and Rule of Law

Our justice system serves our commitment to the rule of law that stands at the center of our civil society and preserves the democratic values around which we have organized. As fewer disputes need the full attention of our court's traditional adversarial decision-making process, and resources are shifted to more efficient ways to resolve common problems, we need to diligently protect the hallmarks of justice:

- Robust judicial systems to resolve new questions of law, and disputes that require an unusual amount of resources;
- Due process that guarantees notice and an opportunity to be heard, especially in criminal matters;
- Process that guarantees the right to confront witnesses in a meaningful manner, ensuring the trustworthiness of their testimony in criminal matters;
- Application of appropriate and unbiased human judgment and compassion;
- Access to an unbiased trier of fact;

- Fundamental and procedural fairness; and
- Evenhanded application of the law and access to the legal process, regardless of a person’s resources.

V. Call for Justice Innovation Guidelines

We must preserve the fundamental rights of the public, individuals, families, and businesses as we discover new ways of using technology, develop new systems, and creatively apply the skills and judgment of human problem solvers. To that end, we call for the development of justice innovation guidelines to apply to new efficiencies in the justice system so that the rights of those whose disputes are so resolved are respected and preserved.

VI. A Two Step Process: Vision and Implementation

We propose that Michigan take a leadership role in creating and implementing a justice system for the 21st Century. The path to creation and implementation begins with a vision. The first step is to bring together the stakeholders and others do the important work of determining how the 21st Century Justice System will work.

V. Draft Proposal and Reporting Template for the Affordability and Access Work Group

Proposal: That the State Bar of Michigan call for and take a leadership role in the creation of a Task Force to envision, create and implement a model for a 21st Century Justice System.

Reason for Proposal: The Justice System as it is currently structured no longer works for a majority of people.

I. Status Quo

The current legal system is designed and structured for each person using the courts or involved with the courts to be represented by a lawyer in a complex, full and unlimited adversarial process. A majority of people can no longer afford paid legal representation or access free legal representation. Efforts to assist people to be self represented, however successful, functionally mean that people are unrepresented as they attempt to use an overly complex, jargon laden, single trial track system that is ill suited to the legal challenges faced by ordinary people. Barriers persist around cost, accessibility, comprehensibility and usability.

II. Options

- Maintain the status quo.
- Assure everyone has legal representation.
- Fully equip people to function as their own lawyer.
- Change the system to work for the needs of the 21st Century.
- Some combination of the above.

III. Trends

Efforts are underway to more fully fund Legal Aid, persuade more lawyers to provide pro bono services and lower the cost of legal services. Legal self help through legal self help centers and reliable online legal tools is growing. Some innovative efforts have been undertaken on an ad hoc basis including licensing nonlawyer legal professionals, permitting limited scope legal services, and creating specialized courts and court programs. Calls have come from leaders in the Access to Justice movement for broader scale innovations. The July 2015 Conference of (State) Chief Justices and Conference of State Court Administrators passed joint Resolutions calling for 100% access to effective assistance for civil needs.

IV. Analysis

A. Opportunities

Michigan can take a leadership role and be in the forefront of needed, significant change in providing meaningful access to justice for all. A reimagined justice system in Michigan could become a model for the courts of other states. Michigan Courts can become a respected and valued single source for resolving disputes of all kinds in innovative ways that are customer focused, use the best of available technology while maintaining a human touch, and assure a place for everyone regardless of resources. There is also potential for significant cost savings.

B. Risks

Profound systemic change calls for an open, flexible approach. The necessary experimentation will bring some success and some failure. The ability to learn and adjust will be essential. A project of this scope will require the commitment and participation of many, each with individual or institutional interests separate from the project goal. Outsiders will be essential to gaining perspective. Managing multiple stakeholders will be challenging. There will most certainly be push back, criticism, and attempts to derail innovation.

There is a great risk to the system and its current leading constituents, lawyers. Not unlike the external challenges leading to the rethinking of the practice of law, if the system is not recreated by those closest to it, it will eventually be reformed by those separate from it. There are already private courts for some, an outsourcing that may be faster but at a cost only available to an elite few.

There is also great risk in doing nothing.

C. Unanswered Questions and Unknowns

Nearly everything about this project is unknown. There are the writings of Access to Justice advocates to draw from such as Richard Zorza and John Grecian along with legal futurists such as Richard Suskkind. There is also the work of Victor Flango and Thomas Clarke ([Reimagining Courts: A Design for the 21st Century](#)) and other work of the National Center for State Courts.

Outside perspectives will be essential to the evaluation and reimagining process. Often insiders are incapable of asking the hardest questions, challenging underlying assumptions, breaking down a complex structure into essential elements, or imagining different ways of working and being. Applying developing approaches such as social laboratories may be appropriate. ([The Social Labs Revolution: A New Approach to Solving Our Most Complex Challenges](#) by Zaid Hassan)

Much research and many perspectives will be needed in the process.

D. Innovations in Recommendation

Nothing could be more innovative than to suggest a reimagining of the justice system for the 21st Century. It is entirely new.

E. Implementation Strategies

1. Potential Supporters and Allies

There should be support from SBM leaders who imagined and convened the Committee on 21st Century Law Practice as many of the issues overlap. Task Force members were specifically called upon to creatively and with innovation “color outside the lines,” “blow up silos,” and “propose change that makes a difference.” We would hope for leadership from the Michigan Supreme Court and the SCAO. Support will also come from the many already committed to Access to Justice including leaders of the Michigan State Bar Foundation, the legal aid community and the legal self help community.

In reality, everyone is a stakeholder and potential ally. Rich or poor, business or individual a justice system must work in a common sense way for the people who need it.

2. Potential Opponents and Obstacles

A call for change on this scale will always have vocal detractors. There will be issues around structure, function, funding, facilities and personnel that will be challenging in the best of circumstances.

3. Interested SBM Entities

SBM leadership and the Access to Justice Foundation leadership are most likely to be interested.

4. Other Interested Stakeholders or Potential Partners

Michigan Supreme Court; Michigan Court of Appeals; State Court Administrator’s Office; Circuit and District Court Judges, Clerks and Administrators; Counties; Municipalities; the ADR Community; the Legal Self Help Community; Law Schools and Legal Scholars. A project of this scale will garner national attention and may include the National Center for State Courts, and court leadership from other states, and the ABA.

5. Possibilities for Technology

Once envisioned, proposed changes will most certainly call upon technology. It will be important to remember that technology although essential, is most likely not sufficient. This is, after all, a human enterprise.

6. Intersection with Other Justice System Needs

This is a proposal for a comprehensive vision that would attempt to meet all justice system needs. It must also recognize that the primary focus must be the public as the customer who uses, relies on and must have confidence in our justice system.

7. Staging: Piloting/Timetable/Recommended Steps

Creation and work of a task force for this purpose could begin closely on the heels of the work of the 21st Century Law Practice Committee with efforts made to garner support for the concept as the work of the Law Practice Committee continues. Initial meetings could begin in the spring or summer of 2016 followed by research and reporting. Although there may be piloting of initiatives developed by the Task Force, the visioning work would not have a pilot phase.

8. Role of State Bar

The SBM is in an ideal position to move this proposal forward. The SBM is well connected and well regarded in the national discussions of access to justice and legal futurism and thus has the ability to garner leadership, resources and support for the effort.

Charge 1: Create a Legal Health Check-up tool that...

- evaluates (and increases) a person’s knowledge of legal issues impacting their lives;
- evaluates their preparedness for looming legal problems that can be avoided/prepared for;
- educates people about how to improve their legal health “score”;
- is interactive and engaging;
- interacts with triage;
- gives the user a “report card” they can use to take to an attorney or keep to work on on their own

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

- ABA report last year said that people with legal problems don’t identify them as such
- problems get worse if they are not handled right away, if someone has info that can mitigate or preempt a problem we’re preventing downstream complications
- bring people into the system who would otherwise have heads in the sand
- help people make sense of an increasingly complex legalistic society; trying to navigate complex systems of benefits, funding, etc. - foreign systems, rules and regs.
- good information that people understand can translate into greater public confidence in the legal system

I. Status Quo:

- A. canadian tool and one on stateside legal - tool out of india to simplify their legal principles - one legal?

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

- . create a tool - build it into MLH
- A. create a tool - stand-alone but link into triage, MLH, others
- B. do nothing
- C. partner with another state/national org to build a backbone, then localize it.

III. Trends

- . larger things: public expects to have online tools, is more familiar with how to use them; expect to be able to do it themselves
- A. increase in SRLs
- B. increasing affordability gap in legal services
- C. increasing use of mobile technology
- D. increasing complexity of legal processes
- E. increasing number of people cannot meet basic needs
- F. increasing need for LEP resources
- G. desire to provide services and help for people in rural locations or otherwise isolated
- H. increasing cost of atty services - what is trend? get with Ann Vrooman
- I. non-holistic services - lacking a full understanding of implications of choices,

IV. Analysis needed for any option under consideration:

- . **Opportunities - what’s the best case scenario if the option is piloted or implemented?**

1. build a tool: widely used, directs people to the kind of legal help they need when they need it; lets them know how to access legal help; advocates involved in an earlier stage of a legal crisis, increasing assistance; prevents existing legal problems from worsening; better informed and

engaged public, who have more faith in the legal system, and who may be able to in the future better identify when they have a legal need, and address it; reduce stress and improve quality of life; help people find a lawyer, understand how to ask questions about fee structures, negotiating payment plans, etc. with attys; opportunity to work with the bar on how to get people to lawyers (all kinds, private, unbundled, pro bono, etc.); can build upon MLH which already exists; bring legal tool to people in many places they already come/wait (schools (all levels), DHS, hospital waiting rooms; prisons; libraries, etc.)

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

1. steering someone to the wrong place; how is the info interpreted? not having places to steer users to; id legal needs we can't help meet; can't keep tool updated then tool's purpose fails; no one uses it; people use it to focus on the wrong legal issue or fail to address the more/most important issues; private bar thinks we're taking business away; empty chutes at the end of triage system;

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

1. where is this located? can't exist in isolation. who pays for it? who maintains it? how do you fund it? will it work? should we pilot/test it? will it meet the need that we're trying to meet? who will be the legal authority - who decides what is the accurate legal response to a legal issue? (MLH model, attys make and maintain the content) who decides what topics are included in the tool? what about people who don't fit into the matrix/aren't able to follow any of the options given
2. possibility of a pilot; don't have enough data to predict it; need to map out triage system better to better understand how this will work on the front end of that; literature: look into medical system - WebMD, etc.
3. plan an evaluation to answer the question of whether it meets the need we're aiming for.
4. how to market this?
5. talk to folks in CN and Stateside Legal and NY - how is it going? what is cost? what have they learned? what changes have they made? what would they recommend? what innovations/builds on their tools do they dream of?

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

1. prevention rather than response; shifts resources to the front end to do this; doesn't wait for crises; feedback right away rather than waiting for a talk with an advocate; the fun aspect makes people engage in it, want to improve their score - appeal to competitive feelings; systematic triage is innovative, the links between the pieces - and this is one way of entree into the triage system; potential to help them realize when they need a lawyer and then get linked to one;

D. Implementation Strategies

1. **Potential supporters and potential allies:** MJJ, ICLE, CDRC, MLH; law school clinics, private bar, legal aid programs, legal access community, community advocates/resources; the public; national legal tech community; courts;

2. **Potential opponents and potential obstacles:** MJI, ICLE, CDRC, MLH; law school clinics, private bar, legal aid programs, legal access community, community advocates/resources; the public; national legal tech community; courts; depends on how we do it; depends on messaging around project; commercial self-help enterprises
3. **Interested SBM entities:** CJI, individual sections; other committees
4. **Other interested stakeholders or potential partners:** see 1 & 2; other states; corporate sponsor for the tool; law firms; mlh, unbundled services system; MSC (esp the folks behind the learning center - MJI);
5. **What are the possibilities to increase effectiveness through technology (e.g. apps, online tools/systems)?** it is an online system/tool; use gamification;
6. **How might this intersect with or impact other justice system areas/needs?** see above. intersects with triage - primary impact/intersection
7. **Staging**

- a. **Does this option need experimentation or piloting?** yes
- b. **what is the recommended timetable, if any?** ASAP, subject to funding. Ideally, one year to completion, possible pieces earlier
- c. **What is the recommended order of recommended steps, if any?** design front end user interface; research; determine scope of pilot and test; evaluate effectiveness; seek and obtain funding; ID collaborators and lead person; do RFP and hire someone to build the game/tool; build game/create content; test and refine; do pilot to determine cost, to test, etc.; ask law firm to sponsor a pilot;
- d. **What role should the State Bar play, if any?** see above - number of places where the state bar will advise or support this tool; similar role to other access projects, supportive and helping educate members and provide links for the public to lawyers; potential financial support? assess and kill or help implement, prioritize. (same for all the charges, really).
- e. **what resources are needed? what already exists?** funding from foundations, etc.

Charge 2: Diagnostics and Referral, Unified Portal & Pathways that: Ang will fill this in from the conversation we just had.

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

- determines rough eligibility for legal services
- prevents people from wasting time doing intake when not eligible
- saves legal services time and resources not talking to ineligible people
- gives everyone, regardless of income, a resource that is useful (at some level)
- refers people to most appropriate resource given their situation
- avoids chain of legal referrals/bouncing around from one org to another, ending at lawyer referral service
- reaching more people
- drives more people to ODR and ADR
- ID legal problems associated with primary legal problem
- responds to customer service needs/expectations

I. Status Quo.

- existing models in other states
- search MLH, search ZeekBeek, call LRS, resources not linked in any central way.
- not much help identifying the legal problem or where you go with it.

- ad hoc availability of legal information and resources.
- lack of reliability based on internet search results

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

- create build it into MLH
- create a tool - stand alone but link to MLH
- do nothing
- partner with another state to build a triage system that is specialized for MI
- use existing template vs. create new template entirely (something like webmd)
-

III. Trends

- A. larger things: public expects to have online tools, is more familiar with how to use them; expect to be able to do it themselves
- B. increase in SRLs
- C. increasing affordability gap in legal services
- D. increasing use of mobile technology
- E. increasing complexity of legal processes
- F. increasing number of people cannot meet basic needs
- G. increasing need for LEP resources
- H. desire to provide services and help for people in rural locations or otherwise isolated
- I. increasing cost of atty services
- J. non-holistic services - lacking a full understanding of implications of choices,

IV. Analysis needed for any option under consideration:

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

- people get info and affordable legal services (or referral to affordable legal services) of some kind
- 100% of people accessing the system get something useful
- information they get results in a satisfiable outcome to whatever brought them to the site
- centralization of resources
- more efficient for clients and legal services entities

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

- increasingly uninformed litigants? or malinformed litigants?
- tool duplicates existing resources
- too many new clients with legal needs
- steer people to the wrong place
- steer people to a resource that doesn't exist
- inability to fund it beyond a pilot stage

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

- what are the measureable outcomes?
- where does it live? who maintains it? how do you pay for it? how to market it?

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

- becomes CT/MA plus - helps to focus them to the appropriate option rather than giving them a list of all possible - provides targeted results
- unified system - links everything together

E. How can we address LEP/accessibility issues? How will this enhance access for LEP individuals?

- Spanish version? other language versions?
- create tool in plain english
- train library staff, senior centers, other self-help centers/people to use help others (elderly, LEP) to use the tool

F. Implementation Strategies

- 1. Potential supporters and potential allies:** MJJ, ICLE, CDRC, MLH; law school clinics, private bar, legal aid programs, legal access community, community advocates/resources; the public; national legal tech community; courts;
- 2. Potential opponents and potential obstacles:** MJJ, ICLE, CDRC, MLH; law school clinics, private bar, legal aid programs, legal access community, community advocates/resources; the public; national legal tech community; courts; depends on how we do it; depends on messaging around project; commercial self-help enterprises
- 3. Interested SBM entities:** CJI, individual sections; other committees
- 4. Other interested stakeholders or potential partners:** see 1 & 2; other states; corporate sponsor for the tool; law firms; mlh, unbundled services system; MSC (esp the folks behind the learning center - MJJ);
- 5. What are the possibilities to increase effectiveness through technology (e.g. apps, online tools/systems)?** it is an online system/tool, mobile friendly
- 6. How might this intersect with or impact other justice system areas/needs?** see above. intersects with legal health check-up tool; online intake; MLH, courts, zeekbeek, LRS, unbundled referral system; criminal systems; portal into court triage?
- 7. Staging**
 - a. Does this option need experimentation or piloting?** yes (testing, pilot through initial grant cycle; evaluation early and often;)
 - b. what is the recommended timetable, if any?** ASAP, subject to funding. Ideally, two years to completion
 - c. What is the recommended order of recommended steps, if any? [refine later]**design front end user interface; research; determine scope of pilot and test; evaluate effectiveness; seek and obtain funding; ID collaborators and lead person; do RFP and hire someone to build the game/tool; build game/create content; test and refine; do pilot to determine cost, to test, etc.; ask law firm to sponsor a pilot;
 - d. What role should the State Bar play, if any?** see above - number of places where the state bar will advise or support this tool; similar role to other access projects, supportive and helping educate members and provide links for the public to lawyers; potential financial support? assess and discontinue or help implement, prioritize. (same for all the charges, really).
 - e. what resources are needed? what already exists?** funding from foundations, etc. Funding from TIG is a possibility;

Charge 3: education and outreach about existing self-help resources; expanding growing existing self-help resources:

Reason for Charge 3: (include citations to research and data wherever relevant): attempt to centralize resources and coordinate efforts, avoid replication; enable users to stash findings when looking at online resources (pocket); stop proliferation of bad resources and duplication of existing resources? Is this a good time to take the message to the courts again? dedicated outreach people to go to annual meetings of groups (FOCA, Judges Associations, etc.)

I. Status Quo.

- many existing resources - how do they all fit together? many court websites have self-help info; still have people developing stuff - how to we make it more accessible and easier?
- lack of existing resources - limited number of self-help centers
- MLH exists as an attempt to centralize and be the primary resource

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

- increase outreach about MLH, increase resources there; develop more structured partnership or requirements to update info about their orgs on MLH (orgs = courts, legal services, etc.); steadily reduce proliferation of duplicate resources and redirect \$ into coordinated systems
- do nothing
- start over with new centralized site

III. Trends

- A. larger things: public expects to have online tools, is more familiar with how to use them; expect to be able to do it themselves
- B. increase in SRLs
- C. increasing affordability gap in legal services
- D. increasing use of mobile technology
- E. increasing complexity of legal processes
- F. increasing number of people cannot meet basic needs
- G. increasing need for LEP resources
- H. desire to provide services and help for people in rural locations or otherwise isolated
- I. increasing cost of atty services - what is trend? get with Ann Vrooman
- J. non-holistic services - lacking a full understanding of implications of choices,

IV. Analysis needed for any option under consideration:

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

- see above

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

- put all resources into MLH and it gets defunded or otherwise fails;
- lack of buy-in/support
- create well-educated populace who no longer needs attys

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

- who are all the other orgs proliferating bad info or duplicate info?
- who are all the partners needed to make the best system?
- how do you pay for it? how to market it?

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

- ?

- improves efficiency

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

- money and information
- interest and support from potential partners

F. How can we address LEP/accessibility issues? How will this enhance access for LEP individuals?

- Ayuda Legal/continued testing and improvement of accessibility issues; routine user testing
- develop all content in plain english
- train library staff, senior centers, other self-help centers/people to use help others (elderly, LEP) to use the tool

G. Implementation Strategies

- 1. Potential supporters and potential allies:** MJJ, ICLE, CDRC, MLH; law school clinics, private bar, legal aid programs, legal access community, community advocates/resources; the public; national legal tech community; courts;
- 2. Potential opponents and potential obstacles:** MJJ, ICLE, CDRC, MLH; law school clinics, private bar, legal aid programs, legal access community, community advocates/resources; the public; national legal tech community; courts; depends on how we do it; depends on messaging around project; commercial self-help enterprises
- 3. Interested SBM entities:** CJI, individual sections; other committees
- 4. Other interested stakeholders or potential partners:** see 1 & 2; other states; corporate sponsor for the tool; law firms; mlh, unbundled services system; MSC (esp the folks behind the learning center - MJJ);
- 5. What are the possibilities to increase effectiveness through technology (e.g. apps, online tools/systems)?** it is an online system/tool, mobile friendly
- 6. How might this intersect with or impact other justice system areas/needs?** see above. intersects with legal health check-up tool; triage tool, online intake; courts, self-help centers, zeekbeek, LRS, unbundled referral system; criminal systems; portal into court triage?
- 7. Staging**

- a. Does this option need experimentation or piloting?** it was piloted already; continue with evaluation and improvement,
- b. what is the recommended timetable, if any?** ASAP, subject to funding.
- c. What is the recommended order of recommended steps, if any? [refine later]**
- d. What role should the State Bar play, if any?** see above - number of places where the state bar will advise or support this tool; similar role to other access projects, supportive and helping educate members and provide links for the public to lawyers; potential financial support? assess and discontinue or help implement, prioritize. (same for all the charges, really). Provide funding.
- e. what resources are needed? what already exists?** funding from foundations, etc. Funding from TIG is a possibility; is grant-based funding sustainable? Should MLH be a permanently funded part of the justice system?



MEMORANDUM

From: Access and Affordability Committee
Work Group #2 (Access to Quality Legal Counsel)

To: Linda Rexer and Libby Hines (AAC Co-Chairs)

Date: October 12, 2015

RE: Interim Report and Recommendations

Work Group #2 (WG #2) submits this memo in response to the co-chairs' request to summarize its interim recommendations and the access/affordability issues the recommendations could solve.

WG #2 was tasked with reviewing and offering innovations in access to quality legal counsel, including consideration of civil and criminal arenas, impact on the poor, moderate income persons, and other vulnerable groups. WG #2 discussed opportunities to utilize technology, assure cultural competency, facilitate outreach, the effect of ethics rules, and integration into the overall legal system. WG #2 also discussed the need to consider a holistic approach in each sub-work group. WG #2 was comprised of the following sub-work groups:

1. Indigent Defense
2. Civil Right to Counsel
3. Unbundling / Limited Scope Representation
4. Pro Bono / Modest Means / Mandatory CLE / Job Corps
5. Specialty / Problem Solving Courts

WG #2 submits the following interim reports and sub-work group templates which outline the status quo, recommendations, and the access and affordability issues solved by these recommendations of each sub-work group.

I. Indigent Defense.

Status Quo.

In a study requested by Senate Concurrent Resolution 39 of 2006, the National Legal Aid and Defender Association (NLADA) found that Michigan failed to provide competent representation to indigent criminal defendants in either Circuit or District courts. In the year-long study of ten

representative counties, NLADA concluded that none are constitutionally adequate and Michigan ranked 44th out of all 50 states in per capita indigent defense spending. In short, Michigan is violating the Sixth Amendment right to counsel.

The Michigan Indigent Defense Commission (MIDC) was created by PA 93 of 2013, and signed into law by Governor Snyder in July of 2013. The MIDC is an independent agency, housed within the judicial branch of state government and comprised of 15 members appointed by the governor with the recommendation of the legislature, Supreme Court, the SBM, and representing interests from the criminal justice system. Advocacy by SBM played a major role in creation of the MIDC.

The commission has a mandate to:

- Collect and compile data for the review of indigent defense services in Michigan;
- Create minimum standards, submitted to the Michigan Supreme Court, to ensure all systems providing indigent defense meet constitutional obligations for effective assistance of counsel;
- Work with counties to implement plans to meet the standards and measure the performance of counties in providing public defense services;
- Award state funded grants to county systems to bring their system in compliance with the new minimum standards;
- Standards should make sure delivery of services is independent of the judiciary, workload is controlled to permit effective representation, and an attorney has the training and experience that matches the complexity of the allegations against his/her client.

Recommendations.

WG #2 recommends that the SBM support all aspects and operations of the MIDC including proposed minimum standards, compliance plans, and full funding. WG #2 also recommends that the SBM advocate for certain preferred compliance plans, such as a public defender office. WG #2 recommends that the SBM continue working to ensure the state legislature fully funds the compliance plans required by the MIDC Act.

Access/Affordability Issues Solved by this Recommendation.

As the MIDC continues its mandate, Michigan will begin a cycle where local systems design compliance plans to meet minimum standards for indigent defense and the state funds these compliance plans. Through this process, the state of Michigan will properly fund indigent defense and residents who cannot afford a lawyer will get the best possible representation.

Courts will comply with requirements for training, education, and qualifications of attorneys; compensation and caseloads; client interviews; expert witnesses and investigations; assignment of counsel at every stage of the proceeding; and independence from the judiciary.

The MIDC anticipates that through compliance plans, many systems will adopt a public defender model of representation, while others will maintain appointed counsel systems that properly provide indigent defense.

II. Innovations in Civil Right to Counsel.

Status Quo.

The mandatory right to appointed counsel in civil cases within Michigan is granted in a very limited manner. Current areas where there is a mandatory right to appointed counsel include cases involving abuse and neglect, civil commitment, guardianships, conservatorships, paternity cases, and others.¹ However, in many proceedings there is not the right to appointed counsel, including cases involving foreclosure, landlord/tenant, many family law cases, and a broad range of other types of cases.² Consequently, many indigent civil litigants are at risk of losing basic human needs due to the mere fact that they cannot afford an attorney.

When John Pollock, of the National Coalition for a Civil Right to Counsel, presented to the State Bar of Michigan in 2014, he discussed the importance of the availability of counsel in “basic human needs” cases that impact litigants’ shelter, sustenance, safety, health, human rights and dependent custodial issues (e.g., foreclosure, landlord/tenant, child custody, guardian, juvenile, DV, family, elder, civil commitment, civil contempt, immigration, school discipline).

Nationwide, current trends reflect broad support for the appointment of counsel in many basic human needs related cases, such as housing (foreclosure, landlord/tenant) cases. Some jurisdictions, like California and Washington, D.C., provide counsel in an even wider range of civil cases (e.g., housing, domestic violence, elder abuse, guardianship, probate conservatorship, public benefits, custody, LGBTQ rights).

As the committee discussed issues related to Civil Right to Counsel (CRTC), several themes emerged that were consistent with and built on Mr. Pollock’s presentation. WG #2 members noted that the need for civil right to counsel should mean the right to “counsel” in the broadest sense—i.e., including out of court legal advice, assistance in administrative proceedings, assistance in both state and federal systems. “Counsel” should also refer not only to an attorney in the courtroom but referrals to appropriate support for non-legal needs directly

¹ See “Future of Michigan” attached chart for a complete list.

² See “Future of Michigan” attached chart for a complete list

related to the legal case, such as housing, transportation, employment, health care, public benefits, and mental health or substance abuse treatment.

Recommendations.

WG #2 proposes the initiation of a pilot program that will ultimately enhance and broaden access to justice for indigent litigants in civil cases and recommends that the SBM assist with the implementation of a pilot program in Michigan. The proposed structure of the pilot program will be a legal services/pro bono model, with centralized monitoring and implementation of pilot programs by the State Court Administrator Office (SCAO) or other state agency (vs. county-by-county implementation).

WG #2 supports the provision of counsel in all the “basic human needs” cases including:

- a. advocacy to prevent and address violence against women and children;
- b. advocacy to prevent homelessness, with a special focus on the current tax foreclosure crisis;
- c. advocacy to protect families’ income, such as garnishment defense and bankruptcy;
- d. advocacy to protect disability related income, such as social security/SSI cessation and overpayment cases;
- e. advocacy in juvenile and school discipline cases; and
- f. advocacy in child custody cases.

WG #2 also recommends that the SBM explore a fundraising plan consisting of: (a) legislative appropriation; and (b) a carve out from the current judiciary budget. Over time, the Bar might look to foundation funding (especially in the pilot phase) or a possible court fee increase. The funding strategy needs to be developed in consultation with the Michigan State Bar Foundation, the Michigan Indigent Defense Commission, and the Legal Services Association of Michigan. On a programmatic level, this proposal will need to coordinate with pilot partners and stakeholders and understand political considerations.

Finally WG #2 recommends that the implementation of a CRTS pilot program coordinate with the Online Triage System currently proposed by AAC – WG #1.

Access/Affordability Issues Solved by this Recommendation(s).

The implementation of a CRTS pilot program in Michigan will ensure that litigants have the right to counsel in cases that involve “basic human needs,” which include actions potentially affecting a litigants’ shelter, sustenance, safety, health, human rights, and dependent custodial issues.

III. Innovation in Unbundling.

Status Quo.

In limited scope representation (LSR), which is also referred to as “unbundling,” attorneys provide only discrete legal services that are agreed upon in advance, rather than full representation. LSR often involves providing legal advice, coaching, and document preparation for parties proceeding *pro se*. LSR attorneys may also be utilized to mediate conflicts, negotiate settlements or make limited appearances in court on behalf of clients who otherwise represent themselves in the case.

[Michigan Rule of Professional Conduct 1.2\(b\)](#) allows the objectives of representation to be limited with client consent after consultation. [Ethics. Op. RI-347](#) (April 23, 2010) affirmed that the practice of LSR, including assistance drafting documents without disclosing the attorney’s involvement or entering an appearance is permitted under this and other Michigan ethical rules. Still, as the opinion notes, court decisions that regard certain LSR practices with disapproval are often based on court rules, rather than ethical rules, so the rules of civil procedure must also be considered. However, Michigan’s court rules are silent as to key LSR practices such as limited appearances and document preparation assistance. In states like Michigan, where court rules do not explicitly allow LSR practices or provide guidance on the process, attorneys are often hesitant to provide the services, out of an abundance of caution. And without court rules that explicitly allow LSR, attorneys practicing it are in fact at risk, as some Michigan attorneys have discovered.³

Further, MRPC 1.2(b) lacks the important client safeguard present in [ABA model rule 1.2\(c\)](#), which requires that the limited scope be “reasonable under the circumstances.” Since some cases, such as complex litigation and cases in which the client is not capable of effective self-representation are not appropriate for LSR, this is an important principle. A rule requiring that the limitation be reasonable protects clients by placing a duty upon the LSR attorney to use

³ See *e.g.*, *Evangelist v. Green Tree Servicing, LLC*, CIV. 12-15687, 2013 WL 2393142 (E.D. Mich. May 31, 2013) *motion for relief from judgment denied*, CIV. 12-15687, 2013 WL 3981001 (E.D. Mich. Aug. 2, 2013) (Case was filed in Wayne County Cir. Ct. and subsequently removed to federal court. In an opinion issued three years after Michigan Ethics Op. RI-347 endorsed undisclosed document preparation assistance under the Michigan Rules of Professional Conduct, the court warned attorney that “ghostwriting” is “unethical and subject to serious sanctions” under the Federal Rules of Civil Procedure), *and Kircher v. Charter Tp. of Ypsilanti*, No. 07-13091, 2007 WL 4557714 (E.D. Mich. Dec. 21, 2007) (unreported). (The *pro se* plaintiff was fully represented by counsel in related state and federal cases, and claimed to have used a document drafted by attorney of record in those cases to draft his *pro se* pleadings before this court. The court noted that similarities between the pleadings and the fact that counsel knew *pro se* litigant’s rationale showed that attorney provided “substantial assistance” which the court found improper, notwithstanding that attorney may not have actually assisted in *drafting* the documents. The court threatened sanctions, including dismissal of federal case, if attorney suspected of providing assistance continued without entering an appearance).

professional judgment in assessing whether the case is appropriate for LSR. The assessment should take into consideration the type of case, the facts, and whether the client appears to have the capacity and access to the necessary resources to effectively proceed *pro se* with the expected level of LSR assistance.

While most jurisdictions simply started with the adoption of the model rule allowing LSR, a version of which now exists [in all 50 states](#), over many years of practice it has become clear that additional rules and supports are essential to provide vital procedural guidance and protections for both attorneys and clients. [Over 30 states](#) (not including MI) have now gone beyond the model rule to provide additional rules to provide increased clarity and encourage the practice. Additionally, entire sets of comprehensive rule and related standardized court and practice forms have emerged in several states to facilitate the rules. These rules and forms address key practical areas including obtaining consent and documenting the limited scope agreement, entering limited appearances and withdrawing by notice, whether and how document preparation assistance must be disclosed, who should get service in an LSR context, how to determine whether communication should be directed toward the SRL or the LSR attorney, and the provision of orientation and practical resources for all stakeholders.

It is true that limited scope practices are already practiced in Michigan and allowed under ethics rules. And other jurisdictions, like Minnesota, have opted to create LSR programs without additional rule changes. However, both attorneys and clients are better protected when rules are clear and provide sufficient procedural guidance. In addition, supportive components including practice support, educational resources, referral mechanisms and integration with self-help resources help ensure that LSR programs are high quality and easily accessible.

In order for Michigan to fully maximize the benefits of LSR and create a system capable of addressing the significant amount of unmet need and protect partially-represented litigants, modifications to the court rules and the creation of a supportive LSR system are likely necessary.

Recommendations.

1. WG #2 recommends that the SBM support the creation of a high quality (ethical, accessible, effective) LSR system including all vital supportive components noted below, including comprehensive rules and forms, educational and practice resources, a referral system, integration with self-help resources, and evaluation.
2. WG #2 recommends that the SBM be encouraged to appoint a special committee charged with reviewing the components and content suggested by WG#2 to recommend the specific content of rule changes and additional components necessary to create a high quality LSR system and the strategies to implement the system without undue delay.

Access/Affordability Issues Solved by this Recommendation(s).

Since LSR requires a much lower level of attorney commitment than full-representation, it is less costly, putting legal assistance within the reach of many low and moderate income individuals. Clients benefit from legal representation in critical areas of a matter, attorneys benefit from having more paying clients, and courts benefit from increased efficiency due to an attorney's expertise on an otherwise self-represented litigant's case. More than 30 states have special rules and experience on LSR which will help us address questions and assure quality.

IV. Innovation in Pro Bono.

Status Quo.

In Michigan, pro bono has become a well-established tradition and many Michigan lawyers strive to fulfill the Voluntary Pro Bono Standard, which provides:

All active members of the State Bar of Michigan should participate in the direct delivery of pro bono legal services to the poor by annually:

1. Providing representation without charge to a minimum of three low income individuals; or
2. Providing a minimum of thirty hours of representation or services, without charge, to low income individuals or organizations; or
3. Providing a minimum of thirty hours of professional services at no fee or at a reduced fee to persons of limited means or to public service or charitable groups or organizations; or
4. Contributing a minimum of \$300 to not-for-profit programs² organized for the purpose of delivering civil legal services to low income individuals or organizations. The minimum recommended contribution level is \$500 per year for those lawyers whose income allows a higher contribution.

In addition to guidance on pro bono provided by the Voluntary Pro bono Standard, Michigan Rule of Professional Conduct 6.1 provides: "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this responsibility by service in activities for improving the law, the legal system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

The need for additional pro bono service in Michigan is greater now than ever. From 2000 to 2013, the population eligible to receive free legal aid increased by more than 53%. However, legal aid programs lack the resources to serve all who need help. The following recommendations provide innovations on ensuring greater access to justice for all Michigan citizens regardless of income.

Recommendations.

1. Pro Bono Systems in Michigan.

WG #2 recommends that the Bar continue to support the work of the Assessment Implementation Committee. The SBM completed a Pro Bono Assessment⁴ in February 2013. The Pro Bono Initiative formed and continues to support an active committee working on the implementation of the report's recommendations (please see attached). WG #2 believes that this report provides detailed and sound recommendations on strategies to improve pro bono in Michigan.

2. Modest Means Legal Services.

The WG #2 is researching these programs, but has **no** recommendations at this time.

3. Continuing Legal Education.

WG #2 has **no** recommendations at this time.

4. Job Corps / Incubator Programs / Equal Justice Fellows.

WG #2 recommends that scarce legal services resources not be repurposed into training programs for under-employed law graduates. WG #2 notes that there are three basic Job Corps / Incubator Program models—private bar sponsored placements; law school placements; and legal services based placements. WG #2 recommends that the primary criteria for evaluating these programs is the contribution they make to access to justice by expanding services to clients. The models all raise the question of whose responsibility it is to train and support new unemployed and underemployed law graduates. WG #2 believes that this is primarily a law school responsibility, and also recommends that the pro bono community in Michigan continue to explore all these models consistent with its other recommendations.

5. Unbundling / Limited Scope Representation.

WG #2 supports the recommendations of the Unbundling work group.

⁴ An Assessment of Pro Bono in Michigan Report:
<http://www.michbar.org/file/programs/pdfs/probonoreport2013.pdf>

6. MCR 8.120 (Law Student Practice).

WG #2 recommends that MCR 8.120(A) be revised to make it clear that law students working with non-profit organizations providing free legal services primarily to low income clients are eligible to practice under the rule even if the primary purpose of the organization is population-based, not income-based.

7. Emeritus Attorneys.

WG #2 recommends that Rule 3(F) of the Rules Concerning the State Bar of Michigan be revised to provide that emeritus attorneys may continue to practice law on a pro bono basis with the supervision and support of a MCR 8.120 qualified organization.

8. Online Justice/Internet Representation Program.

Michigan (through the Legal Services of Northern Michigan's (LSNM) Internet Representation Project) is one of several states that have experimented with on line pro bono advice programs. Recently, the ABA has announced plans to create a national program modelled after the Tennessee Open Justice program. WG #2 recommends that the PBI, in consultation with the Michigan Legal Help program, investigate and possibly support a statewide program in Michigan. WG #2 recommends that any such program be coordinated with Michigan Legal Help, with the statewide intake triage system discussed in other sections of this report, and with the existing LSNM program.

9. Expansion of Law School Clinical Programs.

WG #2 is cognizant of and applauds the many experiential education (clinic) offerings of Michigan's law schools. These programs play a key role in reducing the justice gap. In addition to the direct service that these programs provide, they are important in educating the next generation of lawyers regarding each lawyer's professional responsibility in supporting access to justice; the special legal needs of the poor; and the importance of pro bono to the low income community and the court system. The work group recommends that the Bar encourage law schools to expand these offerings; the Work Group recommends that law schools focus their clinical efforts on the unmet legal needs of low income persons; the Work Group recommends that law schools consider making clinic participation a mandatory requirement for graduation.

10. Resource Development for Civil Legal Aid.

An important element of the Voluntary Standard is the donation option—a lawyer may donate \$300 or \$500 per year to a qualified legal services program in lieu of pro bono service. Nationally, private funding has been the fastest growth area for legal services funding over the past 10 years; nationally, private funding exceeds funding from the federal Legal Services program. In Michigan, the primary vehicle for legal services

funding is the Access To Justice Campaign—a private giving campaign jointly supported by the State Bar of Michigan (SBM), the Michigan State Bar Foundation (MSBF), and the state’s legal services programs. This campaign was created in 1997.

While the ATJ Campaign has been a success, the Work Group believes that there is still room for growth in private giving to legal aid. The Work Group understands that recently a SBM/MSBF group has begun to plan approaches to expand the Campaign, especially within the large law firms and corporate legal departments. The Work Group encourages the Bar to continue to lead these efforts and to continue to look for opportunities to expand the Campaign.

Access/Affordability Issues Solved by this Recommendation(s).

All of WG #2’s recommendations either support increased pro bono legal services or encouragement of financial donations to non-profit legal aid programs and the Access to Justice Fund, which help provide increased access to the legal system.

V. Innovations in Problem Solving /Specialty Courts.

Status Quo.

Traditional criminal and civil court practice involves an adversarial process in which one side “wins” and the other “loses”. There is pressure to “move” cases, with case disposition deadlines by case type. Criminal cases are incident-based. Recidivism is high. “Specialty courts,” including Drug and Sobriety Courts, Domestic Violence Courts, Veterans’ Treatment Courts, and Mental Health Courts -- have specialized dockets that address the underlying issues that contribute to criminal behavior (drug and alcohol abuse and addiction, mental health issues, domestic violence, homelessness).

Such specialty courts, also known as “problem-solving courts,” incorporate a less adversarial, and more holistic approach to each case. Courts collaborate with community agencies to provide intensive services to participants, under close judicial supervision. Problem-solving courts also address accompanying non-legal issues such as employment, housing and education. Judges who preside over problem-solving courts receive specialized training in treatment issues.

Recommendations.

WG #2 recommends the adoption of problem-solving principles and best practices to conventional court, which is an entirely different way of viewing and acting in the justice

system and a major shift in current judicial philosophy. With such a shift, court practice would be less adversarial, more collaborative and holistic, and focus on improving treatment outcomes, thereby reducing recidivism and making the community safer. At the same time, it would save money by reduced incarceration.

WG #2 also recommends that the State Bar should take a leadership role in advancing this new way of justice. The traditional, adversarial process should be relaxed and a more holistic and collaborative model used to achieve proven, better outcomes for individuals and the community.

Access/Affordability Issues Solved by this Recommendation(s).

Effective implementation of this recommendation would intersect with all aspects of the justice system and improve it in measurable and as yet “unmeasurable” ways. For example, in Washtenaw County, implementation of a homeless court (Street Outreach Court) has changed the way people treat and refer to people experiencing homelessness. Instead of demeaning comments or “hiding” the problem; police, prosecutors, and other individuals ask to get help for someone who is homeless.

STATE BAR OF MICHIGAN

**21st CENTURY
PRACTICE**



Access and Affordability Committee

Report of

Work Group #2: Access to Quality Legal Counsel

October 12, 2015

STATE BAR OF MICHIGAN
**21st CENTURY
PRACTICE**



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Access Committee

Charge 1: Draft Report from the Innovations in Pro Bono Work Group

Recommendations:

1. *Pro Bono Systems: The Bar completed a Pro Bono Assessment in February 2013, see Attachment 1. There is an active committee working on the implementation of the recommendations of that Assessment, see Attachment 2. The Work Group believes that this report provides detailed and provides sound recommendations on strategies to improve pro bono in Michigan. The Work Group recommends that the Bar continue to support the work of the Assessment Implementation Committee.*

2. *Modest Means. The workgroup is researching these programs. There are no recommendations at this time.*

3. *Continuing Legal Education. The workgroup decided not pursue a proposal on a mandatory CLE program at this time.*

4. *The workgroup discussed several different Job Corp models in Michigan, which generally take new lawyers and place them in a supervised environment. The current models are:*

a. *[OCBA Mentor-Match Program](#). In this program, the mentor guides and advises the mentee on a pro bono case. Local legal services providers refer eligible cases to the OCBA program.*

b. *[UD Mercy Law School Incubator Program](#). The Incubator Program provides a supportive environment for new attorneys who are committed to beginning a Michigan based solo or small firm practice serving low and moderate income individuals. In exchange for this commitment, and 100 hours of pro bono services, selected attorneys receive valuable training and tools to build their own independent and sustainable law firm.*

c. *[Wayne Alumni Law Group](#). This program is a new, independent law firm created by Wayne State University Law School to help new attorneys move forward and assist Detroit entrepreneurs with growing their businesses and being part of the city's economic comeback. The firm charges its clients for work done, but the billing is about half of what most firms in the area charge.*

d. *[University of Michigan and Michigan State University Law Schools](#). Both schools have programs that provide fellowship funding to legal services programs to sponsor identified recent law school graduates.*

The Work Group also discussed the [Equal Justice Works](#) program. Equal Justice Works Fellowship program is a national program that funds a large number of public interest attorneys each year. These attorneys are generally assigned by subject area—e.g., foreclosure, community economic development, immigration, civil rights, homelessness, access to healthcare, and domestic violence. More than 80% of fellows continue doing public interest work after their fellowship ends.

However, there have been relatively few EJW fellows in Michigan, primarily due to administrative and funding issues relating to the program.

The Work Group notes that there are three basic models—private bar sponsored placements; law school placements; and legal services based placements. The Work Group recommends that the primary criteria for evaluating these programs is the contribution they make to access to justice by expanding services to clients. The models all raise the question of whose responsibility it is to train and support new unemployed and underemployed law graduates. The Work Group believes that this is primarily a law school responsibility. The Work Group recommends that scarce legal services resources not be repurposed into training programs for under-employed law graduates.

The Work Group recommends that the pro bono community in Michigan continue to explore all these models consistent with the recommendations noted above.

5. Unbundling. The Work Group discussed and supports the recommendations of the Unbundling Work Group.

6. MCR 8.120 (Law Student Practice). The Work Group recommends that MCR 8.120(A) be revised to make it clear that law students working with non-profit organizations providing free legal services primarily to low income clients are eligible to practice under the rule even if the primary purpose of the organization is population-based, not income-based. The Work Group notes that there are numerous effective legal services programs (e.g., housed in DV shelters) whose primary purpose is service to a vulnerable population that is not wholly comprised of low income persons; however, a significant majority of the clients served by these programs are low income.

The Work Group discussed a broader proposal—to expand MCR 8.120 to permit any law student working with any lawyer who was providing free services to a low income person to appear in court under the supervision of that attorney. The Work Group was concerned that the system created by the proposal did not provide sufficient structure or quality assurance for law students or clients. The Work Group was also concerned about the possibility of creating inconsistent definitions of client eligibility. The Work Group was concerned that setting up systems to assure eligibility and quality would involve a great deal of administrative cost and effort for a relatively small number of cases.

7. Emeritus Attorneys. The Work Group recommends that Rule 3(F) of the Rules Concerning the State Bar of Michigan be revised to provide that emeritus attorneys may continue to practice law on a pro bono basis with the supervision and support of a MCR 8.120 qualified organization.

8. Online Justice/Internet Representation Program. Michigan (through the Legal Services of Northern Michigan's (LSNM) Internet Representation Project) is one of several states that have experimented with on line pro bono advice programs. Recently, the ABA has announced plans to create a national program modelled after the Tennessee Open Justice program. The Work Group recommends that the PBI, in consultation with the Michigan Legal Help program, investigate and possibly support a statewide program in Michigan. The Work Group recommends that any such program be coordinated with MLH, with the statewide intake triage system discussed in other sections of this report, and with the existing LSNM program.

9. *Expansion of law school clinical programs. The Work Group is cognizant of and applauds the many experiential education (clinic) offerings of Michigan's law schools. These programs play a key role in reducing the justice gap. In addition to the direct service that these programs provide, they are important in educating the next generation of lawyers regarding each lawyer's professional responsibility in supporting access to justice; the special legal needs of the poor; and the importance of pro bono to the low income community and the court system. The Work Group recommends that the Bar encourage law schools to expand these offerings; the Work Group recommends that law schools focus their clinical efforts on the unmet legal needs of low income persons; the Work Group recommends that law schools consider making clinic participation a mandatory requirement for graduation.*

10. *Resource Development for Civil Legal Aid. An important element of the Voluntary Standard is the donation option—a lawyer may donate \$300 or \$500 per year to a qualified legal services program in lieu of pro bono service. Nationally, private funding has been the fastest growth area for legal services funding over the past 10 years; nationally, private funding exceeds funding from the federal Legal Services program. In Michigan, the primary vehicle for legal services funding is the Access To Justice Campaign—a private giving campaign jointly supported by the State Bar of Michigan (SBM), the Michigan State Bar Foundation (MSBF), and the state's legal services programs. This campaign was created in 1997.*

While the ATJ Campaign has been a success, the Work Group believes that there is still room for growth in private giving to legal aid. The Work Group understands that recently a SBM/MSBF group has begun to plan approaches to expand the Campaign, especially within the large law firms and corporate legal departments. The Work Group encourages the Bar to continue to lead these efforts and to continue to look for opportunities to expand the Campaign.

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

I. Status Quo

There is a robust pro bono initiative which has numerous subcommittees working on identified projects. 21st Century Committee should coordinate with and build on these initiatives.

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

NA

III. Trends

There has been significant growth in pro bono, with a great deal of activity and support from the ABA, the State Bar, the federal Legal Services Corporation, and large law firms. There has also been a significant increase in private funding for legal services programs. This is an opportune time to significantly expand these efforts.

IV. Analysis needed for any option under consideration:

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

- B. Risks – what’s the worst case scenario if the option is piloted or implemented?
- C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? To make a decision? Is further research of the literature needed, or is original research (surveys or pilots) needed?
- D. What is innovative about this option? (Innovation means a new idea or approach that is creative or a game-changer. It can refer to a new issue or a new approach to an old problem.)
- E. What resources will be necessary to implement this idea?
- F. Are there any language access barriers that need to be addressed?
- G. Implementation Strategies
 - 1. Potential supporters and potential allies
 - 2. Potential opponents and potential obstacles
 - 3. Interested SBM entities
 - 4. Other Interested stakeholders or potential partners
 - 5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?
 - 6. How might this intersect with or impact other justice system areas/needs?
 - 7. Staging
 - a) Does this option need experimentation or piloting?
 - b) What is the recommended timetable, if any?
 - c) What is the recommended order of recommended steps, if any?
 - 8. What role should the State Bar play, if any?

This workgroup is recommending action in a number of areas. These ideas should be prioritized and then developed in conjunction with all the pro bono stakeholders—legal services programs/LSAM; law firms; law schools; local and specialty bar associations; and the Michigan State Bar Foundation. The State Bar, through its PBI plays a critical leadership and coordination role.

Innovations in Civil Right to Counsel

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

I. Status Quo – **See “Future of Michigan” Chart attached**

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

III. Trends –

As a point of reference, we examined Civil Right to Counsel pilot programs implemented in various jurisdictions. (See “Future of Michigan” Chart attached). The trend reflects broad support for the appointment of counsel in housing cases. Some jurisdictions, like California and Washington, D.C., provide counsel in a wide-range of civil cases (e.g., housing, domestic violence, elder abuse, guardianship, probate conservatorship, public benefits, custody, LGBTQ rights).

IV. Analysis needed for any option under consideration:

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

When John Pollock, of the National Coalition for a Civil Right to Counsel, presented to the State Bar of Michigan in 2014, he discussed the importance of the availability of counsel in cases that impact litigants’ shelter, sustenance, safety, health, human rights and dependent custodial issues (e.g., foreclosure, landlord/tenant, child custody, guardian, juvenile, DV, family, elder, civil commitment, civil contempt, immigration, school discipline). It follows that the best case scenario will be Michigan’s implementation of a pilot program that guarantees litigants the right to counsel in all of these areas.

As the committee discussed these issues, several themes emerged that are consistent with and build on Mr. Pollock’s presentation. (a) Members noted that the need for civil right to counsel should mean the right to “counsel” in the broadest sense—i.e., including out of court legal advice; including assistance in administrative proceedings; including assistance in both state and federal systems. “Counsel” refers not only to an attorney in the courtroom but refers to “counsel”, including referrals to appropriate supports for non-legal needs directly related to the legal case such as housing, transportation, employment, health care, public benefits, and mental health or substance abuse treatment. Effective “counsel” means that lawyers should be aware of and understand how to access resources in their community and should help connect or refer clients to appropriate services. (b) While the committee supports the provision of counsel in all the “basic human needs” areas identified by Mr. Pollack, the committee highlighted six areas of pressing need in Michigan: (i) advocacy to prevent and address violence against women and children; (ii) advocacy to prevent homelessness, with a special focus on the current tax foreclosure crisis; (iii) advocacy to protect families’ income, such as garnishment defense and bankruptcy; (iv) advocacy to protect disability related income,

such as social security/SSI cessation and overpayment cases; (v) advocacy in juvenile and school discipline cases; (vi) advocacy in child custody cases.

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

The worst case scenarios would be: (i) if the pilot program failed (as did the TX pilot program and part of the Boston pilot program), (ii) if the pilot program was not uniformly implemented among the various counties selected for the pilot; and (iii) if the pilot program failed to secure adequate funding and support.

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

(a) Should there be a CLE requirement?

(b) how would the appointed counsel be trained and who would conduct the training;

(c) Identification of Counties in which pilot programs will be implemented;

(d) How to pay court appointed attorneys so there's an incentive;

(e) Length of Pilot Program;

(f) How can we prevent the failure of the TX CRTS pilot from happening in MI;

(g) Will the pilot program apply to appellate proceedings?

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

Currently, the mandatory right to appointed counsel in civil cases within Michigan is granted in a very limited manner. See “Future of Michigan” attached chart. Indigent civil litigants, therefore, are at risk of losing basic human needs due to the mere fact that they cannot afford retained counsel. This Option proposes to initiate a pilot program that will ultimately, enhance and broaden the access to justice for indigent litigants in civil cases.

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

Funding – we preliminarily propose that the Bar explore a fundraising plan consisting of: (a) legislative appropriation; and (b) a carve out from the current judiciary budget. Over time, the Bar might look to foundation funding (especially in the pilot phase) or a possible court fee increase. The funding strategy needs to be developed in consultation with the Michigan State Bar Foundation, the Michigan Indigent Defense Commission, and the Legal Services Association of Michigan. On a programmatic level, this proposal will need to coordinate with Pilot Partners and stakeholders and an understanding of political considerations.

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

Yes. Given the broad range of substantive areas that will be covered by the pilot program, we must ensure that approved and certified court interpreters and multi-lingual court forms and representatives are readily available.

G. Implementation Strategies

1. Potential supporters and potential allies -

National Coalition for a Civil Right to Counsel (NCCRC); State Bar of Michigan; Michigan Advocacy Program; LADA; local school districts; Michigan Indigent Defense Commission; five (5) law schools in MI; Neighborhood Legal Services; SCAO

2. Potential opponents and potential obstacles - **TBD**

3. Interested SBM entities – **CJI; Board of Commissioners**

4. Other Interested stakeholders or potential partners

5. What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)? - **integration with the Michigan Self-Help Website**

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

7. Staging

a) Does this option need experimentation or piloting? **Yes**

b) What is the recommended timetable, if any?

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

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

Ongoing research; identification of political considerations; assistance with managing stakeholders and pilot partners; assistance with identifying funding sources; lobbying of legislative officials

Access Committee

Charge 1

Indigent Defense

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

I. Status Quo

In a study requested by Senate Concurrent Resolution 39 of 2006, the National Legal Aid and Defender Association (NLADA) found that Michigan failed to provide competent representation to indigent criminal defendants in either Circuit or District courts. In the year-long study of ten representative counties, NLADA concluded that none are constitutionally adequate and Michigan ranked 44th out of all 50 states in per capita indigent defense spending. In short, Michigan is violating the Sixth Amendment right to counsel.

National Legal Aid and Defender Association, 2008 - A Race to the Bottom Speed and Savings over Due Process: A Constitutional Crisis. http://www.mynlada.org/michigan/michigan_report.pdf

In October 2011, Governor Snyder created the Indigent Defense Advisory commission to investigate problems and recommend reforms. The Commission found:

- *Michigan's counties offer an "uncoordinated, 83-county patchwork quilt" of public defense systems.*
- *There is no data or transparency to show if taxpayer dollars are spent efficiently or effectively.*
- *There are no statewide standards to define or ensure constitutionally adequate defense counsel.*

<http://michiganidc.gov/wp-content/uploads/2015/05/Final-Report-Advisory-Commission.pdf>

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

The Michigan Indigent Defense Commission (MIDC) was created by PA 93 of 2013, and signed into law by Governor Snyder in July of 2013. The MIDC is an independent agency, housed within the judicial branch of state government and comprised of 15 members appointed by the governor with recommendation of the legislature, Supreme Court, the state bar, and representing interests from the criminal justice system. Advocacy by SBM played a major role in creation of the MIDC.

The commission has a mandate to:

- *Collect and compile data for the review of indigent defense services in Michigan;*

- *Create minimum standards, submitted to the Michigan Supreme Court, to ensure all systems providing indigent defense meet constitutional obligations for effective assistance of counsel;*
- *Work with counties to implement plans to meet the standards and measure the performance of counties in providing public defense services;*
- *Award state funded grants to county systems to bring their system in compliance with the new minimum standards;*
- *Standards should make sure delivery of services is independent of the judiciary, workload is controlled to permit effective representation, and an attorney has the training and experience that matches the complexity of the allegations against their client.*

III. Trends / Activities

The MIDC has released the first set of proposed minimum standards for indigent defense. These standards involve education and training, the initial client interview, experts and investigators, and counsel at first appearance in front of a judge.

These initial standards will be submitted to the Michigan Supreme Court later this year. Following approval by the Supreme Court, the MIDC will work with local jurisdictions to put together compliance plans for implementation of the standards. The state must fund all compliance plans.

The MIDC Act requires mandatory collection of data. The State Court Administrative Office distributed the first MIDC survey on indigent defense to all courts on behalf of the MIDC this summer. To date 116 different Circuit and District Courts have responded.

IV. Analysis needed for any option under consideration:

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

As the MIDC continues its mandate, Michigan will begin a cycle where local systems design compliance plans to meet minimum standards for indigent defense and the state funds these compliance plans. Through this process, the state of Michigan will properly fund indigent defense and residents who cannot afford a lawyer will get the best possible representation.

Courts will comply with requirements for training, education, and qualifications of attorneys, compensation and caseloads, client interviews, expert witnesses and investigations, assignment of counsel at every stage of the proceeding, and independence from the judiciary.

The MIDC anticipates that through compliance plans, many systems will adopt a public defender model of representation, while others will maintain appointed counsel systems that properly provide indigent defense.

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

The MIDC Act requires the State to fully fund compliance plans. To catch up with other states spending

on indigent defense, this long term commitment may well exceed \$50 million. For FY 2016-2017, the Texas Indigent Defense Commission received \$64 million in General Revenue-Dedicated funding and \$7.5 million in General Revenue for a total of \$71.5 million. In FY 2013-2014, the Indiana Public Defender Commission allocated \$18 million to county systems from a dedicated Public Defender Fund. The New York State of Indigent Legal Services received an allocation of \$57 million for FY 2015-2016.

Courts must only comply with minimum standards for indigent defense set by the MIDC if the State funds the compliance plans. The worst case scenario is that the State does not meet this mandate, the minimum standards become advisory, and the MIDC shifts to an agency that simply suggests best practices rather than one with a real mandate to create change. Absent state funding, the expected response to Michigan’s indigent defense crisis would be a return to litigation.

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

The MIDC Act requires mandatory collection of data. The State Court Administrative Office distributed the first MIDC survey on indigent defense to all courts on behalf of the MIDC this summer. To date 116 different Circuit and District Courts have responded.

The overwhelming question is whether the State will comply with the MIDC Act and properly fund the MIDC.

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

The MIDC provides an innovative approach to the problem of indigent defense delivery because it sets up a model where the State will close the gap in funding through grants to the MIDC that permit local counties and courts to control the indigent defense delivery system as long as they meet minimum standards. The State sets standards and pays for a significant indigent defense, but the county controls the delivery system.

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

Full state funding of hundreds of local compliance plans designed to meet the minimum standards promulgated by the MIDC.

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

N/A

G. Implementation Strategies

1. Potential supporters and potential allies
2. Potential opponents and potential obstacles

The systems and compliance plans will represent a major shift from the status quo. All criminal justice stakeholders should support a shift that will allow for the best possible representation for indigent defendants, but certain actors with a stake in the status quo might resist these changes.

3. Interested SBM entities

Criminal law sections and groups; sections involved with court operations; Committee on Justice Initiatives.

4. Other Interested stakeholders or potential partners

Criminal Defense Attorneys of Michigan, Michigan Judges Association, Michigan District Judges Association, Michigan Court Administrators, State Court Administrative Office, State Appellate Defender Office, local bar associations, Prosecuting Attorneys Association of Michigan, and Michigan Sheriff's associations.

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

The MIDC needs to implement data collection and planning systems that allows for easy online reporting of data and submission of compliance plans and budgets.

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

MIDC efforts will intersect with other court data collection and system reform efforts.

7. Staging

- a) Does this option need experimentation or piloting?

Certain compliance plans will be amenable to pilot projects ranging from minor changes to a shift to a public defender office.

- b) What is the recommended timetable, if any?

It is expected that the Michigan Supreme Court will adopt the first set of proposed minimum standards in spring of 2016. Per the MIDC Act, compliance plans will need to be developed within 180 days of this deadline. The MIDC will then have 60 days to approve these plans, at which point, the state must fund the plans. Future minimum standards will follow a similar timetable.

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

SBM should support all aspects and operations of the MIDC including proposed minimum standards, compliance plans, and full funding. SBM might want to advocate for certain preferred compliance plans such as a public defender office.

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

Advocacy by SBM was instrumental in passage of the MIDC Act, and the SBM Board of Commissioners has unanimously approved the first set of minimum standards. The SBM should continue this role by working to ensure the state legislature fully funds the compliance plans required by the MIDC Act.

III. Innovation in Unbundling.

Recommendations.

1. WG #2 recommends that the SBM support the creation of a high quality (ethical, accessible, effective) LSR system including all vital supportive components noted below, including comprehensive rules and forms, educational and practice resources, a referral system, integration with self-help resources, and evaluation.

2. WG #2 recommends that the SBM be encouraged to appoint a special committee charged with reviewing the components and content suggested by WG#2 to recommend the specific content of rule changes and additional components necessary to create a high quality LSR system and the strategies to implement the system without undue delay.

Access/Affordability Issues Solved by this Recommendation(s).

Since LSR requires a much lower level of attorney commitment than full-representation, it is less costly, putting legal assistance within the reach of many low and moderate income individuals. Clients benefit from legal representation in critical areas of a matter, attorneys benefit from having more paying clients, and courts benefit from increased efficiency due to an attorney's expertise on an otherwise self-represented litigant's case. More than 30 states have special rules and experience on LSR which will help us address questions and assure quality.

Status Quo.

In limited scope representation (LSR), which is also referred to as "unbundling," attorneys provide only discrete legal services that are agreed upon in advance, rather than full representation. LSR often involves providing legal advice, coaching, and document preparation for parties proceeding *pro se*. LSR attorneys may also be utilized to mediate conflicts, negotiate settlements or make limited appearances in court on behalf of clients who otherwise represent themselves in the case.

[Michigan Rule of Professional Conduct 1.2\(b\)](#) allows the objectives of representation to be limited with client consent after consultation. [Ethics. Op. RI-347](#) (April 23, 2010) affirmed that the practice of LSR, including assistance drafting documents without disclosing the attorney's involvement or entering an appearance is permitted under this and other Michigan ethical rules. Still, as the opinion notes, court decisions that regard certain LSR practices with disapproval are often based on court rules, rather than ethical rules, so the rules of civil procedure must also be considered. However, Michigan's court rules are silent as to key LSR practices such as limited appearances and document preparation assistance. In states like Michigan, where court rules do not explicitly allow LSR practices or provide guidance on the process, attorneys are often hesitant to provide the services, out of an abundance of caution.

And without court rules that explicitly allow LSR, attorneys practicing it are in fact at risk, as some Michigan attorneys have discovered.¹

Further, MRPC 1.2(b) lacks the important client safeguard present in [ABA model rule 1.2\(c\)](#), which requires that the limited scope be “reasonable under the circumstances.” Since some cases, such as complex litigation and cases in which the client is not capable of effective self-representation are not appropriate for LSR, this is an important principle. A rule requiring that the limitation be reasonable protects clients by placing a duty upon the LSR attorney to use professional judgment in assessing whether the case is appropriate for LSR. The assessment should take into consideration the type of case, the facts, and whether the client appears to have the capacity and access to the necessary resources to effectively proceed *pro se* with the expected level of LSR assistance.

It is true that limited scope practices are already practiced in Michigan and allowed under ethics rules. And other jurisdictions, like Minnesota, have opted to create LSR programs without additional rule changes. However, both attorneys and clients are better protected when rules are clear and provide sufficient procedural guidance. In addition, supportive components including practice support, educational resources, referral mechanisms and integration with self-help resources help ensure that LSR programs are high quality and easily accessible.

In order for Michigan to fully maximize the benefits of LSR and create a system capable of addressing the significant amount of unmet need and protect partially-represented litigants, modifications to the court rules and the creation of a supportive LSR system are likely necessary.

Key Findings.

1. High quality LSR is mutually beneficial—clients get meaningful access to legal assistance, attorneys profit, and courts benefit from increased efficiency.

¹ See e.g., *Evangelist v. Green Tree Servicing, LLC*, CIV. 12-15687, 2013 WL 2393142 (E.D. Mich. May 31, 2013) *motion for relief from judgment denied*, CIV. 12-15687, 2013 WL 3981001 (E.D. Mich. Aug. 2, 2013) (Case was filed in Wayne County Cir. Ct. and subsequently removed to federal court. In an opinion issued three years after Michigan Ethics Op. RI-347 endorsed undisclosed document preparation assistance under the Michigan Rules of Professional Conduct, the court warned attorney that “ghostwriting” is “unethical and subject to serious sanctions” under the Federal Rules of Civil Procedure), and *Kircher v. Charter Tp. of Ypsilanti*, No. 07-13091, 2007 WL 4557714 (E.D. Mich. Dec. 21, 2007) (unreported). (The *pro se* plaintiff was fully represented by counsel in related state and federal cases, and claimed to have used a document drafted by attorney of record in those cases to draft his *pro se* pleadings before this court. The court noted that similarities between the pleadings and the fact that counsel knew *pro se* litigant’s rationale showed that attorney provided “substantial assistance” which the court found improper, notwithstanding that attorney may not have actually assisted in *drafting* the documents. The court threatened sanctions, including dismissal of federal case, if attorney suspected of providing assistance continued without entering an appearance).

Since LSR requires a much lower level of attorney commitment than full-representation, it is less costly, putting legal assistance within the reach of many low and moderate income individuals. Clients benefit from legal representation in critical areas of a matter, attorneys benefit from having more paying clients, and courts benefit from increased efficiency due to an attorney's expertise on an otherwise self-represented litigant's case.

Pioneered in the legal aid context to help SRLs in cases such as family law and landlord/tenant, LSR practices have long allowed legal aid entities to serve many more people than would be possible under a strictly full-representation model. However, as the unmet legal need has steadily increased, and cases involving at least one *pro se* party often make up a majority of the cases in almost all civil courts, it has become clear that legal aid and pro bono efforts alone cannot meet the current unmet legal need. Innovations to increase the affordability of private practice legal services are also necessary.

Fortunately, LSR is not only rewarding due to its effectiveness in increasing access to justice for otherwise self-represented litigants, it is also profitable. And the possibilities for LSR practice are as varied as there are attorneys. Many private practice attorneys charge affordable flat rates for their services, while others charge by the hour. Some have exclusively LSR practices that are both profitable and flexible, allowing them to easily control their case-load, even allowing them to work part-time on a seasonal basis when desired. Others use LSR to provide a significant and steady stream of income that often represents between 15 and 30% of their revenue, and which they have credited to allowing them to survive the recession. Some create their own proprietary software, including automated forms and secure client portals that can support virtual practices, allowing them to serve clients throughout the state. Others contract with non-profit firms who provide the technology, simply adding their expertise to the system and billing at a discounted rate, often \$125 an hour. And even those who prefer to avoid technology can offer the same traditional coaching and advice skills they have always used in their full-representation practices. Clients can get needed forms and legal information from self-help centers, and pay the LSR attorneys to review their drafts and provide customized advice on how to proceed.

Even a client who pays the full hourly rate for limited hours can benefit. For example, rather than paying a retainer of several thousand dollars upfront, a client might hire an LSR attorney for a few hours to help enforce a child support order. The client benefits financially from getting the order enforced, the attorney benefits from additional hours paid at the time of service, and the court benefits because the litigant is better prepared and the process runs more efficiently.

2. LSR rules and resources have become more comprehensive to support high quality practice.

While most jurisdictions simply started with the adoption of the model rule allowing LSR, a version of which now exists [in all 50 states](#), over many years of practice it has become clear that additional rules and supports are essential to provide vital procedural guidance and protections for both attorneys and clients.

[Over 30 states](#) (not including MI) have now gone beyond the model rule to provide additional rules to provide increased clarity and encourage the practice. Recently, entire sets of comprehensive rule and related standardized court forms and practice forms have emerged in several states addressing key practical issues. These issues include obtaining consent and documenting the limited scope agreement, entering limited appearances and withdrawing by notice, whether and how document preparation assistance must be disclosed, who should get service in an LSR context, how to determine whether communication should be directed toward the SRL or the LSR attorney, and the provision of orientation and practical resources for all stakeholders.

3. In order to achieve the goal of increased access, rules must balance the interests of key stakeholders.

The primary beneficiaries of LSR should always be self-represented litigants--the foundational goal of any high quality LSR program is to support ethical, accessible and effective legal services that increase access to justice for self-represented litigants. However, in order to achieve these goals, the LSR rules must take into consideration the perspective of attorneys. If attorneys are not willing to offer the types of LSR services clients need most, neither *pro se* litigants nor the courts will benefit. Experience in other states has shown that it is only when rules began to provide assurances, protections and procedural guidance that significant numbers of private practice attorneys become willing to provide LSR.

Rules allowing attorneys to withdraw from limited appearances without court action upon providing notice that they completed their agreements were a turning point in many jurisdictions. Even after the adoption of the model rule allowing LSR, many attorneys would not engage in unbundled practices for fear that judges might not allow them to withdraw, and would essentially require them to provide full-representation without compensation beyond the scope of their agreements. Rules that similarly provide protections for attorneys who provide assistance in drafting documents are also necessary to promote this key practice.

Of course, clients must also be provided protection, especially since they are the intended primary beneficiaries of LSR. And the judiciary also has a stake—LSR rules must facilitate the courts' role in ensuring fairness to all parties and enforcing ethical practices and proper court procedures.

While varied, these interests can be successfully balanced to allow for feasible practice that still includes sufficient protections to support high quality LSR. Recently, several states, including Illinois, Montana, Massachusetts and Kansas have adopted comprehensive sets of ethical and civil procedure rules and supporting forms that address these key practical issues and balance their related interests.

Clients:

- Need access to attorneys willing to offer the types of LSR that are most needed, including limited appearances and assistance drafting documents
- Need attorneys to offer LSR at affordable rates
- Need protections and accountability built in to the rules
- Need clarity—what to expect from LSR attorneys and what their responsibilities as *pro se* litigants are

Client protections include the rule that LSR must be reasonable under the circumstances, and commentary that makes it clear that clients can challenge an attorney’s withdrawal of a limited appearance, but *only* if the attorney did not satisfy the agreement. SRLs should also have access to a plain language orientation about the rules, so that they know what to expect and can hold their LSR attorneys accountable. The rules and orientation should also make clear what the partially-represented litigant’s responsibilities are, including that their signature certifies that their representations are true, what their duties are regarding disclosure of document drafting assistance received, as well as how rules regarding service and communication apply to them.

Attorneys:

- Need protection—ethical, clear guidance on how to practice, including factors and illustrations in commentary to the rules that provides guidance to both judges and attorneys to protect them as much as possible from subjective determinations such as what “reasonable under the circumstances” means
- Need rules that are feasible:
 - To increase the likelihood that attorneys will actually follow the rules, ensuring client protection and procedural transparency and fairness
 - To encourage sufficiently high numbers of attorneys to actually practice LSR—otherwise, these efforts will not benefit clients, attorneys or the court

Attorney protections include assurances in the form of rules that explicitly state that disclosure of document preparation assistance is allowed, and is *not* an appearance. Likewise, rules should explicitly state that identification of an attorney who assisted in document preparation is not a signature for the purposes of certifying the accuracy of the representations—in the case of a partially-represented litigant, it is the SRL who assumes the duty to certify.

In addition, practice is made feasible for attorneys by rules that provide clear procedural guidance yet are not burdensome, such as rules that allow a limited scope appearance to be entered concurrently with the appearance itself. Standardized court forms, case management forms, and free and easily accessible educational resources are also important mechanisms for facilitating LSR practice.

Courts:

- Concerned with fairness to all parties
- Concerned with transparency and candor to the court

- Require clear, understandable rules that will help courts ensure that court rules and procedures are followed

Judicial interests in fairness, transparency and ethical duties are especially at play in rules such as disclosure of assistance with drafting documents. Fairness to the opposing party is also important in rules regarding communication and service—if rules do not clearly place the responsibility on the LSR attorney to notify the opposing counsel under what circumstances to communicate with the attorney versus the client, the opposing side may be put at a disadvantage, unable to contact either of them, due to ethical restrictions on communication with a represented party. Courts also have an interest in rules that are feasible and provide clear guidance, as such rules are more likely to be followed, are easier to enforce, and create more efficient processes.

4. Education is key to high-quality LSR.

The practice of LSR represents a major cultural shift in the practice of law, and will require extra education and a coordinated effort to ensure that all involved understand the new paradigm and what to expect. Educational opportunities for attorneys, judges, and self-represented litigants will be essential to ensure that everyone involved understands the rules and procedures.

Free, standardized orientation resources that address the rules, best practices, and resources available to both LSR attorneys and *pro se* litigants will improve clarity and communication and create appropriate expectations. Such an orientation will also ensure that more LSR attorneys will know and follow the rules, leading to higher attorney confidence and satisfaction, higher quality, safer client services, and less frustration for court staff.

When Florida first implemented rules supporting LSR, no formal educational program was created. An evaluation report submitted after two years of experience found that though LSR was beneficial, there was significant confusion among attorneys, many of whom were not following the rules or using the required court forms to enter limited appearances. The evaluation committee recommended that educational programs be created to address these concerns. In contrast, more recent evaluations in states like Massachusetts and Kansas that required orientation for LSR attorneys engaging in their LSR pilots had extremely high satisfaction rates, likely due to increased clarity and confidence.

5. Trustworthy online referral panels of LSR attorneys that can be easily printed are the most accessible, efficient and effective mechanism for connecting self-represented litigants with LSR attorneys.

Online referral directories increase access for countless litigants and require far less resources to maintain than a traditional staffed referral service. Both Alaska's Unbundled Section of the state bar and the Massachusetts courts host online directories of LSR panel members that include information important to an SRLs decision such as areas of law practiced, rates,

languages spoken and contact information. In order to provide access to SRLs who might not have easy access to the internet, the full listing of the directories is also published in PDF files on the sites. These files can be easily downloaded and printed for distribution in locations that are in high contact with SRLs, such as courts, self-help centers, legal aid offices and libraries.

6. LSR is most effective when SRLs have sufficient self-help support.

To adequately represent themselves, most self-represented litigants will need support in addition to what an LSR attorney can affordably provide. Self-help centers and websites like Michigan Legal Help (MLH) provide a key function by offering automated forms, legal information and help navigating the legal process. These self-help initiatives connect SRLs with the additional resources necessary to represent themselves in the aspects of their case for which they do not have an attorney's assistance. This support increases the likelihood that the LSR will be reasonable under the circumstances, and that the LSR services will be effective.

Successful methods of utilizing self-help resources in tandem with LSR services can range from LSR attorneys sending their clients to self-help centers and vice versa, to the integration of LSR services within self-help centers and websites themselves. Referrals can be made efficient by providing all stakeholders with the same referral materials, including information on both self-help resources and LSR attorney directories, so that judges and court staff, LSR attorneys, library staff, legal aid programs and self-help centers can all refer clients to both systems at once. Additionally, states whose self-help websites include automated forms can consider adding attorney access to client portals so that registered members of a site's internal LSR panel can collaborate with clients online, making services seamless and fully integrated.

7. Pilots are no longer necessary, and recent pilots are now designed to test supportive systems that increase access to high-quality LSR, rather than rules.

In earlier years while LSR was still considered untested, the inquiry was whether or not LSR could be effective. Repeated pilots of LSR have shown success. The growing trend now is to survey other states' rules and practices, vet the rules among a diverse group of key stakeholders, adapt them to local conditions, and adopt the recommended rules without a pilot.

However, pilots can be useful under some circumstances--recent pilots in states like Massachusetts and Kansas have focused on testing and nurturing supportive systems that include comprehensive rules, forms, orientation, referral mechanisms, and sometimes even innovative projects.

8. Informative, effective evaluations can be conducted with simple low-cost methods.

A combination of surveys, informal conversations or targeted interviews, and comment periods have been shown to be sufficient to provide oversight committees with sufficient, meaningful information with which to evaluate the effectiveness of LSR systems. In order to provide the best information about the system, feedback should be solicited from partially-represented litigants, LSR attorneys, judges and court staff. Surveys and targeted interviews of these

stakeholders can help identify areas of the system that are working well, or may need adjustments and additional support.

The evaluation conducted by Kansas is a useful model. The objective in Kansas was to evaluate the effectiveness of forms and best practices such as orientation and a referral mechanism. Over 350 attorneys participated in the orientation programs. The evaluation committee requested regular feedback from these attorneys, and sent surveys to the participating attorneys in three of the five districts. All but one survey respondent reported being satisfied.

Access Committee

Charge 5: Specialty (Problem-Solving) Courts

Reason for Charge 5 (include citations to research and data wherever relevant)

I. Status Quo

Traditional criminal and civil court practice involves an adversarial process in which one side “wins” and the other “loses”. There is pressure to “move” cases, with case disposition deadlines by case type. Criminal cases are incident-based. Recidivism is high. “Specialty courts”, including Drug and Sobriety Courts, Domestic Violence Courts, Veterans’ Treatment Courts, and Mental Health Courts -- have specialized dockets that address the underlying issues that contribute to criminal behavior (drug and alcohol abuse and addiction, mental health issues, domestic violence, homelessness). Such specialty courts, also known as “problem-solving courts,” incorporate a less adversarial, more holistic approach to each case. Courts collaborate with community agencies to provide intensive services to participants, under close judicial supervision. Problem-solving courts also address accompanying non-legal issues such as employment, housing and education. Judges who preside over problem-solving courts receive specialized training in treatment issues. Outcomes for participants completing problem-solving courts are demonstrably better than traditional court. See, for e.g., http://www.nadcp.org/sites/default/files/ndci/PCPII1_web%5B1%5D.pdf. Currently, problem-solving courts do not exist in many areas of the state and, even if accessible, they have the capacity to benefit very limited numbers of participants.

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

Review existing problem-solving courts and identify those with demonstrated effectiveness.

Apply what we know works to conventional court.

Educate all justice system stakeholders on the availability and substance of principles and best practices in problem-solving courts. Integrate these principles and practices at all levels of the justice system whenever possible.

III. Trends / Activities

Within the last ten years, there has been a trend to implement more specialized, problem-solving courts as research has documented their effectiveness.

IV. Analysis needed for any option under consideration:

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

Problem-solving courts achieve better outcomes. By addressing the underlying issues that contributed to the illegal behavior, they better serve individuals and the community and keep the community safer. They are cost-effective. Money is saved from less incarceration and repeated court hearings due to recidivism. See, for e.g.,

<http://www.courtinnovation.org/sites/default/files/CriminalJustice.pdf>

“Pilots” already exist—current, effective problem-solving courts.

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

Risks are negligible to none. The same risks already exist. Problem-solving courts work to lessen those risks. Failure to address underlying issues (serious mental health issues or drug addiction, for example) may lead to additional crimes. With treatment under the problem-solving model and its closer judicial supervision, participants are less likely to engage in criminal behavior.

Problem-solving courts have potential 5th Amendment risks for defendants due to the increased personal interaction between the defendant and the judge. Although problem-solving courts encourage and support treatment and give defendants more chances at successfully completing treatment, there is the potential for a harsher sentence than might otherwise have been imposed if the person fails to successfully complete the program.

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

There is a wealth of research and data on problem-solving courts. SCAO has a person assigned to monitor Michigan Drug, Sobriety, and Mental Health Courts and is one source of grant funding for courts that set up such programs. Problem-solving courts have been encouraged by many national and state organizations, all 50 Chief Justices and State Court Administrators, and the ABA. There is a National Association of Drug Court Professionals and Michigan has a large Association, too: Michigan Association of Treatment Court Professionals (MATCP).

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

The recommendation is to adopt problem-solving principles and best practices to conventional court. This is an entirely different way of viewing and acting in the justice system, a major shift in philosophy. With such a shift, court practice would be less adversarial, more collaborative and holistic, and focus on improving treatment outcomes,

thereby reducing recidivism and making the community safer. At the same time, it would save money by reduced incarceration.

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

Widespread educational and information resources would be needed. To shift from an adversarial system would require a lot of education and training for all stakeholders. Exposure to current, effective problem-solving court dockets would be helpful. See

www.courtinnovation.org/sites/default/files/applying_ps_principles.pdf. The Michigan Association of treatment Court Professionals (MATCP) has annual conferences with excellent training.

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

None that do not already present themselves in conventional court.

G. Implementation Strategies

1. Potential supporters and potential allies

Current judges and stakeholders using problem-solving courts (participants, judges, attorneys, treatment providers, criminal justice partners), MDOC, Michigan Association of Counties, law enforcement, prosecutors, defense attorneys, MATCP.

2. Potential opponents and potential obstacles

Prosecutors, defense attorneys, judges, law enforcement. Funding for necessary training, treatment, and increased drug and alcohol testing is a potential obstacle.

3. Interested SBM entities

Linda Rexer and the Michigan State Bar Foundation, State Bar Committees addressing justice initiatives and access to justice.

4. Other Interested stakeholders or potential partners

MATCP, PAAM, SCAO, criminal defense attorneys, umbrella organizations of treatment providers (including doctors and psychologists), the Department of Health and Human Services, any social service agency, MDOC, CMH.

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

Unknown. Problem-solving courts rely on much interpersonal communication with participants, judges, Probation and treatment providers. Electronic reporting to team

members with releases and timely updates are critical. DCCMIS is the system used by the State to keep accurate data for evaluation of current Drug, Sobriety, Mental Health and Veterans' Treatment Courts. Additional technology to evaluate other problem-solving courts would need to be developed.

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

Effective implementation would intersect with all aspects of the justice system and improve it in measurable and as yet "unmeasurable" ways. For example, in Washtenaw County, implementation of a homeless court (Street Outreach Court) has changed the way people treat and refer to people experiencing homelessness. Instead of demeaning comments or "hiding" the problem, police, prosecutors, individuals ask to get help for someone who is homeless.

7. Staging

- a) Does this option need experimentation or piloting?

No piloting is needed as it is already done (current, effective problem-solving courts).

- b) What is the recommended timetable, if any?

Could begin immediately.

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

Planning, education, implementation.

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

The State Bar should take a leadership role in advancing this new way of justice. The traditional, adversarial process should be relaxed and a more holistic and collaborative model used to achieve proven, better outcomes for individuals and the community.

Future of Michigan - Civil Right to Counsel

Current RTC-Mandatory	Current RTC-Discretionary	Substantive Areas of Law Identified	Approved Pilot Areas	Structure
Abuse/Neglect Proceedings for both accused parents and children	All Basic Human Needs	Areas that impact litigants' shelter, sustenance, safety, health, human rights and dependent custodial issues (e.g., foreclosure, landlord/tenant, child custody, guardian, juvenile, DV, family, elder, civil commitment, civil contempt, immigration, school discipline)	Foreclosure, landlord/tenant, child custody, guardian, juvenile, DV, family, elder, civil commitment, civil contempt, immigration, school discipline)	Legal Services/Pro Bono Model ; centralized monitoring/ implementation of pilot programs by SCAO or other state agency (vs. county-by-county implementation)
minor seeking judicial waiver of parental consent requirement to have an abortion	Counsel for a parent in a third party custody dispute			
Civil Commitment, Civil Contempt	Counsel for a child in any private custody dispute if child's interests not adequately represented			
Guardianship/conservatorship of adults	Counsel for a child in petition for adoption after temporary placement			
Paternity cases (both paternity petitioner and paternity respondents)	counsel for noncustodial parents at termination proceedings			
Person considered a health threat prior to being committed to an institution or subjected to tests	Petition to emancipate-minor and/or parents			

Termination of parental rights- parents and minor				
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Budget	Funding	Stakeholders	Pilot Partners	Political consideration	Questions to Consider
<p>Estimated \$5,000,000 / year (based on analysis of California and Washington, D.C. pilot programs)</p>	<p>Combination of: (a) legislative appropriation; (b) private donor financing; (c) court fee increase</p>	<p>National Coalition for a Civil Right to Counsel (NCCRC), State Bar of Michigan and pilot partners</p>	<p>Michigan Advocacy Program; LADA; local school districts; Criminal Indigent Defense Commission; five (5) law schools in MI; Neighborhood Legal Services; SCAO</p>	<p>TBD</p>	<p>(a) Should there be a CLE requirement? (b) Training; (c) Identification of Counties in which pilot programs will be implemented; (d)How to pay court appointed attorneys so there's an incentive; (e) Length of Pilot Program; (f) How can we prevent the failure of the TX CRTC pilot from happening in MI; (g) Will the pilot program apply to appellate proceedings?</p>

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**MICHIGAN PRO BONO ASSESSMENT ADVISORY GROUP
JULY 31, 2014
NOTES**

Introduction

The following chart includes developments on the implementation of the recommendations from the Pro Bono Assessment through June 30, 2014. This report shows both progress made to date and further actions that will be taken.

AREA OF FOCUS	STRATEGY	CURRENT ACTIVITY	9/24/13 NEXT STEP	WHO?	PROGRESS REPORTED 7/14 AND NEXT STEPS
Create new relationships					
Reach out to non-affiliates (by non-affiliates we mean organizations that have pro bono programs but that are not currently ATJ-approved organizations)	Update Bar website to better present information of interest to non-affiliates—e.g., trainings, malpractice info, etc. Establish and maintain communications with non-affiliates	Website being developed (Rob). This strategy and the strategy on reaching out to organizations will be combined. See the boxes immediately below this one.	When Intern comes on, Rob will focus on this.	State Bar	There was a delay in getting an intern, so Rob was delayed getting started. Our first review of a new request for recognition from a program not currently on the ATJ list reminds us that sometimes there are tensions between programs that lead to competition for pro bono attorneys and financial contributions, and we do not have an identified mechanism to effectively resolve those. See discussion in next section.

AREA OF FOCUS	STRATEGY	CURRENT ACTIVITY	9/24/13 NEXT STEP	WHO?	PROGRESS REPORTED 7/14 AND NEXT STEPS
<p>Convene organizations in community to discuss services and ways pro bono lawyers could assist, as well as organizations that may be using pro bono lawyers on their own now (quality control).</p>	<p>Identify and contact appropriate groups, arrange meeting time and space, develop agenda,</p>	<p>We believe it makes more sense to work on this issue by issue when there is volunteer or staff leadership to reach out to a given community.</p>	<p>Subcommittee of Joan, Bob and Rob to examine and recommend what should happen, how and when</p>	<p>The PBI in collaboration with groups identified on an issue-by-issue basis</p>	<p>To date, the PBI has created workgroups on Veterans' services and on services to the homeless. At its June meeting, the PBI approved a proposal to create an IP pro bono program. The resources needed for these specialized programs vs pro bono produced should be monitored.</p> <p>These groups will continue to meet and we anticipate that new issue groups will be identified.</p>
<p>Outreach to self-help providers</p>	<p>Contact network leaders to see whether pro bono can be incorporated</p>	<ol style="list-style-type: none"> 1. Michigan Legal Help reaching out to use law students. 2. Michigan Legal Help recently hired staff to reach out to Self Help Centers. This staff will assess the current use of pro bono in these centers and whether there is an opportunity to expand this. 3. The Bar Foundation has begun research on unbundling with the hope of developing a specific unbundling 	<p>Ask Michigan Legal Help to identify and reach out to the right people</p>	<p>Linda and MLH staff</p>	<p>Michigan Legal Help began using pro bono law students for live chat in 2013.</p> <p>MSBF is taking the lead on unbundling research.</p>

AREA OF FOCUS	STRATEGY	CURRENT ACTIVITY	9/24/13 NEXT STEP	WHO?	PROGRESS REPORTED 7/14 AND NEXT STEPS
		proposal by the end of 2014.			
Outreach to mediation	Contact network leaders to see whether pro bono can be incorporated. The group is loosely coordinated by Doug VanEpps.	Candace spoke with Doug last fall. One of the ADR groups asked if ADR work was considered pro bono. Rob Mathis prepared a memo addressing this question (and answering it in the affirmative). This issue was presented to the PBI at its last meeting and was approved by an electronic vote.	On hold.	Candace and Rob	Candace or Rob will re-connect with Doug VanEpps after the policy issue is addressed. They can meet with the ADR Section of the State Bar to explain the position of PBI to recognize certain ADR work as pro bono, and to identify ways to expand participation. (Note, Michigan court-affiliated Dispute Resolution Centers process 14,000 cases/year and have a settlement rate of about 70%. The increase in recognized pro bono could be immense.)
Improve efforts among MSBF grantees and ATJ affiliates					
Self-assessment by MSBF grantees	Identify purpose, design self-assessment tool (CA model), define "good pro bono program."		Engage a consultant to develop tools drawing on tools in California and elsewhere	John Tull contracts with MSBF	John has presented a proposal to MSBF. Linda has reviewed and will finalize with John. We expect a report from John and Linda within the next 60 days. Agreement with the approach of a checklist with tools that can support it.

AREA OF FOCUS	STRATEGY	CURRENT ACTIVITY	9/24/13 NEXT STEP	WHO?	PROGRESS REPORTED 7/14 AND NEXT STEPS
Self-assessment by ATJ affiliates	Develop form	John Tull has outlined the elements of a self-assessment check list along with additional tools that will help programs assemble data from clients, program staff, and pro bono lawyers.			ATJ affiliates are covered by John's proposal.
Local bar leadership focus groups	Dialogue with local bar, develop agenda and arrange meetings, convene focus group, follow up	We need to finalize details on the assessment process.	John look at this as possible part of the self-assessment		John's proposal includes input from private attorneys—but to obtain this information through a survey of pro bono lawyers, not focus groups of local bar leadership.
Enhance the culture of pro bono in Michigan					
Reach out to next generation	Law students	The law schools are already quite active in pro bono—3 of the 5 schools have representatives on the PBI. Others participate in the annual workshop or on other bar committees. Rob did a memo (2011) summarizing all law school clinics and pro bono programs.	Bob reaches out to the PBI Law School group.	PBI—Bob will take the lead	There is a lot going on here. All 5 schools have active pro bono or public interest programs. The LSC regulation is being revised to include law student pro bono. The National Center for Access to Justice is actively promoting pro bono requirements through state courts and through law schools.
Reach out to next generation	New lawyers	No statewide structure to bring in new lawyers. There are conditions (e.g., lots of new lawyers; local bar interest) that make this a		PBI	Both UD Mercy Law School and the Oakland County Bar Association received ABA mini-grants to support incubator/mentoring programs.

AREA OF FOCUS	STRATEGY	CURRENT ACTIVITY	9/24/13 NEXT STEP	WHO?	PROGRESS REPORTED 7/14 AND NEXT STEPS
		significant issue in some communities—but not all. We see this as a local Bar issue that we will monitor.			
Engage senior lawyers	Use retired legal aid lawyers to provide legal aid services through programs, clinics, outreach	Candace obtained and initially reviewed lists of some former legal services lawyers. This was not an efficient approach.	We did not discuss this as a separate strategy, nor assign responsibility	Candace	We think this is best considered as a sub-strategy of the general direction to “engage senior lawyers” discussed below.
Engage senior lawyers	Engage senior committees of local bars	There will be a pro bono panel at a Master Lawyers event in August.	Identify senior lawyer committees and contact	State Bar staff	After the August MLS session, Rob will send an e-mail to local bar senior lawyer committees asking them to report on their level of activity and any projects that they are sponsoring.

AREA OF FOCUS	STRATEGY	CURRENT ACTIVITY	9/24/13 NEXT STEP	WHO?	PROGRESS REPORTED 7/14 AND NEXT STEPS
Engage senior lawyers	Reach out to law firms	PBI and representatives of large firms are already active in this area.		PBI	Candace will talk to Thom Linn about ideas for senior lawyers.
Expand large law firm/corporate counsel	Sponsor annual forum for large firm coordinators, invite other cities; co-counsel on impact cases; adopt issues Identify and share best practices and develop capacity to support and encourage expansion of pro bono in large firms.	The MI-Firm Pro Bono group has been pretty effective in convening the large firms and in facilitating discussion of individual cases and of projects and policy issues. The MI-Firm group is launching an IMPACT pro bono program (DV cases in Wayne County) in July 2014. Also, there was a significant expansion of the Circle of Excellence in 2013—including a high % of firms at the Leadership Level.		Large firm work group, Jennifer B, Kim Paulson, Heidi Naasko, Thom Linn.	The PBI will continue to work with the MI-Firm group. We will continue to look for opportunities to engage large firms in Central and Western Michigan.



**FINAL REPORT OF WORK GROUP 3 OF
THE ACCESS AND AFFORDABILITY SUBCOMMITTEE TO THE 21ST
CENTURY LAW TASK FORCE**

NOVEMBER 2, 2015

CONFIDENTIAL

Do Not Distribute

Co-Chairs:

Antoinette Raheem

Chris Hastings

Members:

Ashley Lowe

Cheryl Nodarse

David Santacroce

Diane Paulsen

Laurie Orlando

Marcela Westrate

Thomas Linn

SBM Support:

Laurin' Thomas

Jeffrey Barker

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A. EXECUTIVE SUMMARY

The Work Group was charged with reviewing Washington’s and other states’ efforts to deploy “Limited License Legal Technicians.” We approached the task with zeal and an open mind, but came back to two interrelated concerns:

1. There is of yet no data demonstrating that LLLTs are an effective tool for controlling legal costs and increasing access to justice; and
2. There is of yet no data demonstrating that LLLTs can adequately protect the public. Since LLLTs would have only limited legal training, they might not be able to spot issues outside their training.

We urge patience with the LLLT idea as data develops in Washington and California, so that Michigan may have the benefit of it as we develop our own plan. Creating new categories of licensure requires a sea-change in thinking about how professionals are licensed, how they are regulated, and how they do their work. Change is certainly necessary, but repeating an experiment that is still underway, without information about its success, does not appear wise. We recommend revisiting LLLTs in 3-5 years. See Charge 1.

Work Group III believes the lowest-hanging fruit to be harvested is the “unbundling” within the scope of Work Group I’s charge. We are excited about several ideas, however, that fall within the scope of our charge. We see three core strengths in this State:

1. The overarching commitment of the State Bar to regulation that emphasizes the protection of the public: "No organization of lawyers can long survive which has not for its primary object the protection of the public," said Roberts P. Hudson.
2. A growing and successful network of legal self-help centers, where Michigan residents may find free legal resources and triage.
3. The Michigan Legal Help website (<http://michiganlegalhelp.org/>)

Work Group III believes the ideas from within our charge that should be prioritized draw on these three strengths. This is our vision—three pillars to help Michigan residents with legal problems:

- Self-help centers in every county or circuit, staffed by trained employees or volunteers who distribute legal information and forms;

- A more comprehensive website that can provide form documents and court forms
- Licensed attorneys providing services on both a comprehensive and “unbundled” basis

Critical to the effective use of these pillars is new category of professional, a “lay navigator.” These individuals are specially trained in available resources, to guide Michigan residents between these three pillars, as well as to the plethora of other helping agencies (social services, psychological, health services, governmental services, charities, clergy, etc.) they need to resolve the issues before them.

Toward realizing our vision, we suggest the prioritization of six (seven?) specific charges¹:

Charge 8: Creation of a “gold standard” for self-help centers that other new and existing centers may emulate.

Charge 9: Seeking legislation requiring each Michigan county or circuit to form and support a non-profit self-help center, and appropriating funds to do so.

Charge 11: Expansion of the Michigan Legal Help website into other areas of law, to compete head-to-head with the likes of LegalZoom.

Charge 2: Creation of a new category of professional, the “Lay Navigator,” and establishment of training and perhaps licensure or regulation of that category.

Charges 14/15: Making early mediation automatic in most lawsuits and post-judgment divorce disputes, with a special master or mediator involved.

Charge 16: Allowing lawyers involved in mediating or arbitrating cases to draft pleadings supporting judgment on the resolution (note relationship to Work Group 1’s charge).

While the six charges above are the core of our vision, other ideas are related and significant, perhaps even essential to their implementation:

¹ The Work Group has retained the numbering system it created for development of like ideas together. As a result, while similar ideas are in proximity with one another in our final report, favored ideas are not sequentially numbered here.

Charge 19: Adopting a rule-based definition of the practice of law (and unauthorized practice), so that attorneys and non-attorneys alike can understand the boundaries of the profession of law.

Charge 10: Standardization of court practices and forms to a single, user friendly paradigm, so that they may be distributed online and in self-help centers and will be accepted by every court.

Charge 17: Establish a single filing portal to electronically file all Michigan actions [related to Charge 19].

Charge 18: Establish statewide-venue specialty courts [linked to Charge 17].

Our remaining ideas sort into two additional categories: ideas that we think are useful and worth pursuing now or presently, as they are not resource intensive; and ideas we do not believe should be implemented at this time, but which should be revisited periodically. Appended to this report is a chart sorting ideas into their respective bundles.

B. Work Group 3—Priority Charge Alignment

I	PRIORITY CHARGES
Charge 8	Creation of a “gold standard” for self-help centers that other new and existing centers may emulate
Charge 9	Seeking legislation requiring each Michigan county or circuit to form and support a nonprofit self-help center, and appropriating necessary funds
Charge 11	Expansion of the Michigan Legal Help website into other areas of law, to compete head-to-head with the likes of LegalZoom
Charge 2	Creation of a new category of professional, the “Lay Navigator,” and establishment of training and perhaps licensure in support of that category
Charges 14-15	Promote mediation; make early mediation automatic in most lawsuits, with a mediator/special master involved in early, abbreviated discovery
Charge 16	Allow lawyers involved in mediating or arbitrating cases to draft pleadings supporting judgment on the resolution [this idea is a sub category of Work Group I’s charge]

II	CHARGES RELATED/ESSENTIAL TO PRIORITY CHARGES
Charge 20	Adoption of a rule-based definition of the practice of law (and unauthorized practice)
Charge 10	Standardization of court practices and forms to a single, user friendly paradigm, so that they may be distributed on line and in self-help centers and will be accepted

	statewide by every court
Charge 18	Establish a single filing portal to electronically file all Michigan actions [related to Charge 18]
Charge 19	Establish statewide-venue specialty courts [linked to Charge 17]

III	RECOMMENDED CHARGES
Charge 4	Expand use of paralegals/legal assistants within the current regulatory framework by providing new training to attorneys on using paralegals to contain costs
Charge 7	Administrative Probate—Further streamline simple probate to an administrative level. Changes include raising the maximum amount allowed to avoid supervised or unsupervised probate
Charge 12	Create spaces in existing and new self-help centers for collaborative law efforts, and encourage other professions to use those areas.
Charge 13	Integrate enhanced legal services (whether attorney pro bono or self-help) into existing social services paradigms. Encourage the adoption of holistic representation programs in criminal law, child advocacy and other areas.
Charge 16	Remove the ‘v.’ from matters that should be considered non-adversarial, especially family law
Charge 23	Make current State Bar pro bono standards mandatory and police them

IV	NOT RECOMMENDED AT THIS TIME, BUT MONITOR
Charge 1	New training regimen and licensing for new categories of professional: Limited License Legal Technicians (LLLTs)
Charge 3	Expand the Michigan Immigration Clerical Assistance Act, MCL 338.3451, et seq., or replace it with something not quite so meaningless
Charge 5	Loosen the strings on paralegals and legal assistants by modifying the regulatory framework—paralegals still work under supervision of lawyers, but with expanded powers, similar to physician assistants
Charge 6	Administrative divorce—allow non-judicial officers to enter divorce decrees dissolving childless marriages, based upon signed, notarized forms
Charge 21	Creation of a “domestic peace corps,” governmental or non-profit, that provides no or low cost poverty law services
Charge 22	Re-imagine law licensure to require service of the type identified in Charge 24 above. Certain law graduates with jobs that guarantee training could buy out of the scheme, creating revenue to support it.

C. Charges on the Final Reporting Template

AXIS ONE: LLLTs

Charge 1: New Training Regimen and Licensing for new categories of professional: Limited License Legal Technician (LLLT)

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

Lawyers make a large investment in education, that they expect (and must) recoup in their rates. Many Michigan residents cannot or choose not to pay those rates. Licensing a category of service provider that has a smaller investment could result in lower rates.

I. Status Quo

There is no concept of Limited Licensed Legal Technicians (LLLT) in Michigan. In Washington State, however, there is an infant system for licensing LLLTs in the area of Family Law, although there is no specific subject matter areas stated in the Order. Washington State began licensing individuals in 2015 pursuant to Order approving the LLLT program dated June 15, 2012:

<http://www.wsba.org/~media/Files/WSBA-wide%20Documents/LLLT/Supreme%20Court/Legal%20Technician%20Rule.ashx> (Order, Rule, and Dissent)

There is no written definition of what constitutes the Practice of Law in Michigan [other than what is written in the *Dressel v. Ameribank*, 468 Mich 557, 664 N.W.2d 151 (Mich. 2003): “we hold that a person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion and profound legal knowledge.”] Only the Unauthorized Practice of Law is demarcated in Michigan: MCL 450.681 (<http://legislature.mi.gov/doc.aspx?mcl-450-681>) and MCL 600.916 (<http://legislature.mi.gov/doc.aspx?mcl-600-916>).

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

Once hard data emerges from the Washington experiment, should that data warrant, adopt in current or modified form the Washington State infant system for licensing LLLTs in the area of Family Law, with possible future expansion into limited areas of Real Estate (residential Landlord-

Tenant and “routine” residential real estate documents²) and Estate Planning³ (simple estates only), following the Washington State model. But first there must be a determination and a definition of what is the Practice of Law so that a carve out can be made of what an LLLT is allowed to handle in accordance with this definition.

GUIDING PRINCIPLES: Task Force Guiding Principles 1-7 are relevant and necessary for this model to work, with the primary focus on 6, the emergence of nontraditional delivery methods and providers. Adoption of the Washington LLLT model in Michigan must be in keeping with all the Guiding Principles, or the Charge should be abandoned.

III. Trends:

One State (Washington State) has implemented an LLLT process, currently with seven (7) people licensed after completion of 2,000 or 3,000 hours of supervised paralegal/legal assistant experience (depends on which type of paralegal degree was attained), completion of the educational criteria, and passing a licensing exam. It is too early to tell if this concept will work and protect the public. There are some other states looking at this concept (and other concepts) Please see: Jurisdictions’ Activity on Alternative Licensed Legal Professionals, May 2015 (attached).

One state, Vermont, has decided against implementing a Limited License Legal Technician (LLLT) process at this time. Please see: The Vermont Joint Commission on the Future of Legal Services, dated September 24, 2015

at <https://www.vtbar.org/UserFiles/files/Commission/Commission%20Report%20-%20First%20Year%20Study.pdf> or <http://sbmblog.typepad.com/files/vermont-futures-commission-report.pdf>

It should be noted that the Washington State has a written definition of the practice of law.

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gagr24

² Michigan has long allowed real estate brokers to draft “routine” residential real estate documents for their transactions, so long as they have an interest in the transaction and do not charge a fee. See, [Ingham County Bar Assn v Walter Neller Company, 342 MI 214; 69 NW2d 713 \(1955\)](#). In [Dressel v. Ameribank, 468 Mich 557 \(2003\)](#)), the Supreme Court suggested that charging a fee was not a critical part of the analysis, without reconciling its holding in Walter Neller. Dressel also suggests that anything short of the exercise of “legal discretion and profound legal knowledge” may not be the practice of law at all. This has created a good deal of confusion among the bar, and emboldened those who wish to encroach upon the lawyers’ franchise.

³ Please Note: The State of Michigan already has made information available to the public on-line and in print form in a 26-page booklet known as Peace of Mind, whereby a person can create a Statutory Will and Advanced Directive for Health Care. Please see: <http://www.legislature.mi.gov/publications/peaceofmind.pdf>

States with definitions of the Practice of Law:

http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.authcheckdam.pdf (Please note that this is from 2002. An updated analysis is attached as Exhibit 3 to this report)

FTC and DOJ reasoning in 2008 why there should be no model definition for the practice of law:

<http://www.justice.gov/sites/default/files/atr/legacy/2008/03/26/200604.pdf>

IV. Analysis needed for any option under consideration:

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

Members of the public are adequately served for their legal needs in specific areas of the law through the use of LLLT instead of a fully licensed attorney and these limited services are affordable and accessible.

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

1. There is no cost constraint (ie: no limit on what an LLLT can charge the public) so the public could end up paying as much or more than what they would pay an attorney.
2. No data yet suggests that LLLTs save consumers money. The idea is resource-intensive, but may have little or no salutary effect.
3. This is implementing a whole new layer of legal service providers with less stringent educational background who may not have the capability to handle the client matter in a holistic way that an attorney can, fully identifying all relevant issues, especially in the area of issue spotting and may end up harming the public.
4. Persons with lesser financial means may have complicated legal issues that may not be fully addressed by the LLLT, and there is no guarantee that the LLLT would recommend those persons seek help from a licensed attorney.
5. Because implementation of the charge will create a class of non-lawyer that can compete with attorneys, rallying support for this charge within the State Bar will be difficult.
6. This Committee’s charge is Access, and currently there is a segment of the public that cannot afford an attorney, choosing to handle issues on their own or not at all. But because there may be no income limit to those who can utilize an LLLT, the general public may choose to utilize an LLLT instead of an attorney which further erodes the earning potential of attorneys (which is not a charge of this Committee but is a real world potential outcome).

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? No. To make a decision? No. Is further research of the literature needed, or is original research (surveys or pilots) needed? Both. We need to see how this concept is working

in Washington State once the LLLT begin to work on their own (over a 1 year, 3 year, and 5 year basis) which may answer some questions and pose other questions. Close and thorough analysis of how Washington State is progressing is necessary. While it is proposed to help the 80% who cannot afford an attorney (according to ABA stats) it may in effect create 2 classes of legal representation with no limit on affordability.

Several other states are currently evaluating Washington's program. After 3 years, the State of Washington has licensed just 7 persons, raising the question of whether enough of the public could be served to justify the significant time/expense to construct, establish and maintain this licensing program. It is simply too early to tell how Washington's experiment will bear out.

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

The LLLT profession is a new approach to an old problem designed to provide access to justice to those who cannot afford it.

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

1. Education. There will need to be curriculum created and implemented, and schools to educate the persons who would become LLLT, just as Washington State has designed and implemented. Please note that in Washington State the level of education and the rigor of the course curriculum is less than what is utilized at some paralegal programs in Michigan. Thought should be given to requiring a Bachelor's degree (4 year undergraduate degree) first and then the schooling for the LLLT. The idea is to increase the educational standards much like the medical community has done with the professions of Nurse Practitioners and Physicians Assistants.
2. Regulatory: This will necessitate legislation, the creation of a new licensure Board, infrastructure, and regulatory oversight to ensure that the principles of profession ethics and protection of the public is maintained.

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

Not at this time. Should an LLLT program be implemented, steps should be taken to ensure that LLLTs include members of foreign-language speaking communities.

G. Implementation Strategies

1. Potential supporters and potential allies

Paralegal Associations, Law Schools and other Colleges and Universities would start new programs and expand current programs to train these professionals. ICLE and other providers of legal education materials could also market their materials and seminars/webinars to LLLT and create additional educational materials specifically for LLLTs.

2. Potential opponents and potential obstacles

Members of the State Bar generally, specifically members of the sections highlighted (family law, real estate, estate planning and probate) as well as the ever-growing number of solo practices owned by newer licensed attorneys who stand to lose clients and the opportunity to “learn their trade”. If not implemented properly this could reflect negatively on the legal profession generally in the eyes of the public.

3. Interested SBM entities

Standing Committee on Unauthorized Practice of Law, Family Law Section, Paralegal/Legal Assistant Section

4. Other Interested stakeholders or potential partners

ICLE, Legal Aid, Self-Help Centers and other civic-minded organizations are all potential partners.

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

As in all areas of the law, technology will provide a means of getting information to the public faster and easier.

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

While everyone wants all persons in the public to have greater access to justice, the reality is that this program may increase court filings and create more backlogs in the court system so the court system may need to expand as necessary.

7. Staging

a) Does this option need experimentation or piloting?

Yes, but the pilot program is in Washington and is underway. It is not yet ready for the experimentation or pilot stage in Michigan.

b) What is the recommended timetable, if any?

The Washington Model has just begun, and the first LLLT licenses issued this year. There should be analysis of the merits of the program within 3-5 years.

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

First, there needs to be a definition of the Practice of Law, so that a carve out can be made to allow and define the utilization of the LLLT. Thereafter, the regulatory framework, qualifications, and educational curriculum would need to be developed, using Washington as a model.

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

For the present, the Bar should monitor results in Washington and other states. Should LLLT programs garner a successful track record, the Bar could play an advocate's role, but it will be a challenge to find consensus support from our membership. There will be many attorneys who will think that this concept is an onerous invasion onto their profession and on their ability to earn a living. The concept of LLLT has the potential to harm the public if the persons who utilize LLLT instead of an attorney do not get adequate representation.

Also, the SBM may be the licensing arm of the LLLTs, thereby increasing its revenues. For these reasons, SBM may be perceived as having a conflict of interest during the development of the LLLT program.

Charge 2: New training regimen and (potentially) licensing for new categories of professional: Lay Navigators

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

Michigan's strengths in the access arena are its Michigan Legal Help website and its several self-help centers. New resources, however, are needed. One of those resources is people who are trained to lead residents to the appropriate resource. Many people who present at self-help centers have problems that are not legal problems at all, and need to be directed to appropriate social service agencies. Having folks who are trained specifically on the resources available (such resources including lawyers, social service agencies, self-help centers, legal aid clinics, Michigan Legal Help, and other service providers such as clergy, psychologists, social workers, etc.) will help people start at the right door.

I. Status Quo

There is no concept of a legal "Lay Navigator" in Michigan, but Michigan has created some viable local legal self-help centers and websites. Furthermore, there is no written definition of what constitutes the Practice of Law in Michigan to know whether this gatekeeper role would be considered unauthorized practice of law.

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

A. The "Lay Navigator" would be a licensed or registered person or entity that would assist members of the public through the legal maze of their particular legal issue(s) and integrate them into a triage system, such as currently operating Legal Assistance Centers

(<http://www.legalassistancecenter.org/>) and/or the Michigan Legal Help website <http://michiganlegalhelp.org/>. If implemented correctly, this model would provide greater access to justice and the legal system to more of the public.

New York State has recently implemented “Navigators” on a trial basis:
<http://nylawyer.nylj.com/adgifs/decisions15/022415report.pdf>

GUIDING PRINCIPLES: All are relevant, especially 1, 3, 4, 5, and 6

III. Trends

Many cannot afford the costs of an attorney and will attempt to handle their legal issues on their own, especially in the Court system. These people need help knowing what process they need to follow and which form(s) they need to complete and submit to the Court or the Registrar.

IV. Analysis needed for any option under consideration

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

Members of the public may be adequately served by “Gatekeepers” who assist with their legal needs in directing through the process and assisting with the completion of pre-printed standard forms approved for use in the legal court system. People feel empowered to handle Court matters on their own (pro se) as they have received information and guidance from someone who knows the Court system and the forms utilized by that Court (ie: the “Lay Navigator”).

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

Persons may have complicated legal issues that may not be fully addressed by the utilization of a “Lay Navigator,” who should, but may not, recommend that a person seek an attorney due to the complexity of the legal issue.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? Possibly. To make a decision? Possibly. Is further research of the literature needed, or is original research (surveys or pilots) needed? Both. There are training programs in place at self-help centers in Kent, Berrien and Allegan counties. Kent County’s Legal Assistance Center is the longest standing such center and probably has the best developed training program. It is administered mostly to law and paralegal students. The program this charge envisions would be more rigorous than that training, but it provides a starting place. We need to analyze what is happening now, and how it could be augmented, which may answer some questions and pose other questions. What is proposed may help the 80% who cannot afford an attorney (according to ABA stats), but if it is not carefully administered, people may be led to the wrong door, which may in effect create two classes of legal representation.

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

This is a new approach that builds on the existing structure of legal self-help centers and the Michigan Legal Help website.

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

The answer to this question is unknown at this time. “Lay Navigators” may be persons who have a Paralegal education or one or two years of law school, or there may be a special curriculum created and implemented and schools to educate the persons who would become “Lay Navigators”.

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

“Lay Navigators” who speak different languages would be able to help different ethnic groups.

G. Implementation Strategies

1. Potential supporters and potential allies

Law Schools, Paralegal Programs, existing legal education providers

2. Potential opponents and potential obstacles

Members of the State Bar generally, specifically the ever-growing number of solo practices owned by newer licensed attorneys who stand to lose clients and the opportunity to “learn their trade” by taking appointments at the Court. This potential obstacle is surmounted by education. A properly implemented plan will ensure that those needing the assistance of a lawyer are directed to the lawyer’s door, while those the lawyer would not help anyway are directed elsewhere.

3. Interested SBM entities

Standing Committee on UPL, Paralegal/Legal Assistant Section

4. Other Interested stakeholders or potential partners

Legal aid clinics and self-help centers; and individuals or companies that would open up shop in Michigan to employ the “Lay Navigator”.

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

It can be used with other technologies to offer a lower cost option to people.

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

While everyone wants all persons in the public to have greater access to justice, the reality is that this type of program may increase court filings and create more back log in the court system so the court system may need to expand as necessary.

7. Staging

a) Does this option need experimentation or piloting?

Yes.

b) What is the recommended timetable, if any?

This can be implemented fairly quickly because law students are currently doing some of this work, so that system should be expanded and evaluated.

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

First, there needs to be a definition of what is the Practice of Law, so that a carve out can be made to allow and define the utilization of the "Gatekeeper" if that person is not a current law student, as an exception already exists for law students. (See: MCR 8.120; E.D. Mich L.R. 83.21). Next, the regulatory or registry framework, qualifications, and possibly educational curriculum would need to be developed. A twist on this process could be for Law Schools to directly manage these "Gatekeepers."

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

The State Bar's role would be one of advocacy, and potentially of regulation. There may be a conflict of interest if the SBM were the licensing or registration arm of the "Lay Navigator."

AXIS TWO: Paralegals and Legal Assistants

Charge 3

Expand the Michigan Immigration Clerical Assistant Act, MCL 338.3451, et seq., or replace it with something that isn't quite so meaningless.

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

One of the most underserved and preyed-upon populations in Michigan consists of those who require immigration services.

I. Status Quo

Many people in this country illegally would like to be here legally, and many who are here legally would like to be here permanently. This population is impecunious and cannot afford lawyers. To make matters worse, there is a substantial, unlawful black market in "legal" services, most notably in the Hispanic and Chaldean communities. In the Hispanic communities, the problem is particularly heightened by the fact that the word "notario," in Spanish, means "lawyer," while the English phrase "notary" has a substantially different meaning. Non-lawyer "notarios" victimize residents at an alarming rate.

In Michigan, the 2004 Immigration Clerical Assistance Act, MCL 338.3451, et seq. ([http://www.legislature.mi.gov/\(S\(xzvcp2001tvp5gyzvqgrut\)\)/mileg.aspx?page=getobject&objectname=mcl-338-3451](http://www.legislature.mi.gov/(S(xzvcp2001tvp5gyzvqgrut))/mileg.aspx?page=getobject&objectname=mcl-338-3451)) attempted to address the situation by limiting by law the work immigration clerical assistants could do to translation and filling out forms with information provided by the client, outlawing work outside that scope, and providing for registration of immigration clerical assistants. Virtually no one registered for the designation for the simple reasons that it required no meaningful training, permitted no meaningful work, and allowed no meaningful compensation. In 2014 the registration provisions of the Act were repealed. The remaining portions of the Act aren't completely worthless—they provide a civil remedy to victims and a criminal penalty to perpetrators—but they do nothing to address the access problem.

At a federal level, President Obama has proposed immigration reform legislation, which, we are told, attempts to significantly alleviate the access problem by permitting for the licensure of trained immigration professionals that are not lawyers, and cannot provide legal advice, but are able to provide an advanced and useful level of service, similar perhaps to an enrolled patent agent. We are further informed that the immigration bar, nationally, supports the Obama proposal as a general matter.

The lack of success of the Obama Administration's immigration measures is a matter of public record.

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

We see two options:

1. Draft and advocate for new amendments to the Immigration Clerical Assistance Act which provide for meaningful training, licensure and oversight of immigration clerical assistants with the power to meaningfully help immigration clients.
2. Evaluate and if appropriate, advocate for the Obama Administration proposal on a national level.

The problems with the first option are that drafting such legislation is difficult, enactment is dubious, and, since immigration is a matter of federal law, is of dubious usefulness and subject to federal preemption.

The problem with the second option is that the logjam that is our US Congress seems unlikely to abate because of the advocacy of a group of Michigan lawyers.

III. Trends

See Paragraph I above. We are unaware that other states are attempting to tackle this problem.

IV. Analysis needed for any option under consideration:

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

Michigan residents requiring immigration services have a low-cost and meaningful additional resource available to them, and lawless elements causing harm to that community are thwarted.

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

We waste our time.

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

We believe there is enough information available now to make a decision to direct current energies elsewhere. Efforts to legislate at the federal level should be monitored, and it may become appropriate to act at a later time.

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

The option is not a game-changer.

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

Human resources, and potentially, lobbying dollars.

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

No

G. Implementation Strategies

1. Potential supporters and potential allies

The immigration bar

2. Potential opponents and potential obstacles

Opponents include those who are providing services unlawfully and the political lobby that opposes immigration on philosophical grounds.

3. Interested SBM entities

Immigration section

4. Other Interested stakeholders or potential partners

Immigrants

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

Not applicable

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

This is the same issue discussed hereinabove and hereinbelow, with a tilt toward immigration. It is simply a different avenue to address the same issue.

7. Staging

a) Does this option need experimentation or piloting?

No

b) What is the recommended timetable, if any?

None

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

None

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

Monitoring.

Charge 4

Provide new kinds of training for lawyers so that they may better provide affordable services through expanded use of paralegals/legal assistants in current regulatory framework, as well as through alternatives to non-legal sources.

Reason for Charge 4 (include citations to research and data wherever relevant)

It has been observed by more than one subcommittee that the types of training currently available to attorneys as CLE do not emphasize access and affordability opportunities. This thought needs development by our committee. Areas that have been suggested for additional specialized training programs include:

- a. Training in the use of paralegals to contain cost;
- b. Training in referring both rejected clients and accepted clients to alternate resources; and
- c. Training in dealing with clients with special challenges, including addiction and mental illness.

Item (a) seems to provide the best opportunities. Paralegals are able to perform much if not most of the leg work on client projects. Lawyers' hourly rates are higher than paralegals' hourly rates as a general matter, due to the difference in education. If paralegals can do more, customers are charged less. Lawyers eager to provide superior service at competitive rates should be eager to learn how they can better utilize paralegals to control costs and increase their competitive edge.

Item (b) could be a simple seminar of an hour or two, at which a pamphlet of applicable resources is disseminated and discussed. Legal resource center volunteers are trained on the array of social, quasi-

legal and legal resources available to those without financial resources; lawyers should be trained on this as well.

Item (c) is perhaps for a bit more rarified audience, but many in family law, criminal law and litigation could benefit from a better understanding of how to work with clients who have special challenges.

V. Status Quo

Private vendors offer an array of seminar options. It appears that most fall into one or more of the following groups:

- Seminars that promote training in specific areas of the law;
- Seminars that offer assistance in attracting and retaining clients or law office management;
- Boondoggle seminars in exotic locales that provide a tax deduction for playing golf and drinking Mai-Tais on the beach.

Although they could be seen as species of the second sort, missing from the list are seminars that train lawyers how to reduce costs or serve underserved clients.

Specifically, with regarding to paralegal usage, the paralegal profession has been around for more than 40 years. A paralegal's ability to perform, *and bill for*, work done under the supervision of attorneys has been recognized by the US Supreme Court (see, for example, *Missouri v Jenkins*, 491 US 274 (1989)) and the Michigan Supreme Court (see MCR 2.626). Yet, there is no training offered for Michigan attorneys on the use of paralegals. Currently and in the past, the focus on training for the use of paralegals has been solely on the training of paralegals in the practical, theoretical, and ethical aspects of the law, under the guidance of the ABA and State Bar of Michigan, as well as local and national paralegal associations such as Great Lakes Paralegal Association and National Association of Legal Assistants, to name a few. There are no known programs in place in Michigan or elsewhere to train attorneys on the proper use of paralegals to maximize value to the clients, while also maximizing value to the firm in which the paralegals are employed. (Edes, "Training for Effective Paralegal Utilization," <http://apps.americanbar.org/buslaw/blt/2007-05-06/edes.shtml>)

The American Bar Association's Standing Committee on Paralegals has identified the following core reasons why firms may want to hire paralegals, which could be tailored into training sessions:

1. *Paralegals provide increased profitability for your firm by increasing revenue and decreasing expenses.*
2. *Paralegal time can be billed out separately to the client and at a lower cost.*
3. *Paralegals are paid less than an attorney, yet handle many substantive tasks (under an attorney's supervision).*
4. *Paralegals perform substantive legal tasks such as; legal research, interviewing clients, drafting documents, drafting pleadings, assisting at closings and more.*
5. *Paralegals free up attorney time allowing you the opportunity to increase your caseload.*

6. Paralegals permit associates and partners to focus on complex legal work and client interaction.
7. Paralegals improve client satisfaction by being accessible to clients on a daily basis when attorneys are unavailable.
8. Paralegals reliably track deadlines and make sure they are met on a timely basis.
9. Paralegals can assist attorneys on pro bono cases benefiting both the law practice and the paralegal.
10. Paralegals round out the legal team by improving the overall efficiency and productivity of the law office.

http://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlg_top_10_reasons_to_hire.authcheckdam.pdf

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

- A. Include particular instruction in law schools on the proper and comprehensive use of paralegals.
- B. Offer continuing legal education programs on the same.
- C. Vet the creation of such programs with private vendors or local bar associations.

All options primarily serve the TF Guiding Principles #2 and 7. And all are recommended.

VII. Trends

We are unaware of existing programs of this ilk, and while we have not done an exhaustive search, a few broad Internet searches have returned no examples.

Furthermore, as to paralegal usage, there is no common understanding of a paralegal's role because that role varies greatly from firm to firm and by practice area. This lack of understanding, coupled with pressures to bill hours along with undeveloped delegation skills and misunderstanding about law firm economics and profitability may lead to attorneys being hesitant to assign or "give away" work to paralegals on staff who are able to perform many services for clients at a lower hourly rate.

VIII. Analysis needed for any option under consideration:

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

The best-case scenario for implementation of this Charge is the win-win situation of the public receiving high quality legal services at a lower cost and lawyers are sensitized to non-legal alternatives, while lawyers working with paralegals are left with more time to perform higher services, and law firms maximizing on the profitability of paralegal services.

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

The worst-case scenario if the option is implemented as to the paralegal component is for there to be an overall decrease in work/jobs for attorneys, particularly new attorneys.

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

No research is necessary. There is enough data to suggest the likelihood of success of this Charge, to at least some small degree. It will take very little effort to implement. The suggested Charge would have a positive impact on the professional development of attorneys, with its focus on effective business skills. Its overall impact from the standpoint of access and affordability, when effectively combined with other Charges presented here, could result in a positive shift toward offering more affordable legal options to the public.

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

This is a new approach to an old problem. Paralegals have been included within the legal front for over 40 years. Thus far, all training has been focused on teaching paralegals to perform the legal work. That should remain unchanged. Now, however, we are suggesting adding the component of teaching lawyers how to most effectively use paralegals for affordability and profitability. As to training on the non-legal alternatives, this Charge is not deeply innovative. It merely brings an existing solution (education) to bear on a different problem (access).

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

At the low end of implementation, all that is necessary are a few communications with private educational service providers such as ICLE. At a higher end, the idea is still not terribly resource intensive. The Bar could recruit members to be on seminar panels and develop materials. Paralegal associations such as SBM Paralegal/Legal Assistant Section, Great Lakes Paralegal Association and NALA (National Association of Legal Assistants) could also develop programming relevant to the use of paralegals to control costs.

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

No. Not applicable.

G. Implementation Strategies

1. Potential supporters and potential allies

- Law Schools
- State Bar of Michigan (particularly Paralegal/Legal Assistant and Young Lawyers Sections)
- American Bar Association Standing Committee on Paralegals
- ICLE and other seminar providers
- Local Bar Associations

- Great Lakes Paralegal Association
 - National Association of Legal Assistants
2. **Potential opponents and potential obstacles**
None
 3. **Interested SBM entities**
Paralegal/Legal Assistant and Young Lawyers Sections
 4. **Other Interested stakeholders or potential partners**
See 1, above
 5. **What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?**
Webinars (in addition to live seminars) may be an effective delivery vehicle for attorney instruction. Podcasts work with webinars.
 6. **How might this intersect with or impact other justice system areas/needs?**
This option complements most other options.
 7. **Staging**
 - a) **Does this option need experimentation or piloting?**
No. This can be implemented as soon as educational programs can be put together. A pilot project for law school curriculum or seminar to help train the new lawyers may lead to the best buy in.
 - b) **What is the recommended timetable, if any?**
Begin work in 2016.
 - c) **What is the recommended order of recommended steps, if any?**
Develop webinars (either in house or through allies in the business of providing legal trainint) for existing attorneys to be rolled out in 2016/2017, and begin work on law school seminar or curriculum.
 8. **What role should the State Bar play, if any?**
Advocacy and facilitator of webinars/educational seminars.

Charge 5

Loosen the strings on paralegals by modifying the regulatory framework. Paralegals still work under attorneys but with expanded powers, similar to a Physician's Assistant

Reason for Charge 5 (include citations to research and data wherever relevant)

See Charge 4.

IX. Status Quo

Currently, paralegals can be delegated any task normally performed by a lawyer, as long as the lawyer supervises the work, except those proscribed by law. (ABA Model Guidelines for the Utilization of Paralegal Services). For example, paralegals can review and organize client files, conduct factual and legal research, prepare documents for legal transactions, draft pleadings and discovery notices, interview clients and witnesses, and assist at closings and trials. Paralegals must avoid the unauthorized practice of law. However, this term is currently undefined in the State of Michigan. Generally, paralegals may not:

- 1) Establish the attorney's relationship with the client or set fees to be charged;
- 2) Give legal advice; or
- 3) Represent clients in court, take depositions, or sign pleadings. (Some federal and state administrative agencies, however, do permit non-lawyer practice, such as the Social Security Administration.)

(ABA Model Guidelines for the Utilization of Paralegal Services).

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

Similar to Charge 1 (Limited License Legal Technician), this Charge focuses on expanding the scope of paralegal services into areas previously and solely reserved for licensed attorneys. The difference between this and the LLLT Charge is that this charge would take the already-established profession of paralegal and expand the scope into LLLT practice areas while still maintaining attorney supervision of those practices. This Charge addresses TF Guiding Principles #1-3 and 6-7.

XI. Trends

Washington State has developed and implemented an LLLT licensing procedure and process that assumes *no direct supervision of attorneys* for the LLLT professional. Other states are closely monitoring Washington's progress to determine whether an LLLT program would be worthwhile. The Washington model provides that LLLT can perform the following tasks:

- Obtain relevant facts from clients
- Inform clients about possible implications of the law as applied in their cases

- Advise clients on how best to manage their legal action for best results
- Prepare clients to represent themselves in court proceedings
- Perform legal research to answer clients' legal questions
- Draft legal documents to be filed with the court

<http://wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Legal-Technician-FAQs>

XII. Analysis needed for any option under consideration:

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

This charge can take the best features of the LLLT program to adequately and cost-effectively serve members of the public while lessening some of the risks and ethical concerns presented by the LLLT licensure. Many of Washington LLLT's tasks are currently being performed by Michigan paralegals under attorney supervision. The only differences to be addressed are:

- Advise clients on how best to manage their legal action for best results
- Prepare clients to represent themselves in court proceedings

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

UPL and/or an increase in malpractice claims against the supervising attorneys

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

Until there are results and data from Washington State's LLLT program, whether and how to implement this charge is not known. For example, if Washington's program is an unqualified success, with underrepresented served to a greater extent and fears of UPL turn out to be unfounded, then this Charge would possibly be deemed to fall out and Charge 1 (LLLT) be implemented. If, on the other hand, Washington's program is shown to be flawed for lack of attorney oversight, or if Washington's program meets with too much resistance in Michigan, this may be a viable option and then the questions remain as to what sort of education and experience is required for this form of paralegal work.

Under current State Bar Bylaws, there are certain educational and experience requirements to become an associate member of SBM. (But not all paralegals are required to be associate members.) Are those sufficient? Would advanced education, certification and/or registration be required? Currently, no state licenses paralegals. Some states do, however, have checks in place on either a voluntary or compulsory level dictating paralegal work. Here are some examples:

Texas – “Board Certified Paralegals” (voluntary state certification program with specialties)

Louisiana – Voluntary state certification program

Florida – “Florida Registered Paralegals” – credentialing system through the State Bar with essentially the same requirements as SBM Bylaws require for associate membership

California – statute defining who may call themselves a “paralegal” but no registration or licensure requirement

<http://apps.americanbar.org/buslaw/blt/2007-01-02/durgin.shtml>

Many of these programs have been in place for over 10 years.

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

This Charge is a new approach to a *new problem* (or perceived problem) of the LLLT licensure. It takes the best features of the LLLT program while keeping guidance and ultimate assurance of the care of clients with attorneys.

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

The primary advantage of this Charge over, for example, Charge 1 (LLLT) is the lack of resources necessary to implement it. The State Bar Bylaws already have criteria to define a qualified paralegal, as follows:

Any person currently employed or retained by a lawyer, law office, governmental agency or other entity engaged in the practice of law, in a capacity or function which involves the performance under the direction and supervision of an attorney of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent that legal assistant, the attorney would perform the task, and which work is not primarily clerical or secretarial in nature, and:

(a) who has graduated from an ABA approved program of study for legal assistance and has a baccalaureate degree; or

(b) has received a baccalaureate degree in any field, plus not less than two years of in-house training as a legal assistant; or

(c) who has received an associate degree in the legal assistant field, plus not less than two years of in-house training as a legal assistant; or

(d) who has received an associate degree in any field and who has graduated from an ABA approved program of study for legal assistants, plus not less than two years of in-house training as a legal assistant; or

(e) who has a minimum of four (4) years of in-house training as a legal assistant;

may upon submitting proof thereof at the time of application and annually thereafter become a Legal Assistant Affiliate Member of the State Bar of Michigan.

The State Bar also has in place the mechanism to register such qualified paralegals, just as it would accept such persons for associate membership.

Whether these membership criteria are sufficient education to perform the LLLT tasks/functions *under the supervision of an attorney* remains a question. In Washington, LLLTs must additionally take 15 credits of basic and advanced family law courses in addition to an education/experience criteria plus 3,000 hours of substantive legal experience.

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

No. Not applicable.

G. Implementation Strategies

1. Potential supporters and potential allies

- Law Schools (if additional college credit required)/ABA Paralegal Programs
- State Bar of Michigan (particularly Paralegal/Legal Assistant)
- American Bar Association Standing Committee on Paralegals

2. Potential opponents and potential obstacles

Members of the State Bar generally

3. Interested SBM entities

Paralegal/Legal Assistant Section; UPL Committee

4. Other Interested stakeholders or potential partners

- ICLE
- Local Bar Associations
- Great Lakes Paralegal Association
- National Association of Legal Assistants

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

Except for ease in registration and or credentialing, it is unknown what role technology might play with this Charge.

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

Unknown

7. Staging

a) Does this option need experimentation or piloting?

Possibly a pilot system in a particular practice area (such as Washington's LLLT program's beginning with family law) may be in order.

b) What is the recommended timetable, if any?

Michigan may want to wait until 3 years of data is available from Washington. The first group of 7 Washington LLLTs were licensed this Spring.

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

- (1) Create new designation or definition of paralegal with required base of education, such as "Registered Michigan Paralegal," using SBM Bylaw's associate membership criteria;
- (2) Define "Practice of Law" and/or UPL;
- (3) Determine whether additional education or experience is required for new designation;
- (4) If additional education is required, set up educational courses through law schools and/or ABA-approved Michigan paralegal programs.

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

The State Bar is poised to be a trailblazer with this Charge because the Bylaws and membership structure is already in place, making implementation much less stringent than other options.

AXIS THREE: Removing matters from the judicial system

Charge 6

Administrative Divorce. Permit non-judicial officers to enter divorce decrees in marriages without children, based upon forms filled out and signed by the parties, and notarized with a special attestation to reduce the risk of fraud. Eliminate the waiting period for granting the divorce, and replace it with a similar timeframe to undo the divorce, by filing forms that convert it to a judicial divorce.

Reason for Charge 6 (include citations to research and data wherever relevant)

Makes non-adversarial divorce cheap, fast and accessible.

I. Status Quo

Currently, divorce is an adversarial process. Even parties who are amicable and have nothing to divide, must file a complaint establishing one party as the plaintiff and the other the defendant. Because of the adversarial nature of the process, many parties feel compelled to hire attorneys increasing the cost and delay in the divorce process. In addition, anyone who wants to get divorced must wait at least 60 days from the date of filing the complaint. This includes parties with no children and no significant assets to divide.

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

Permit non-judicial officers to enter divorce decrees where:

- a) marriage without minor children,
- b) no real estate and/or limited assets,
- c) no pension or retirement fund of any type
- d) no PPO or history of convictions for criminal domestic violence.

TF Guiding principles 1, 5, 6.

III. Trends

- A. There is no question that more people want to address their own legal needs without hiring an attorney. The number of self-represented litigants continues to rise across the country.
- B. The idea of administrative or simplified divorce exists in other states. Florida, for example, allows for a faster, simpler divorce process when parties agree to use the simplified process, have no minor children, neither party will claim alimony, and the parties agree to the division of their assets.

- C. For years in Michigan, the legislature has proposed changes to the divorce process including eliminating the adversarial process. These proposals have not been ultimately successful, but the concepts are being discussed regularly.

IV. Analysis needed for any option under consideration:

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

1. Virtually eliminates cost of simple divorce to consumers
2. Reduces public expense; frees judicial resources
3. Saves parties time and emotional energy
4. Meets needs of consumers for a more streamlined process

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

1. May minimize significance of marriage and divorce
2. Pushback from family lawyers
3. Pushback from religious and other civic groups
4. Significant legislative and court rules changes required
5. Risk of fraud
6. Risk of abusive spouse taking advantage of other spouse

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

Further research is needed into which other states have adopted this concept and the problems and successes associated.

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

1. This idea takes divorce outside the traditional adversarial process so that the system does not add to the parties’ conflict. It allows a collaborative option to dissolve marriage.
2. Implementation of this option changes what has been a legal problem into essentially a family problem that can be resolved by the family.

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

1. Non-judicial officers must be hired or duties expanded, staff must be trained
2. Creation of process and forms, documents. Once created, forms will not have to be printed because they will be available on-line. Parties can bear the cost of printing.
3. Lobbyist, legislative resources for changes in legislation and court rules.

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

Yes. Instructions should be available in a variety of languages. Staff should be made available to assist with forms in variety of languages.

G. Implementation Strategies

1. Potential supporters and potential allies

- a) Legal services organizations,
- b) Courts, whose dockets will be reduced,
- c) Low-income community organizations,
- d) Human service agencies

2. Potential opponents and potential obstacles

- a) Lawyers in general, Family law bar in particular
- b) Religious groups and other civic groups
- c) Domestic violence organizations

3. Interested SBM entities

- a) Domestic violence committee
- b) Family law Section
- c) State Planning Body
- d) Alternative Dispute Section
- e) Law Practice Management Section
- f) Paralegal/Legal Assistant Section
- g) Equal Access Initiative

4. Other Interested stakeholders or potential partners

- a) Michigan Legal Help
- b) Self-Help Centers
- c) Courts
- d) Law Libraries

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

Forms to be developed via Michigan Legal Help

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

Reduce case load and increase efficiency of family courts

7. **Staging**

a) **Does this option need experimentation or piloting?**

A pilot is not necessary, but a lower risk option would start in one county.

b) **What is the recommended timetable, if any?**

Realistically, 2-4 years

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

- (1) Change divorce law and court rules – year 1
- (2) Develop process – year 2
- (3) Develop forms – year 2
- (4) Train non-judicial officers – year 3
- (5) Train legal services and other support groups – year 3
- (6) Pilot process – year 3
- (7) Statewide implementation- year 3-4

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

- a) Legislative influence
- b) Advocacy to change court rules
- c) Address concerns of bar members regarding change
- d) Convene taskforces to develop process, forms, training, and pilot implementation

Charge 7

Administrative Probate. Further streamline simple probate to an administrative level. Changes could include raising the minimum amount required to avoid probate from current levels. Develop basic estate planning documents for on-line access.

Reason for Charge 7 (include citations to research and data wherever relevant)

Goes further down the road to bring Michigan in line with other forward-thinking states.

V. Status Quo

Michigan currently allows for administrative transfer of small estates valued at less than \$22,000. Assets can be transferred by affidavit or assignment of property. Forms exist on Michigan Legal Help for transfer of small estates. Individuals with larger estates must transfer assets via the more expensive probate process.

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

Increase the value of estates that may be transferred administratively. This serves Guiding Principles 1 and 6.

VII. Trends

A. Every state has an option for administrative transfer of small estates. While some other states have maximum estate values close to that of Michigan (around \$20,000), many have expanded their limits significantly. Many states have asset limits over \$100,000 or more. In fact, New Mexico allows assets up to \$500,000 to be transferred administratively under certain conditions. See 50-State Administrative Probate Survey (attached as Exhibit 4).

VIII. Analysis needed for any option under consideration:

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

1. Frees judicial resources
2. Reduces costs to consumers
3. Saves consumer’s time

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

1. May not result in significant savings over current model.
2. Non-judicial process may raise concerns with lack of due process.
3. Legislative and/or court rules changes may be required.
4. Lawyers, paralegals, and legal assistants may be resistant to changes.

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

1. The State Bar staff has created an Administrative Probate Survey with information about all 50 states asset limits for administrative transfer of assets.
2. Some additional research might include the experience of states with higher asset limits to assess the potential risks of such limits.

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

This concept expands an innovative approach and expands the population that benefits from the simpler process.

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

1. Legislative change to probate code.
2. Updating forms and instructions to reflect changes.

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

1. Nothing in addition to what is already needed.

G. Implementation Strategies

1. Potential supporters and potential allies

- a) Legal services organizations
- b) Elder law advocates
- c) Probate courts and staff

2. Potential opponents and potential obstacles

- a) Lawyers, Probate and Estates bar in particular
- b) Paralegals and Legal Assistants

3. Interested SBM entities

- a) Probate and Estate Section
- b) Equal Access Initiative
- c) Paralegal/Legal Assistance Section
- d) Elder Law and Disability Rights Section
- e) State Planning Body
- f) Law Practice Management Section

4. Other Interested stakeholders or potential partners

- a) Michigan Legal Help
- b) Self-Help Centers
- c) Courts
- d) Law Libraries

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

- a) Work with Michigan legal help forms and instructions

6. **How might this intersect with or impact other justice system areas/needs?**
 - a) Improve functioning of courts by eliminating more small estates from court docket
7. **Staging**
 - a) **Does this option need experimentation or piloting?**
 - (1) No. This is already in effect and will be an expansion of process already in place
 - b) **What is the recommended timetable, if any?** Less than 2 years
 - c) **What is the recommended order of recommended steps, if any?**
 - (1) Change of law –year 1
 - (2) Update online forms and process – year 2
 - (3) Train community members to assist public –year 2
8. **What role should the State Bar play, if any?**
 - a) Legislative influence
 - b) Advocacy to change court rules if necessary
 - c) Address concerns of bar members regarding change

AXIS FOUR: Lay Navigation—Self Help Centers and Internet-Based Services

Charge 8

Create or recognize a “gold standard” for self-help centers that other new and existing centers may emulate. This idea could include assisting one or more existing self-help centers to expand to meet this gold standard.

Reason for Charge 8 (include citations to research and data wherever relevant)

Self-help centers exist in Michigan and have a proven track record of helping low-income residents navigate the judicial system. Most Michigan citizens, though, do not have access to a self-help center, and most local bar associations have no information about how to form or run a self-help center. Charge 8 proposes to remedy this by creating a template for the creation of self-help centers.

Such a template will have to recognize that different communities have different resources, and as such, their self-help centers will look different. Kent County’s Legal Assistance Center has the luxury of a local law school (WMU Cooley) and local colleges with paralegal programs (Davenport and Grand Valley Universities). Volunteers consist largely of students from these schools. Counties without these resources will need direction on finding volunteers from practicing, retired, and new lawyers, as well as the community at large.

IX. Status Quo

Self help centers have the most traction in California, where, as the result of a 2004 initiative of the California Judicial Council, self help centers were formed in each of California’s counties. They are funded by tax dollars. See the 2007 Report of California’s equivalent to our Supreme Court Administrative Office to the California Legislature here:

http://www.courts.ca.gov/documents/rpt_leg_self_help.pdf

Unsurprisingly, the report suggests that, while a tremendous success, the self-help centers require additional funding, and that some county centers are underperforming.

In Michigan, self-help centers exist in Albion, Berrien, Calhoun, Kent, Macomb, Marquette, Monroe, Muskegon, Oakland, Oscoda, Ottawa, Washtenaw and Wayne Counties. (Source: <http://michiganlegalhelp.org/organizations-courts/self-help-centers?page=1>) Each has its own creation story and its own sources of funding, although we believe the Michigan Bar Foundation provides some support to all of the self-help centers.

Michigan’s first self-help center, The Legal Assistance Center (“LAC”), in Kent County, opened in 2004, funded by gifts from local lawyers and law firms, and in-kind assistance from Kent County in the form of space in the Kent County Courthouse. It serves over 17,000 customers a year on a

budget of roughly \$200,000, which translates to less than \$12 a service. The self-help centers in Berrien, Ottawa and (to an extent) Allegan Counties work on the LAC model, serving clients directly with one-on-one assistance by (mostly) non-lawyers. Legal advice is not provided. Rather, the Centers provide access to legal forms and information as permitted by law. Other self-help centers in Michigan are simply portals to the Michigan Legal Help website—some consist of nothing more than a computer terminal or two available for public use in the county courthouse.

Only the LAC in Kent County and Berrien County’s Self-Help Legal Resource Center are open during most or all regular business hours. The LAC is open Tuesday through Friday, but is developing a capital plan to allow it to be open on Monday.

Ottawa and Berrien County’s self-help centers are entirely county-funded. Kent and Allegan County’s are nonprofit 501(c)(3) corporations. It is believed that the other Michigan self-help centers (the ones that function as portals to Michigan Legal Help) run mostly or exclusively on grants from the Michigan Bar Foundation.

Despite their stunning track record in Michigan, most Michigan residents do not have access to a self-help center.

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

Options exist on a spectrum, the polar ends of which are developed in this Charge 8 and the following Charge 9. Charge 8 is simply to create a how-to instruction manual on the building, funding and operation of a self-help center.

Once the “gold standard” is built, it will open up a number of implementation options, the extreme end of which is Charge 9, a program like California’s which mandates and to an extent funds self-help centers in each county.

The proposal supports all seven of the Guiding Principles, but especially Principles 1-3.

XI. Trends

There is a marked national and Michigan trend toward the provision of self-help resources. In Michigan, the most recent trend (beginning in 2013) is toward opening low-cost portal based centers (computer terminals in courthouses). We do not see this as a long-term trend, it is simply a recognition that such centers are more easily and cheaply built. The long-term trend is and should be toward the creation of volunteer-staffed centers that provide one-on-one assistance directly to Michigan consumers.

XII. Analysis needed for any option under consideration:

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

A “gold standard” assists in inspiring each Michigan jurisdiction to open a volunteer-staffed legal self-help center, and/or inspires the Legislature or private donors to offer funding for the creation of such centers.

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

The proposal is fairly low risk. It requires no capital outlay. The risk is that we build it and no one comes. But even if they don’t come soon, they might come later, and having a template for building self-help centers can’t hurt.

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

We do not see a need for additional data. Kent County’s Legal Assistance Center provides meaningful data, and a meaningful model for success.

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

The idea isn’t really new or innovative. Rather, it is a choice to replicate what has already been shown to work. Newness is the scale.

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

Necessary resources are almost, if not exclusively, human resources from volunteers that have already shown a substantial commitment to this work, and are high up on the learning curve. Many such people, including Deborah Hughes, Ashley Lowe and Chris Hastings, already serve on the AAC Committee.

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

A template will have to recognize as a challenge the service of non-English speaking populations in each community. This challenge is met by the creation of foreign language information resources, and the recruitment of volunteers who speak the languages. We know how to address these issues.

G. Implementation Strategies

1. Potential supporters and potential allies

Potential allies include existing self-help centers, the Michigan Bar Foundation, the Michigan Bar, the state legislature and private donors.

2. Potential opponents and potential obstacles

Although it has been subdued as of late, there is at least potentially an enemy-from-within: the Michigan Bar member who does not realize that self-help centers do not provide legal services and do not compete with lawyers. If anything, self-help centers assist lawyers by

driving persons who require legal advice toward them. The key to surmounting this potential obstacle is education.

3. Interested SBM entities

Probably all State Bar entities are interested, but particularly the litigation section and the Standing Committee on the Unauthorized Practice of Law.

4. Other Interested stakeholders or potential partners

Existing self-help centers, the Michigan Bar Foundation.

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

While implementation of a gold standard may well involve online tools (particularly Michigan Legal Help), its creation requires old fashioned work and Word software.

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

We see this Charge as intersecting with Charge 4 (training gatekeepers), Charges 8 and 9 (making self-help centers ubiquitous) and Charge 11, expanding the Michigan Legal Help website.

7. Staging

a) Does this option need experimentation or piloting?

No

b) What is the recommended timetable, if any?

Now

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

Work would start by convening a blue-ribbon task force, by invitation and or appointment. Each existing self-help center and Michigan Legal Help should be represented on the Committee, or at least be invited to place a person on the Committee. There should also be at least one Circuit Court Judge.

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

We see this as a State Bar initiative. State Bar volunteers and other interested stakeholders would do work.

Charge 9

Require each Michigan county or circuit to form and support a non-profit self-help center contiguous to the circuit court(s). Could also include district courts eventually.

Reason for 9 (include citations to research and data wherever relevant)

As set forth in greater detail in Charge 8, Michigan has only a handful of self-help centers, and only four of those are anything more than computer terminals to the Michigan Legal Help website. California, in contrast, has enacted legislation requiring each county in the state to form a staffed self-help center.

XIII. Status Quo

See Charge 8.

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

This proposal requires legislation and legislative appropriation. The legislature could phase in self help centers or it could require them all at once in short order.

The proposal supports all seven of the Guiding Principles, but especially Principles 1-3. It also tends to foil those who are engaged in the unauthorized practice of law.

II. Trends

See Charge 8.

III. Analysis needed for any option under consideration:

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

Michigan will have a thriving self-help center available to every resident of the State.

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

The likely worst-case scenario is that the Michigan Legislature or Governor rejects the proposal. This could happen because we fail to find a sponsor, because a bill dies in committee, because a bill is voted down in either house, or because of a governor’s veto.

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

No additional research by the State Bar is necessary. Presumably the Michigan Legislature, should it wish to take up this idea, will do its own research. Plenty of data on the success of the self-help centers in Michigan is available.

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

While this idea simply replicates what California has already done, it is the most aggressive proposal we have for bringing access to legal resources to Michigan residents.

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

We will need a congressman to sponsor a bill. We can assist in drafting such a bill. California's legislation is a likely starting point. This idea is not resource intensive from the point of view of the State Bar, but it will die quickly if we cannot find a sponsor.

Should a bill be drafted and proposed, the State Bar could, but need not, lobby on behalf of the bill.

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

No.

G. Implementation Strategies

1. Potential supporters and potential allies

Potential allies include existing self-help centers, the State of California, the Standing Committee on the Unauthorized Practice of Law.

2. Potential opponents and potential obstacles

State Bar members may oppose the idea. As discussed in Charge 8 above, their opposition is met by education. Fiscally conservative folk will oppose the idea because it requires tax revenue.

3. Interested SBM entities

Standing Committee on the Unauthorized Practice of Law

4. Other Interested stakeholders or potential partners

The Michigan Bar Foundation, Legal Aid

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

Not applicable.

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

This intersects with Charge 8, above.

7. Staging

a) Does this option need experimentation or piloting?

No. See Section III (c) above.

b) What is the recommended timetable, if any?

Now

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

The first step is a sponsor. A popular tutorial on legislative process is available here:
<https://www.youtube.com/watch?v=tyeJ55o3EIO>

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

Seek a sponsor for legislation, participate in drafting and proposing revisions, potential lobbying.

Charge 10

Standardize circuit and district court forms to a statewide paradigm.

Reason for Charge 10 (include citations to research and data wherever relevant)

There are two reasons for this charge:

9. Laypersons do not find SCAO forms to be user friendly; and
10. Many judges require forms and practices specific to their requirements, perplexing unrepresented litigants and making it more difficult to train self-help support staff.

IV. Status Quo

For years, self-represented litigants in Michigan were faced with significant number of court forms, many of which were confusing, outdated, and unaccepted by the courts. Michigan Legal Help (MLH) has gone a long way to address the need for accessible forms by providing one source for regularly updated, straightforward, and accepted forms. Still, there are areas of the law not addressed by MLH, such as simple real estate transfers and estate planning documents.

In addition, some self-represented litigants do not have convenient access to the internet and/or do not feel comfortable working with on-line forms. Michigan Legal Help has partnered with a number of self-help centers to address the needs of these litigants, but not every litigant has access to such centers. And the self-help centers themselves would benefit from easy-to-use standardized forms.

For those litigants who need access to printed forms, Michigan Legal Help is not an option. The Legal Assistance Center in Kent County provides printed forms for self-represented litigants, but the forms are specific to Kent County and not universally accepted across Michigan. Even if their forms were accepted by all courts, the LAC does not have a distribution process that would give access to litigants across the state.

A set of uniform, court-supported and accepted, and accessible printed forms would provide access to the legal system to those litigants without the ability or comfort-level to utilize MLH.

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

Support MLH's development of forms and legal information in additional subject areas, such as simple real estate transactions and estate planning documents. Guiding Principles 1 and 3

Create a statewide workgroup to develop printed forms – Guiding Principles 1 and 3

VI. Trends

There is a growing recognition that litigants want access to legal information and the ability to proceed without an attorney in simple legal matters. A number of states have printable on-line forms for self-represented litigants, but not all are user friendly or easy to access.

VII. Analysis needed for any option under consideration:

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

Litigants will be able to access clear, understandable forms on-line or in hard copy for the majority of legal issues. Litigants who do not have access to the Internet, are not computer-literate, and/or do not have access to a self-help center will be able to locate forms in a variety of locations at low or no-cost. Courts will accept the forms without limitation.

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

More litigants may proceed unrepresented by an attorney because the mechanism to access the courts is available without lawyers. Clients with complicated legal matters that require analysis and advocacy by an attorney may attempt to proceed unrepresented and be negatively affected.

Lawyers may lose clients who think they can self-represent using available and accessible forms.

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

The experience of MLH and the LAC provide a great deal of data regarding the need for forms that courts will accept and litigants can understand and access. The LAC specifically has convened a task force on form standardization that included local experts and judges, and that experience is something of a pilot program already run. It seems quite clear that expanding the universe of available forms on MLH and in paper form will provide increased access to the legal system in ways that make sense to users.

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

This is really just about expanding what is already happening with MLH, the LAC, and other self-help centers. The innovation comes in the breadth of the project and the idea that all courts will accept all the forms established under this project. Litigants will have the same access regardless of their access to the Internet or a full-service self-help center.

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

Funding to support development of additional subject areas at MLH and/or elsewhere.

F. Are there any language access barriers that need to be addressed? Yes. We do not foresee courts accepting foreign language forms, but foreign language instructions would be helpful.

G. Implementation Strategies

1. Potential supporters and potential allies

The general public who will have better access to the legal system. Legal aid providers who already refer potential clients to MLH or self-help centers like the LAC, but could use more resources.

2. Potential opponents and potential obstacles

Lawyers who believe they will lose clients because on-line and printable forms are available.

3. Interested SBM entities

State Planning Body, each of the subject matter committees and sections whose members may be affected by these proposals.

4. Other Interested stakeholders or potential partners

MLH, LAC, other self-help centers, law schools

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

On-line forms as discussed.

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

Impact will be similar to the impact of MLH. Courts and court staff often complain that they are stuck in an impossible situation when self-represented litigants appear before them and need direction. These options would provide a resource for court staff as well as self-help centers to provide to litigants without giving legal advice.

7. Staging

a) Does this option need experimentation or piloting?

MLH and the LAC have been the pilots.

b) **What is the recommended timetable, if any?**

These options could be implemented immediately. A taskforce to develop forms could begin meeting immediately and set a schedule for developing printed forms within the year.

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

Establish forms task force, set timetable for creating and approving forms.

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

The State Bar should convene the forms task force and support its work. It could also help facilitate increased funding for MLH.

Charge 12

Expand the Michigan Legal Help website into other areas of law to offer alternatives to Legal Zoom.

Reason for Charge 12 (include citations to research and data wherever relevant)

Public is beginning to utilize private on line legal tools in place of utilizing a lawyer.

I. Status Quo

Michigan Legal Help provides on line tools for some areas, e.g. divorces.

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

Access could be increased by expansion to other areas where low income parties may be aided such as for residential landlord-tenant matters, basic residential quit claim deeds, basic wills and basic durable powers of attorneys.

III. Trends

Members of the public, whether they can afford lawyers or not, are increasingly turning to internet legal tools.

IV. Analysis needed for any option under consideration:

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

Members of the public who may not be able to afford lawyers are adequately served for their legal needs in limited and specific areas of the law through the use of low or no cost on line legal tools i.e. Michigan Legal Help as expanded.

Members of the public who have complicated legal issues may be more readily referred to an attorney by this service than by private on line legal services.

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

Members of the public who can afford lawyers may also use this service.

Members of the bar may push back on this concept.

Persons of limited financial means may have complicated legal issues that may not be addressed by this service.

Developing a system complex enough to address all relevant issues.

Legislative and/or court rule changes may be required.

C. Unanswered Questions and Unknowns -- do we have enough data to predict the likelihood of the scenarios? Yes To make a decision? Yes

Is further research of the literature needed, or is original research (surveys or pilots) needed?

A pilot may be helpful for a limited period of time to test real world application before full implementation. Legislative and/or court rule changes may be required.

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

It is a continuation and expansion of a current innovative tool, i.e. Michigan Legal Help.

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

The same resources that were used to originally establish Michigan Legal Help.

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

Not at this time.

G. Implementation Strategies

1. Potential supporters and potential allies

Current supporters of Michigan Legal Help

2. Potential opponents and potential obstacles

Members of the State Bar generally and members of family law, real estate, estate planning and other affected areas.

3. Interested SBM entities

Sections such as family law, real estate, estate planning and other affected areas.

4. Other Interested stakeholders or potential partners

State Bar Foundation and similar non-profit organization

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

The possibilities are extensive.

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

We are unsure at this time what the impact might be on other justice system areas.

7. **Staging**

a) **Does this option need experimentation or piloting?**

Yes

b) **What is the recommended timetable, if any?**

If prioritized, approximately 1 year.

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

Research, create questions and responses, develop and implement pilot, study results of pilot, then implement full program if appropriate.

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

Continue their support as in the past for Michigan Legal Help.

AXIS FIVE: Partnerships with Other Professions

Definition: The kinds of services underrepresented clients present with are often only tangentially legal problems. Providing services to unsophisticated individuals often includes identification of the kind of services these folks actually need. “Collaborative law” refers to efforts to create formal or ad hoc teams to help clients identify areas in which they need assistance. Team members may include lawyers, social workers, mental health professionals, financial advisors, probation agents and social service providers.

Charge 12

Create spaces in existing and new self-help centers for collaborative law efforts, and encourage other professions to use those areas

Reason for Charge 12 (include citations to research and data wherever relevant)

Persons in need of legal services usually have other emotional, occupational or social needs, many of which impact their ability to access, understand, participate fully in, and benefit from the legal process. Lawyers, while skilled at spotting the issues, are not typically trained or skilled at accessing supportive services for their clients. Partnering with, and providing easy access to professionals able to address these non-legal needs can positively impact, not only the public’s perception of lawyers, but also clients’ overall satisfaction with the legal process in Michigan and their quality of life.

I. Status Quo

Legal needs are handled without intentional regard to other life factors impacting the client. Referrals to outside resources are found only sporadically at various courts and generally consist of written materials requiring clients to pick up or find the materials, and then take additional steps to access services of value. Lawyers do not have easy access to community resources that could support clients outside of the legal setting.

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

The thrust of this charge is to create the physical space necessary for collaborative law in new and existing self-help centers. Options will be specific to each center. For example, the Legal Assistance Center in Kent County already has a conference room that could be cross-purposed for collaborative law. Other centers may need to create acquire new space.

With space available, it will be easier to identify and partner with other professions trained to address the emotional, occupational or social needs of clients, (for example, the Michigan Mental Health Counselors Association, Social workers, Career counselors, Michigan Works, real estate

professionals, colleges, low income housing specialists, MORC, etc.), and invite them to have a presence in the self help center. This would be consistent with Task Force Guiding Principals 1 and 3.

III. Trends

Collaborative law, or at least talking about collaborative law, is hot right now, but we are unaware of specific initiatives to create spaces for it to incubate. We would be the trendsetter.

IV. Analysis needed for any option under consideration:

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

If implemented it could provide the necessary infrastructure for collaborative law efforts, and partners could bear some of the costs.

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

This would require significant effort for outreach to establish partnerships and funding sources.

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

A pilot program is likely needed for data upon which to base outcomes.

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

This would represent a more holistic or comprehensive approach to client’s legal issues.

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

A funding source is necessary.

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

Interpreters would need to be available in centers, and it will be necessary to recruit collaborative law partners in a manner sensitive to the populations that will be using each center. This is an issue already being addressed by various existing centers.

G. Implementation Strategies

1. Potential supporters and potential allies

Mental health professionals and colleges are likely supporters. SCAO may be a potential supporter due to their past success in establishing local community dispute resolution centers.

2. Potential opponents and potential obstacles

- It is possible that competition among various potential partners could impact success and that quality of services would vary depending upon partner participation. Funding is also a significant barrier.
3. **Interested SBM entities**
Lawyers and Judges Assistance Committee
 4. **Other Interested stakeholders or potential partners**
Self help centers, the Michigan Mental Health Counselors Association, Social workers, Career counselors, Michigan Works, real estate professionals, colleges, low income housing specialists, MORC, etc.
 5. **What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?**
Technology should be a key component available onsite to access and coordinate available resources.
 6. **How might this intersect with or impact other justice system areas/needs?**
This has the potential to free up court staff and personnel from the challenges inherent in dealing with the diverse public.
 7. **Staging**
 - a) **Does this option need experimentation or piloting?** Yes.
 - b) **What is the recommended timetable, if any?**
Some period of time needed to identify partners, establish funding source and secure space to operate.
 - c) **What is the recommended order of recommended steps, if any?**
See (b) above.
 8. **What role should the State Bar play, if any?**
The State Bar could take the lead in identifying partners and funding.

Charge 13

Integrate enhanced legal services (whether attorney pro bono or self-help) into existing social services paradigms. Encourage the adoption of holistic representation programs in criminal law, child advocacy and other areas.

Reason for Charge 13 (include citations to research and data wherever relevant)

Various holistic defense programs exist throughout the country. These programs acknowledge that a criminal defense attorney is often not the only assistance that an individual accused of a crime needs. Services could be offered at the centers created in the previous charge; could be forms-based, self-help programs or other programs provided at low- or no-cost by volunteer attorneys or recent law school graduates. The Bronx Defenders are leaders in the holistic defense movement, additional information is available here: <http://www.bronxdefenders.org/holistic-defense/>.

I. Status Quo

In many instances a criminal offense is viewed solely through that lens. Offenders may have other legal issues that need to be addressed or need advice on social services or collateral consequences of convictions. Some problem-solving courts already have programs that address some offenders' needs.

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

The self-help spaces recommended in the previous charge could be used to encourage partnering between professions. This charge identifies some of the programs that might be run out of a self-help center. Following are a few examples of holistic, community-oriented defense models that Michigan might follow. These examples reflect Guiding Principle 1 in regards to having the needs of clients at the center of the delivery of legal services and Guiding Principle 2 in regards to meeting clients' needs and facilitating access to justice.

1. Emulate San Francisco's "Children of Incarcerated Parents" (CIP) program to integrate legal and social work/social services and make them available to this at-risk population. Additional information is available here:
<http://www.brennancenter.org/sites/default/files/legacy/Justice/COD%20Network/Adachi-%203%20cipbrochure.pdf>.
2. One state created a pilot project to assist individuals in having their drivers' licenses reinstated. This state engaged a lead attorney on the issue and used this attorney to train others to succeed in license reinstatement hearings. There are numerous examples of programs like this in Michigan and throughout the nation. But, they are not used uniformly. Programs should reflect the needs of the communities in which they operate.
3. Review programs such as the Brennan Center's Community Oriented Defender network, which encourages community-based solutions to clients' problems. Additional information is available on the Brennan Center's website:
<https://www.brennancenter.org/publication/community-oriented-defense-stronger-public-defenders>.

III. Trends

Nationwide, public defenders are adopting a more holistic approach to their practices. This approach acknowledges that are additional factors beyond a criminal charge that impact an accused's daily life. By looking at the totality of the circumstances, recidivism rates and incarceration rates can be reduced.

IV. Analysis needed for any option under consideration

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

These programs assist target populations. There is the potential to build on existing infrastructure, utilizing existing spaces. These programs allow offenders to address other impediments to future success and reentry by ensuring that offenders have the tools to succeed.

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

Funding may be difficult. The focus should be narrowed; there are many different programs that could be implemented.

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

More research may be needed in Michigan. In San Francisco, the Children of Incarcerated Parents program provided increased visits from children, housing assistance, assistance with family court issues and assistance with legal paperwork unrelated to the instant charges. Similar successes could be seen in Michigan’s larger cities. Individual counties may have ideas on what would best suit a particular area of the state.

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

The option looks at the family as a whole and not just at the offender. This holistic approach enables additional problems to be identified and resolved and results in higher success rates for offenders. These approaches might work well as an expansion of problem-solving courts that focus on a particular type of offense.

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

Attorneys willing to look beyond the instant client problem and evaluate the offender’s situation. It will involve a closer look at a variety of factors including the individual’s family situation; housing availability; employment and other pending court issues.

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

See discussion in previous Charge.

G. Implementation Strategies

1. Potential supporters and potential allies

Various civil legal aid providers, Michigan Poverty Law Program, Criminal Defense Attorneys of Michigan, various local bar associations.

2. Potential opponents and potential obstacles

Defense attorneys may argue that this is a burden in addition to the criminal case representation.

3. Interested SBM entities

Various sections might be interested including the Criminal Law Section and the Criminal Law Council, the Family Law Association, various groups from the Justice Initiatives.

4. Other Interested stakeholders or potential partners

Religious organizations such as the Michigan Catholic Conference may be interested. Non-profit organizations that provide assistance such as the United Way and other local organizations might be interested.

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

A comprehensive list of factors that might assist an individual could be developed and placed online. A list such as this might enable an individual to better identify which issues could be raised with an attorney. Easy-to-read checklists could be developed.

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

It intersects with civil legal aid provisions.

7. Staging

a) **Does this option need experimentation or piloting?** Yes.

b) **What is the recommended timetable, if any?**

None recommended.

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

Not applicable

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

The State Bar would work to publicize the requirements to its members and the population at large.

AXIS SIX: Alternate Dispute Resolution

Definition: In the course of identifying other ideas, the Work Group identified a number of ideas relating to alternate dispute resolution. Some of the ideas developed in this category have been sorted into other categories in this Interim Report, but others seemed to deserve this unique axis.

Charge 14

Train lawyers and lay navigators to show members of the public to portals that help with different types of conflict resolution, e.g. negotiation, restorative practice, mediation, facilitation, or arbitration, in addition to litigation.

Reason for Charge 14 (include citations to research and data wherever relevant)

Everyone knows when you see a surgeon, she's likely to recommend surgery. Lawyers recommend litigation. Can we avoid this through training?

V. Status Quo

Currently there are a limited number of Self-help Centers but they are not specifically focused on referring the public to or education the public about ADR. Similarly, while more new attorneys are familiar with mediation and possibly arbitration, overall the bar lacks in depth information about the broad spectrum of ADR options available to the public and has little encouragement to share such information with the public.

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

- Train lawyers to understand the various types of ADR, their benefits, their applicability, their drawbacks, and how they work.
- Train lay navigators to understand the various types of ADR, their benefits, their applicability, their drawbacks, and how they work.
- Staff SHC's, courthouses, law firms and other portal venues with the trained navigators.
- Include more ADR options and explanations about how they work on MLH.

Each option supports Guiding Principles 1,3,6 and 7.

VII. Trends

More and more types of ADR are being used/developed nationwide. The public is slowly becoming aware of the various forms of ADR through methods such as self-education (e.g. internet), word of mouth, and to some extent, courts. However, Michigan has no comprehensive process to educate the public on what types of ADR are available and when it is best to use which type of ADR.

VIII. Analysis needed for any option under consideration:

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

- Easy to do; Information readily available
- Increases value of other resources
- Use as part of self- help centers, Legal Aid offices and other portals that parties use for legal help
- Increase efficiencies

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

- Delivery system for service providers fragmented throughout state
- Costs could be a deterrent or at least slow enforcement
- Some attorneys may resist education about processes that may detract from traditional dispute resolution methods with which they are familiar.

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

Sufficient information exists about ADR. It simply needs to be compiled in a user-friendly format. No further data development is needed.

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

Informing the public, when they turn to the legal system expecting traditional litigation, that they have a variety of method available to them to resolve their conflicts.

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

Necessary resources include experienced ADR professionals and/or funds to develop literature (on line or otherwise) about various form of ADR.

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

The lawyers and lay navigators who serve at various portals should be diverse and, in appropriate areas, multilingual.

G. Implementation Strategies

1. Potential supporters and potential allies

Members of the public who cannot afford lawyers for conflicts where less expensive options are available, legal services agencies, courts, ADR providers

2. Potential opponents and potential obstacles

Members of the bar, courts

3. Interested SBM entities

Family law section, ADR Section, Equal Access Initiative, Law Practice Management

4. Other Interested stakeholders or potential partners

Michigan Legal help, Self help Centers, courts

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

Increase information on MLH about ADR options and explanations about how they work.

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

This could take some of the burden off the court system and legal aid by diverting parties to non-judicial options that are more appropriate for certain conflicts.

7. Staging

a) Does this option need experimentation or piloting?

No

b) What is the recommended timetable, if any?

Less than a year.

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

Compile relevant information, train lawyers and lay navigators. Share info with the public.

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

Involve the people who have the relevant information in the development of the data, promote the concept within the bar, train and disseminate the information.

Charge 15

Make early mediation automatic in most if not all lawsuits and post-judgment divorce disputes, with a mediator/special master involved in early, abbreviated discovery where needed.

Reason for Charge 15 (include citations to research and data wherever relevant)

See Charge 14

I. Status Quo

Currently, mediation takes place far too often in late stages of litigation, if at all. Since mediation can save not only time and money, but minimize further ostracizing the parties involved, it should be considered earlier so that the full benefits can be realized.

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

- Establish a limited list of exceptional types of cases that might not be appropriate for mediation.
- Establish a variety of various entry points (e.g. before litigation, immediately after filing, or after limited discovery) when a case should be considered for mediation.
- Help establish protocols for early limited exchange of information where such is needed before mediation.
- Develop a court rule or statute that puts the automatic mediation into place.
- Make sure the public is aware of the pros and cons of mediation and which mediators are right for their cases.

This Charge supports Guiding Principles 1, 2, 3, 6

III. Trends

Currently a few states such as Washington and North Carolina have across the board automatic mediations and are having good success with them. More state have mandatory mediation in limited circumstances.

IV. Analysis needed for any option under consideration:

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

- Reduces litigation expense

- Promotes early resolution of litigation
- Use Pilot Project to test viability (e.g. see Business Court pilot for model)
- Enlists support of Supreme Court in implementation

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

- Requires changes to entrenched litigation bias from the bar and judiciary
- Some cost involved, e.g. for mediators
- How to allocate costs

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

The ADR section of the state bar has done extensive research on this, which we can access.

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

It expands the options available to parties in every case to address a variety of needs and interests.

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

People to draft and promote legislation or rule changes.
Trainers of multilingual and multicultural mediators.

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

Since mediation will be more widely used, there need to be more mediators trained who are fluent in the languages of the various communities that need to be served.

G. Implementation Strategies

1. Potential supporters and potential allies

Community organizations, legal service offices, ADR providers, courts

2. Potential opponents and potential obstacles

Some litigators and some courts may resist change. The cost and time of legislative change and public education could be an obstacle.

3. Interested SBM entities

Equal Access Initiative, ADR Section, Litigation Section, Law Practice management section, Domestic violence section and more

4. Other Interested stakeholders or potential partners

ADR trainers, law schools, MLH, SHC, courts

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

Use on line tools (MLH and public service announcements, etc.) to educate lawyers and the public about what mediation is, its advantages, its limitations and how to use it effectively in various cases so that the bar and the public are receptive to the changes.

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

This could take some of the burden off the court system and legal aid by diverting parties to non-judicial options that are more appropriate for certain conflicts.

7. Staging

a) Does this option need experimentation or piloting?

A carefully structured pilot might have some benefits but is not essential since the benefits of ADR are already well established.

b) What is the recommended timetable, if any?

2-3 years

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

1. Develop a court rule or statute that establishes the automatic mediation process.
2. Establish a limited list of exceptional types of cases that might not be appropriate for mediation.
3. Establish a variety of various entry points (e.g. before litigation, immediately after filing, or after limited discovery) when a case should be considered for mediation.
4. Help establish protocols for early limited exchange of information where such is needed before mediation.
5. Make sure the public, lawyers and lay navigators are aware of the pros and cons of mediation and which mediators are right for their cases.

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

Involve the people who have the relevant knowledge in the development of the procedures for implementation and the legislation needed to enforce it; promote the concept within the bar; educate the bar and public about how to use the new system and its value.

Charge 16

Remove the “v.” from matters that should be considered non-adversarial, especially family law.

Reason for Charge 16 (include citations to research and data wherever relevant)

Not everyone who comes to the courts for justice has a “dispute,” yet we unwisely characterize them as enemies locked in battle.

I. Status Quo

Currently, with the exception of a few cases such as probate matters, all parties in a litigation are set up to oppose (or be “versus”) the other party. In many cases, and surely in family law matters, this sets an unnecessarily adversarial tone where the parties may in fact be in agreement as to the desired resolution. Thus the current status might prevent or discourage parties from pursuing legal remedies due to resistance to confrontation and concern about the cost that being adversarial can add, and actions once filed can become unnecessarily prolix.

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

Require appropriate cases such as uncontested divorces to be filed as “In re Harold and Dolores Smith” instead of “Smith v. Smith”

This serves Guiding Principles 1, 2, and 6.

III. Trends

Collaborative divorce is a national trend, but we have been unable to identify states that are making this modest effort to make judicial divorce proceedings collaborative.

IV. Analysis needed for any option under consideration:

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

- Promotes collaborative rather than combative thinking by the parties and the system; minimize contention
- May be easy to do
- By minimizing contention, may increase efficiencies

- Reduces litigation expense
- Promotes early resolution of litigation

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

- Change to court rules is required
- Requires changes to litigation bias from the bar and/or judiciary

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

No pilot is necessary.

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

The innovation is in removing the assumption that all parties to a legal matter must be adversaries and in encouraging a process that actually encourages parties to work together.

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

- Enlist support of Supreme Court in implementation (court rules)
- Individuals to draft new court rule

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

No.

G. Implementation Strategies

1. Potential supporters and potential allies

Community organizations, legal service offices, ADR providers, courts

2. Potential opponents and potential obstacles

Some litigators and some courts may resist change. The cost and time of rule change and public education could be an obstacle, but these are seen as relatively modest.

3. Interested SBM entities

Interested entities include the Equal Access Initiative, ADR Section, Litigation Section, Law Practice management section, Domestic violence section and more.

4. Other Interested stakeholders or potential partners

Law schools, MLH, SHC, courts

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

Use on line tools (MLH and public service announcements, etc.) to educate lawyers and the public about the new option, its advantages, its limitations and how to use it effectively in various cases so that the bar and the public are receptive to the changes.

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

This could take some of the burden off the court system and legal aid by diverting parties to less contentious modes of resolution.

7. Staging

a) Does this option need experimentation or piloting?

No.

b) What is the recommended timetable, if any?

Approximately 2 years

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

Steps are the same as for any rule change. Here the change will be to MCR 2.113(C)(1)(b), regarding captions.

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

Involve the people who have the relevant knowledge in the development of the procedures for implementation and the legislation needed to enforce it; promote the concept within the bar; educate the bar and public about how to use the new system and its value.

Charge 17

Allow lawyers involved in mediating or arbitrating cases to draft pleadings supporting judgment on the resolution (segue to “unbundling”)

Reason for Charge 17 (include citations to research and data wherever relevant)

I. Status Quo

Currently there is an ethical opinion that lawyer mediators who serve as a mediator in a divorce may not draft the pleadings for the divorce once the mediation is complete.

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

Remove this ethical barrier and allow mediators who have a completely resolved divorce case to draft pleadings for the divorce to be enforced.

This serves Guiding Principles 1,3,and 6.

III. Trends

It is believed that this is being done in some other states but further research on trends is needed.

IV. Analysis needed for any option under consideration:

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

- Reduces risk of settlements falling apart post-resolution
- Promotes efficiencies in entry of judgments
- strengthens role of mediators and arbitrators

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

- Need to address ethical rulings that constrain this practice
- Same challenges as other “unbundling” efforts
- Additional challenges of defining the scope of this representation, and regulating attorney conduct in this area where she has multiple “clients” with disparate interests

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

A pilot project to test viability might be informative although not essential (e.g. see Business Court pilot for model)

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

This idea breaks away from the traditional thought that once a mediator on a case the lawyer can play no other role in the case ethically.

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

Enlist support of Supreme Court in implementation (court rules)
May need lobbyist to support legislative changes
Individuals to draft new laws or court rules

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

We see none specific to this idea.

G. Implementation Strategies

1. Potential supporters and potential allies

Community organizations, legal service offices, ADR providers, courts

2. Potential opponents and potential obstacles

Some litigators and some courts may resist change. The cost and time of legislative change and public education could be an obstacle.

3. Interested SBM entities

Interested entities include the Equal Access Initiative, ADR Section, Family Law Section, Law Practice Management section, Domestic Violence section and more.

4. Other Interested stakeholders or potential partners

ADR trainers, law schools, MLH, SHC, courts

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

Use on line tools (MLH and public service announcements, etc.) to educate lawyers and the public about the new option, its advantages, its limitations and how to use it effectively in various cases so that the bar and the public are receptive to the changes.

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

This could take some of the burden off the court system and legal aid by diverting parties to non-judicial options that are more appropriate for certain conflicts.

7. Staging

a) Does this option need experimentation or piloting?

A carefully structured pilot might have some benefits but is not essential.

b) What is the recommended timetable, if any?

Approximately 2 years

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

1. Develop a court rule or statute that establishes the new process.
2. Establish a limited list of exceptional types of cases that might not be appropriate for the new process.
3. Develop a statute or court rule that puts the new process into place.
4. Get the rule or law implemented.
5. Make sure the public, lawyers and lay navigators are aware of the benefits of the new process and which cases are right for the new process.

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

Involve the people who have the relevant knowledge in the development of the procedures for implementation and the legislation needed to enforce it; promote the concept within the bar; educate mediators, the bar and public about how to use the new system and its value.

AXIS SEVEN: Miscellaneous ideas outside the scope of our charge

Charge 18

Establish a single filing portal to electronically file all Michigan actions. (Linked to “Specialty Courts” below.)

Reason for Charge 18 (include citations to research and data wherever relevant)

A single portal for filing papers in civil actions would eliminate local practices and procedures that make litigation unnecessarily prolix, reduce the expense associated with maintaining offices of multiple clerks of the various courts, and create opportunities for multi-jurisdictional specialty courts (see Charge 19 below).

I. Status Quo

Presently, each circuit and district court accepts filing at the office of the court clerk. Some circuit courts are experimenting with e-filing, using systems unique to that court. The Court of Appeals is experimenting with a central electronic filing system called “TrueFiling” that could serve as a model for a larger centralized system. http://courts.mi.gov/opinions_orders/e-filing/pages/default.aspx

Local practice dominates, and each court has its own requirements for filing, noticing motions, etc. This increases expense for clients served by out of town lawyers, by requiring local counsel, or acceptance of the risk of additional expense based upon error.

Statistical information on court filings must be kept by each jurisdiction separately, resulting in the possibility that different jurisdictions report in different ways, skewing assembled data.

Finally, the current system offers little realistic possibility of developing statewide-venue specialty courts, staffed by specialized judges, to create efficiency in complex and/or rote cases.

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

While courts will continue to develop e-filing systems on their own, special efficiencies can be gained only through the option of single portal filing. Within that universe, starting single-portal filing could be developed for the circuit courts first, with district courts to follow.

Central filing could be experimented with and phased in beginning with several hand-selected circuits, but the sought-after efficiency is realized only when all courts at any given level participate in centralized e-filing. It is less clear that the district courts would benefit from centralized e-filing.

Note that Charge 18 is conceptually linked to Charge 19.

Guiding Principles: This charge most directly serves Principles 1, 2 and 6. By reducing the State’s costs for processing filing and creating potential efficiencies through the development of specialty courts, overall litigation costs may be lowered.

III. Trends

The trend toward electronic filing is clear. The federal district, circuit and Supreme courts have all moved to electronic filing. State efforts to implement electronic filing are a patchwork. Florida is now phasing in a statewide single portal for e-filing: <http://www.flcourts.org/resources-and-services/court-technology/efiling/>

State court developments in e-filing are registered by the National Center for State Courts on this website: <http://www.ncsc.org/Topics/Technology/Electronic-Filing/Resource-Guide.aspx>.

To our knowledge, no state has fully implemented a statewide electronic filing regimen.

IV. Analysis needed for any option under consideration:

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

1. Filing fees are reduced due to a reduction in expense of filing, or funds received for filing repurposed for other access-related activities.
2. Centralized receipt of raw data results in more efficient and accurate reports, again reducing expense.
3. Specialized multi-venue courts are developed, with specialized judges presiding over electronic courtrooms where litigants may appear electronically, further reducing expense to both the State and litigants. This is further discussed below in Charge 19.

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

1. Catastrophic expense. Given the level of sophistication of existing systems and the number of qualified vendors and products, this risk is not perceived as high, but it is present.
2. Loss of local jobs. Court clerks would lose their positions.
3. Pushback from those comfortable with the status quo. Many lawyers know how the system works in their jurisdiction, and will perceive little incentive to change. Some will also fear losing “local counsel” work, particularly in remote jurisdictions.
4. This proposal must be implemented in concert with the expansion of self help centers and use of lay navigators, to ensure that it does not create additional burdens to unrepresented litigants.

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

Although cost estimates and information could be solicited from vendors now, the most useful data would come from the issuance of a Request for Quotation by the Supreme Court Administrative Office.

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

Put simply, scope. Electronic filing is in the future of Michigan's state courts, and seizing the initiative to create massive economies of scale through centralized e-filing would put Michigan all by itself in the first tier of e-filing innovation.

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

Resources necessary to further explore this idea would be minimal: the costs of creating a Request for Quotation, and analyzing the bids received. Implementing the proposal would require a substantial appropriation from the SCAO's existing budget, or an infusion of new funds by the legislature. Additionally, the development of multijurisdictional specialty courts would require new legislation in the areas of venue and, potentially, subject matter jurisdiction.

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

No.

G. Implementation Strategies

1. Potential supporters and potential allies

Vendors, lawyers

2. Potential opponents and potential obstacles

Lawyers, court clerks, entrenched interests

3. Interested SBM entities

Litigation section

4. Other Interested stakeholders or potential partners

Federal courts, Florida and potentially other states

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

Discussed above

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

See Charge 18, below

7. Staging

a) Does this option need experimentation or piloting?

Yes. The place to start is a Request for Quotation, presumably from the Supreme Court Administrative Office. The RFQ should seek proposed implementation strategies. After analysis of quotations, piloting options may be selected as appropriate.

Implementation of centralized filing must be paced to the advancement of other parts of a comprehensive access agenda. Centralized filing must be supported by ubiquitous self-help centers lest they become an obstacle rather than a benefit to access.

b) What is the recommended timetable, if any?

Six months for issuance of an RFQ, another six for evaluation and implementation of the next step. Again, the timetable for implementation must be informed by other advances in an access agenda.

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

Discussed above

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

The State Bar's role would be to recommend and support the proposal to the Supreme Court Administrative Office and State Legislature.

Charge 19

Create statewide-venue specialty courts. (Linked to single-portal filing, above)

Reason for Charge 19 (include citations to research and data wherever relevant)

Particularly in rural circuits, judges are required to be super-generalists, hearing every case properly filed in the attendant clerk's office. Single-portal filing creates the opportunity for efficiency and specialization. Matters recurring frequently enough on a statewide basis could be peeled off each court's general docket, and assigned to a statewide-venue specialty court staffed with a judge skilled in such matters.

I. Status Quo

All cases are filed and heard in the circuit or district where, subject to jurisdictional or venue challenge, they will be heard and decided. Rural multi-county circuits who may have only one or two judges are required to utilize those judges for cases they may be ill-prepared to handle, such as complex commercial, mass tort, or consumer class action cases. These judges must be super-generalists with few resources supporting them.

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

Relevant specialty courts include complex commercial courts and class action courts. Additional needs and efficiencies may be identified through data gleaned from single-portal filing. Each Guiding Principle is served.

III. Trends

Both in Michigan and nationally there has been a longstanding trend toward the more effective and efficient management of litigation through the creation of specialty courts. Many if not most circuit courts now have family divisions. Currently some circuits are experimenting with a complex commercial court, and early reports on the success of the pilot programs have been encouraging.

IV. Analysis needed for any option under consideration:

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

1. All jurisdictions, but particularly rural circuits, will benefit from the ability to divert cases with unique characteristics to a forum served by a specialized judge.
2. Parties may realize efficiencies in both time and money related to specialized case management.

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

1. A concentration of judges in practice areas could result in a sort of “Czar” of that practice area, impeding the development of the common law through the traditional course of having multiple judges interact with specific scenarios.

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

Although it is conceivable that statewide specialty courts could be implemented without single-portal e-filing, the two ideas appear to be related and best implemented together. Statewide jurisdiction courts would necessarily lag the development of the single-portal filing system.

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

To our knowledge, no one has done this before on this scale.

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

1. New venue and, potentially, subject matter jurisdiction statutes
2. Appropriations for new judges (offset by efficiencies in the individual circuits)

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

No.

G. Implementation Strategies

1. **Potential supporters and potential allies**
Trial lawyers; consumer groups
2. **Potential opponents and potential obstacles**
Entrenched interests
3. **Interested SBM entities**
Litigation section
4. **Other Interested stakeholders or potential partners**
5. **What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?**
Discussed in Charge 18.
6. **How might this intersect with or impact other justice system areas/needs?**
See Charge 18.
7. **Staging**
 - a) **Does this option need experimentation or piloting?**
No
 - b) **What is the recommended timetable, if any?**
Should wait creation of a single-portal filing system
 - c) **What is the recommended order of recommended steps, if any?**
Implementation should follow creation of the single-portal filing system
8. **What role should the State Bar play, if any?**
The State Bar's role would be to advocate and promote the idea to the Supreme Court Administrative Office and the State Legislature.

Charge 20

Define the Practice of Law (and Unauthorized Practice) by State Bar Rule.

Reason for Charge 20 (include citations to research and data wherever relevant)

A draft definition of the practice of law (attached as Exhibit 2) was overwhelmingly supported by the State Bar Representative Assembly and rather summarily rejected by the Michigan Supreme Court in 2011. While this topic was not on anyone's mind when we started our work, as we progressed, we

tripped time and time again over the fact that the absence of a clear definition, accessible to laypersons, is a serious impediment to increasing access to justice for folks who can't afford lawyers. It empowers the bad guys, and limits the efforts of the good guys.

I. Status Quo

The unauthorized practice of law is governed by a pair of statutes, [MCL 600.916](#) and [MCL 450.681](#), but more significantly by a handful of Supreme Court opinions:

- *Bay County Bar Association v. Finance System, Inc.*—Where a corporation and an individual, who was not licensed as an attorney, in operating collection agencies, took assignments of claims from their customers and brought suits on the assigned claims, in which the customers retained an interest, the corporation and individual were engaging in the unauthorized practice of law.
- *Detroit Bar Association v. Union Guardian Trust Co.*—The statute authorizing trust companies to act as agents or attorneys in management of estates and serve as trustees, empowers them to perform ordinary and incidental services relative to trusts assumed by them for statutory fees only, without violating the UPL statute.
- *Dressel v. Ameribank*—Preparing the legal documents for a banking or mortgage transaction the lender is involved in and charging the customer a fee for the documents does not constitute the unauthorized practice of law.
- *Dubuc v. Michigan Board of Law Examiners* (Cite 342 F.3d 610)—Michigan Bar as a state agency is entitled to immunity under the 11th Amendment. Executive Director of the SBM is not entitled to 11th Amendment immunity. Absolute immunity provisions of the Michigan Supreme Court Rules Concerning the State Bar of Michigan do not immunize Executive Director of the SBM from suit in federal court alleging federal constitutional violations.
- *Ginger v. Cohn* (Cite 426 F.2d 1385)—After disbarment attorney had no standing to continue to represent a bankrupt corporation.
- *In re Ernest J. Desilets* (291 F.3d 925)—A lawyer not licensed to practice in Michigan may practice bankruptcy law generally in Michigan if properly admitted to practice before the federal court of the state.
- *Ingham County Bar Association v. Walter Neller Company*—Title insurance companies have no authority to engage in activities "incidental" to their business, whether or not they charge for the service.
- *Peters Production, Inc. v. Desnick Broadcasting Company*—Recognizing that a corporation is a legal entity separate from its officers, shareholders, or other constituents, Michigan law does not allow a non-lawyer officer or shareholder of a corporation to appear in court proceedings on behalf of the corporation.
- *Shenkman v. Bragman*—The filing of a wrongful death action by a Personal Representative of a deceased estate in pro per (without an attorney) constitutes the unauthorized practice of law.
- *State Bar of Michigan v. Cramer*—Not only court appearances, but also out-of-court conduct may be prohibited pursuant to unauthorized practice of laws and rules.

Common law is a notoriously imprecise way to inform laypersons of what they may and may not do, and the absence of clear direction on UPL, education is difficult. The Standing Committee on the

Unauthorized Practice of Law has long lamented the absence of a definition. Legal resource centers too would benefit from additional clarity in this area.

The Supreme Court has a legislative mandate to determine what is and is not the practice of law. While the legislature could change that, the Standing Committee on UPL has long felt that petitions to have the legislature step in could open Pandora's Box. The Supreme Court is the proper entity for prescription and proscription in this area, but it has shown no interest in changing the status quo.

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

This appears to be an all-or-nothing proposition, and the definition of the practice of law previously developed by the UPL Committee and a separate blue-ribbon ad hoc committee, and overwhelmingly supported by the Representative Assembly, appears to be the proper vehicle. The proposal supports Guiding Principles 1-3 and 6.

III. Trends

As of 2011, 23 jurisdictions purported to have statutory definitions of the practice of law. In the last fifteen years, six states have moved to adopt "modern" definitions, beginning with Washington in 2001. For a detailed analysis, see the March 14, 2011 Memorandum from Chris Hastings to Steve Gobbo attached as Exhibit 3.

IV. Analysis needed for any option under consideration:

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

1. The public and legal resource providers benefit from clarity in UPL.
2. The Standing Committee on UPL benefits in its enforcement efforts; the amount of litigation required to police UPL is diminished.
3. Those who strain against the limits of licensure are constrained.

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

1. The Supreme Court says "no" again.
2. The state legislature takes a hand, political forces are mobilized to weaken current UPL protections, and the public is harmed.

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

Exhaustive work already done appears sufficient. What is missing is Supreme Court interest.

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

The idea is neither new nor innovative. It merely moves Michigan in line with other forward-thinking states.

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

Supreme Court connections and influence, if any.

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

No.

G. Implementation Strategies

1. Potential supporters and potential allies

Legal resource centers

2. Potential opponents and potential obstacles

- a) Trade interests (although, significantly, the proposed definition garnered the support of the MAICPA, which is the trade organization supporting Certified Public Accounting.)
- b) The Michigan Supreme Court

3. Interested SBM entities

- a) The Standing Committee on UPL
- b) Real estate and estate planning sections

4. Other Interested stakeholders or potential partners

N/A

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

N/A

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

This is seen as a significant and perhaps necessary advancement of most of the Task Force's agenda.

7. Staging

a) Does this option need experimentation or piloting?

No

b) What is the recommended timetable, if any?

It is probably appropriate to integrate this idea into a "wish list" for the Supreme Court at the end of the Task Force's work.

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

See above.

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

The Bar's role is of advocacy to the Supreme Court and the SCAO.

Charge 21

Creation of a "domestic peace corps," either governmental or non-profit, that provides low or no cost poverty law services. This idea could use as a model GM Legal Services and/or "Teach for America," or delivered through the existing network of Legal Aid agencies.

Reason for Charge 21 (include citations to research and data wherever relevant)

This is a "kill two birds with one stone" idea that matches the perceived dearth of employment opportunities for young lawyers with the burgeoning need for low cost legal services.

I. Status Quo

Legal aid agencies throughout Michigan are strapped for cash, as their funding has been significantly curtailed. Traditional legal aid positions may be slightly below market, but are coveted and easy to fill.

In the meantime, at least anecdotally, legal employment is down and recent law graduates are struggling to find work (it should be noted that statistical support for anecdotal wisdom is hard to come by. According to the US Department of Labor, the demand for new lawyers is on par with the rest of the marketplace: <http://www.bls.gov/ooh/legal/lawyers.htm>).

Numerous efforts seek to bridge the gap. Some, funded by law firms and legal foundations, are discussed below in Section III.

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

For any option, the severe impediment will be funding. New funding could be disseminated through the existing Legal Aid network, or provided through new programs, which could be modeled on "Teach for America," the Peace Corps, or the paradigm of General Motors Legal Services.

Options include encouraging and supporting private law firm and charitable foundation work of the type already underway (see items 1 and 2 in "III. Trends" below).

Each option serves guiding principles 1-3 equally. Creation of a new paradigm for delivery of services could create additional benefit with regard to guiding principle 4 (Diversity) by permitting special focus on underserved areas.

III. Trends

There are any number of good tales here. We present several:

1. The Skadden Fellowship program (described in more detail here: http://www.skadden.com/newsletters/Skadden_Fellowship_Foundation_25_Years_Brochure.pdf) provides private funding for some 125 well-qualified young lawyers annually to begin their life in public service.
2. Here in Michigan, the statewide firm of Dickinson Wright is making its lawyers available at no charge to various dispute resolution centers across the State: <http://www.grbj.com/articles/83151-law-firm-partners-with-network-of-resolution-centers>
3. Both South Dakota (http://www.abajournal.com/news/article/south_dakota_lures_lawyers_to_rural_areas_with_annual_subsidies/) and Iowa bars (http://c.ymcdn.com/sites/iowabar.site-ym.com/resource/resmgr/Section_Committee_Documents/Rural_Practice_Committee_RE.pdf) fund programs paying young lawyers a stipend to locate their practices in underserved communities.
4. Americorps provides fellowships: <http://www.equaljusticeworks.org/post-grad>

IV. Analysis needed for any option under consideration:

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

New lawyers are immediately placed in positions that provide them training and provide underserved Michigan citizens with free or discounted legal services.

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

Money is never raised and time is wasted.

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

Scenarios have not been fully developed by the Subcommittee. Many programs are already underway and appear successful, although the ultimate cost/benefit equation is unknown.

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

This option is innovative and a game-changer only if launched on a large scale, and such a launch may be impractical.

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

1. On any sort of scale, lots of money.

2. Otherwise, the State Bar can encourage and promote efforts such as those already underway.

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

Programs could be put into place to serve communities where language barriers are an issue.

G. Implementation Strategies

1. Potential supporters and potential allies
 - a) Large law firms, which have traditionally supported pro bono efforts
 - b) Small law firms and individual lawyers
 - c) Law schools
2. **Potential opponents and potential obstacles**

Lack of funding
3. **Interested SBM entities**

SBM Law Student Section
4. **Other Interested stakeholders or potential partners**

Legal Aid and Dispute Resolution centers
5. **What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?**

Not considered.
6. **How might this intersect with or impact other justice system areas/needs?**

Favorably.
7. **Staging**
 - a) **Does this option need experimentation or piloting?**

Should the Task Force be interested in moving forward with this charge, it will require substantial development of specific ideas and timetables. What the Subcommittee presents here is bare bones.
 - b) **What is the recommended timetable, if any?**

See subsection (a) above
 - c) **What is the recommended order of recommended steps, if any?**

See subsection (a) above

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

At a minimum the State Bar should support and applaud efforts such as those of the Dickinson Wright firm that are already underway, and track such efforts so as to identify future opportunities.

Charge 22

Re-imagining law licensure to require service of the type identified in (1) above. Service could be imagined either as free or reduced rate. Certain students with jobs that guarantee training could buy out of the scheme, creating resources, like a “success tax.”

Reason for Charge 22 (include citations to research and data wherever relevant)

Charge 22, seen as a companion to Charge 21, would create a stream of human and financial resources to support pro bono or reduced-cost legal services to Michigan residents.

I. Status Quo

In bygone days, apprenticeships were the point of entry into the legal, as well as other, professions. Today, most if not all law schools recognize the importance of experiential learning and have a clinical or experiential (internship) component to course work in the third year. Currently, however, there is no experiential component to law licensure

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

Like Charge 21, this Charge is formative at best, and if it is of interest, will require additional development. Below is just one way to imagine it.

Law students would be required, as a condition of law licensure, to follow one of two paths:

1. Upon completion of law school, enroll in the domestic legal peace corps envisioned by Charge 21. They would be paid modestly with a package of salary and debt forgiveness, perhaps modeled along the lines of “Teach for America.”
2. Graduates with job offers could opt out of the program. Their employers would furnish a commitment to provide on-the-job training, and perhaps even pay a fee that would help to underwrite the compensation of graduates following the first option.

III. Trends

The idea is seen as novel, but there is some trend back toward formal apprenticeship in England, and serious consideration of the idea in the province of Ontario, Canada. The UK Legal Services Act of 2007 (https://en.wikipedia.org/wiki/Legal_Services_Act_2007; <http://www.legislation.gov.uk/ukpga/2007/29/contents>) provides sweeping reforms to de- and re-

regulate the legal profession. Among them is the creation of a separate, experiential path to law licensure, through formal apprenticeship. Ontario is considering similar reforms.

<http://www.slaw.ca/2012/07/09/the-return-of-legal-apprenticeships/>

IV. Analysis needed for any option under consideration:

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

The pool of talent available to provide low or no cost legal services is augmented by a phalanx of new lawyers seeking licensure. Students who wish to avoid this service will be required to show that they have an alternate experiential path, and will generate resources to fund their less-fortunate colleagues.

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

Human resources are wasted; the effort becomes mired in political backlash and perhaps even litigation.

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

To be frank, this is an idea that is probably best admired for its innovation and long-haired aspiration, and put back on the shelf for another day.

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

On the other hand, the idea is a game-changer. Paired with Charge 20, it could create the kind of resources to seriously fill the justice gap.

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

This idea would require substantial revision to the Rules for the Board of Law Examiners, and potentially to Rule 15 of the Rules Concerning the State Bar. Legislation should not be necessary, but it is easy to envision attempts at legislation to block this proposal.

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

No.

G. Implementation Strategies

1. Potential supporters and potential allies

Law schools and law students; lawyers; Board of Law Examiners

2. Potential opponents and potential obstacles

Law schools and law students; lawyers; Board of Law Examiners

3. Interested SBM entities

- SBM Law Student Section
4. **Other Interested stakeholders or potential partners**
Law firms and other entities hiring lawyers
 5. **What are the possibilities to increase effectiveness through technology (e.g., apps, online tools/systems)?**
N/A
 6. **How might this intersect with or impact other justice system areas/needs?**
N/A
 7. Staging
 - a) **Does this option need experimentation or piloting?**
See subsection (c) above.
 - b) **What is the recommended timetable, if any?**
See subsection (c) above.
 - c) **What is the recommended order of recommended steps, if any?**
See subsection (c) above.
 8. **What role should the State Bar play, if any?**
Stop us now, before we come up with more whacky ideas.

Charge 23

Make current State Bar pro bono standards mandatory and police them.

Reason for Charge 23 (include citations to research and data wherever relevant) Funds for legal aid and other access-based programs are in more than short supply, while many lawyers shirk their ethical commitment to poverty law.

I. Status Quo

The State Bar of Michigan has established a voluntary standard for pro bono participation. Formal recognition on the part of the State Bar of the importance of "providing professional services at no fee or a reduced fee to persons of limited means" is reflected in the [Standard](#). The [Standard](#), which

was recently updated, was initially adopted by the [Representative Assembly of the State Bar of Michigan](#) on April 28, 1990, and states:

As adopted by the Representative Assembly as a policy of the State Bar of Michigan

All active members of the State Bar of Michigan should participate in the direct delivery of pro bono legal services to the poor by annually:

1. Providing representation without charge to a minimum of three low income individuals; or
2. Providing a minimum of thirty hours of representation or services, without charge, to low income individuals or organizations;¹or
3. Providing a minimum of thirty hours of professional services at no fee or at a reduced fee to persons of limited means or to public service or charitable groups or organizations; or
4. Contributing a minimum of \$300 to not-for-profit programs² organized for the purpose of delivering civil legal services to low income individuals or organizations.³ The minimum recommended contribution level is \$500 per year for those lawyers whose income allows a higher contribution.

Many Michigan lawyers take this moral commitment quite seriously. Others do not.

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

Options are seen as existing on a scale of reporting and investigatory schemes. At the low end, each Michigan lawyer would be required to fill in and sign a form designed to report on the manner in which she fulfilled her commitment. A more strident approach would require the submission of documentary proof, and create an investigatory panel to identify and investigate questionable submissions. Any investigatory panel could be made up of lawyer volunteers along the lines of the Attorney Grievance Commission.

At any level of implementation, moving forward with this idea would serve Guiding Principles 1-3.

III. Trends

This idea is believed novel.

IV. Analysis needed for any option under consideration:

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

A larger pool of pro bono service providers and funds

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

Backlash and outrage from within the legal profession. If we can’t get mandatory CLE, what is the likelihood of getting this?

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

The unanswered question is whether the Bar has the stomach for the battle.

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

In addition to increasing resources for legal access, the option would signal to the residents of the State of Michigan the depth of our professional commitment to a just society (if successful).

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

Implementation would require change to the Voluntary Pro Bono Standard to make it the Mandatory Pro Bono Standard, and inclusion into the Rules of the State Bar. Also, intestinal fortitude will be needed.

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

No.

G. Implementation Strategies

1. Potential supporters and potential allies

Proponents of access

2. Potential opponents and potential obstacles

The forces of Mammon; lawyers

3. Interested SBM entities

None identified

4. Other Interested stakeholders or potential partners

None identified

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

None identified

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

Creates resources both human and financial to support other initiatives.

7. Staging

a) Does this option need experimentation or piloting?

No

- b) **What is the recommended timetable, if any?**
Implement by 2017
 - c) **What is the recommended order of recommended steps, if any?**
One step—it just needs to be taken
8. **What role should the State Bar play, if any?**
This one is fully within the SBM’s purview and mandate.

D. Conclusions

There is no single silver bullet that will resolve the issues of access to and affordability of legal services. An “all of the above” approach is required. That said, we must deploy our limited resources wisely to build on our strengths. As Janet Welch wisely observed in the September 15, 2015 AAC meeting, we need to “follow the data.” We are on the cusp of obtaining the kind of data necessary to meaningfully evaluate the LLLT concept. While that data develops, energies should be focused upon existing strengths and other reforms.

EXHIBIT ONE
Jurisdictions' Activity on Alternative Licensed Legal Professionals⁴
May, 2015

State/Jurisdiction	Description/Notes
Alabama	No activity.
Alaska	No activity.
Arizona	<p>Arizona certifies legal document preparers, who are non-attorneys who may help individuals and entities prepare documents. LDPs may provide general legal information but may not give legal advice. http://www.azcourts.gov/cld/LegalDocumentPreparers.aspx</p> <p>The Supreme Court's Access to Justice Commission is starting to study and make recommendations on innovative ways of promoting access to justice for individuals who cannot afford legal counsel or who choose to represent themselves in civil cases. There is no indication that alternative licensed legal professionals will be discussed, but the commission is still in progress. http://www.azcourts.gov/cscommittees/ArizonaCommissiononAccesstoJustice.aspx</p>
Arkansas	No activity.
California	<p>In February, 2015, the State Bar of California Civil Justice Strategies Task Forces issued its final report endorsing the use of licensed, trained legal practitioners to provide limited legal services to low-income individuals who cannot afford to hire attorneys for advice on civil legal matters. For more information contact Francisco Gomez State Bar of California 180 Howard Street, 10th Floor San Francisco, California 94105, francisco.gomez@calbar.ca.gov and see Civil Justices Strategy Task Force Report and Recommendations, State Bar of California (2015), available at http://board.calbar.ca.gov/docs/agendaltem/Public/agendaitem1000013042.pdf at pages 51-53.</p>
Colorado	<p>The Colorado Supreme Court Advisory Committee, Subcommittee of Limited License Legal Technicians has compiled materials to begin consideration of whether Colorado should adopt a program allowing licensed legal technicians to perform limited legal services for</p>

⁴ For purposes of this chart, an alternative licensed legal professional is a legal professional licensed to provide legal services or practice law without the supervision of a licensed lawyer, or who is authorized to provide representation or legal services and is subject to regulatory oversight by a State or Federal agency.

	the public. For more information contact James C. Coyle, Attorney Regulation Counsel at 303-928-7780, j.coyle@csc.state.co.us .
Connecticut	The Connecticut Bar Association Task Force on the Future of Legal Education and Standards of Admission released a report in June, 2014 recommending, among other things, that non-lawyers be allowed to perform some limited legal services. The report discussed the concept of a post-bachelor's degree training program; i.e. something more than a paralegal program but less than a JD program. For more information please see http://c.ymcdn.com/sites/www.ctbar.org/resource/resmgr/CT_Lawyer_Volume_25_-_Public/Pages_from_March_15_-_Reform.pdf
Delaware	No activity reported.
District of Columbia	No activity reported.
Florida	The Admission Committee of The Florida Bar's Vision 2016 Commission is looking at the issue. If the Vision 2016 Commission approves a proposal, then that proposal may be presented to the Florida Commission on Access to Civil Justice .
Georgia	No activity.
Hawaii	No activity reported.
Idaho	No activity.
Illinois	No activity.
Indiana	No activity.
Iowa	No activity.
Kansas	No activity.
Kentucky	No activity.
Louisiana	No activity.
Maine	No activity.

Maryland	No activity.
Massachusetts	Access to Justice Commission and Supreme Court's Rules Committee are scheduled to have preliminary discussions about alternative licensed professionals some time in 2015.
Michigan	No activity.
Minnesota	No activity.
Mississippi	No activity.
Missouri	No activity.
Montana	No activity reported.
Nebraska	No activity.
Nevada	Non-lawyer document preparers are allowed pursuant to statute enacted in 2013. At the direction of a paying client, document preparers are allowed to prepare or complete pleadings, applications or other documents for clients, translate an answer to a question posed in such a document, secure supporting documents, such as birth certificates, in connection with a legal matter and submit completed documents to a court or administrative agency. Document preparers are required to register with and are regulated by the Nevada Secretary of State. For more information please see http://nvsos.gov/index.aspx?page=1346
New Hampshire	No activity.
New Jersey	No activity.
New Mexico	In January, 2015, the New Mexico Access to Justice Commission formed a working group to study the suitability of an alternative licensure program in New Mexico. The discussion and research are in the initial stages. Contact Elizabeth McGrath (505) 244-1101 or William Slease (505) 842-5781 for more information.
New York	As reported in Richard Zorza's Access to Justice Blog in February, 2014 (available at http://accesstojustice.net/2014/02/11/new-york-chief-judge-lippman-announces-court-navigator-program-in-state-of-judiciary/) in 2014, New York Chief Judge Jonathan Lippman "announced the launch of a pilot project of Court Navigators to help unrepresented litigants in Housing Court cases in Brooklyn and consumer debt cases in the Bronx and Brooklyn." According to the Court's website, the Court Navigator Program trains college students, law students and other persons to assist unrepresented litigants, who are appearing in <u>Nonpayment Proceedings</u> in the <u>Resolution Part</u> of Housing Court or in the

	<p>Consumer Debt Part of the Civil Court. <u>Nonpayment proceedings</u> are cases where landlords sue tenants to collect rent. Consumer debt proceedings involve credit card companies, hospitals, banks or any other person or company to whom a litigant may owe money. The Program operates in partnership with LawHelp, and in Kings County Housing Court with the non profit organizations University Settlement, and Housing Court Answers. The goal of the Court Navigator Program is to help litigants who do not have an attorney by offering non-legal support. Participating volunteers work in the courtroom under the supervision of a Court Navigator Program Coordinator and are provided the opportunity to interact with judges, lawyers and litigants, and to gain real-world experience. For more information please contact: courtnavigator@nycourts.gov and see http://www.courts.state.ny.us/courts/nyc/housing/rap_prospective.shtml.</p> <p>Additionally, in June, 2013 the New York City Bar Committee on Professional Responsibility issued a report discussing the role of nonlawyers serving as courtroom aides to assist litigants in proceedings before selected courts and agencies. The Committee further recommended that the New York Bar consider adopting a legal technicians model similar to Washington State for services outside of judicial and administrative hearings and that nonlawyers' roles should be expanded to fill a growing justice gap. For more information please see http://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf.</p>
North Carolina	No activity.
North Dakota	No activity.
Ohio	No activity.
Oklahoma	No activity.
Oregon	<p>In December, 2014, the Oregon Legal Technicians Task Force agreed to submit a proposal to the Oregon State Bar Board of Governors suggesting that the BOG consider the general concept of a limited license for legal technicians as one component of the BOG's overall strategy for increasing access to justice in Oregon. For more information please contact the Task Force Chair, Theresa L. Wright at 503-620-0222, twright@osbar.org or refer to the Task Force's Final Report at http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf</p>
Pennsylvania	No activity.
Rhode Island	No activity reported.
South Carolina	No activity.

South Dakota	No activity.
Tennessee	No activity.
Texas	No activity.
U.S. Virgin Islands	No activity.
Utah	The Utah Bar currently has a Futures Commission that is investigating the future of the practice of law and legal education. A subcommittee of the Futures Commission is investigating and reporting on alternative legal service providers. The Futures Commission is slated to issue a report and recommendation on its findings at the Utah Bar's annual convention in July, 2015. Additionally, Utah Bar leadership has met with the Utah Supreme Court to seek permission to investigate Washington's LLLT program as something Utah might consider. The Court granted permission and the Utah Bar Commission is determining whether to move forward with an additional committee or to wait on the report of the Futures Commission. For more information please contact Elizabeth A. Wright, General Counsel, Utah State Bar, (801) 297-7047.
Vermont	In March, 2014, the Vermont Bar formed the Vermont Joint Commission on the Future of the Legal Profession. The Commission consists of four sub-committees: (1) Technology Committee; (2) Court processes Committee; (3) Legal Services Committee; and (4) Committee on the Future of Legal Education/Future of the Profession. The Future of Legal Education/Future of the Profession Committee plans on issuing a final report in summer, 2015. The Committee is likely to recommend education and training programs for the certification or licensing of nonlawyers who are authorized to provide specific, limited legal services under the supervision of an attorney. Loosely called a "paralegal plus" these professionals will be subject to rules of professional conduct and continuing legal education rules. For more information please contact Michael Kennedy, Bar Counsel, 32 Cherry Street, Suite 213, Burlington, VT , 0540, (802) 859-3004.
Virginia	The Virginia State Bar's Committee to Study the Future of Legal Practice is looking at a variety of issues, including limited license legal technicians. http://www.vsb.org/site/publications/vlawyer/april_2015
Washington	In 2012 the Washington State Supreme Court adopted the Limited License Legal Technician Rule. The rule authorizes new legal professionals in Washington State, who meet certain educational and experience requirements, to provide a limited range of legal services to clients in specific approved practice areas. Presently, Washington's Limited License Legal Technicians ("LLLTs") are approved to provide services in family law matters, including dissolution and separation petitions, support modification actions, parenting plans and support, domestic violence matters, and paternity actions. For more information contact Paula Littlewood at 800-945-9722 or visit http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians . Additionally, pursuant to Rule 12 of the Admission to Practice Rules, Washington State

	authorizes Limited Practice Officers (“LPO”) who, although not a lawyer, can select, prepare and complete documents in prior approved forms for us in closing loans, extensions of credit, and the sale or other transfer of real or personal property. For more information see http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Limited-Practice-Officers .
West Virginia	No activity.
Wisconsin	No activity.
Wyoming	No activity.
U.S. Government Entities/Agencies	
United States Bankruptcy Courts	Pursuant to Federal Bankruptcy laws, individuals who are not licensed attorneys can only enter information into bankruptcy forms on behalf of individuals filing for bankruptcy. Preparers are prohibited from providing legal advice and cannot sign documents on behalf of the bankruptcy petitioner. For more information please see http://www.justice.gov/ust/r05/docs/general/guidelines/bank_pet_prep.pdf .
United States Equal Employment Opportunity Commission	Individuals who are not licensed to practice law may appear in a representative capacity on behalf of a claimant with the United States Equal Employment Opportunity Commission (“EEOC”). Such individuals may appear at mediations and hearings but are not entitled to fees should the EEOC make a finding adverse to the employer. For more information please see http://www.eeoc.gov/ .
United States Patent and Trade Office	Pursuant to 35 U.S.C. § 2(b)(2) § 11.5(b), the United States Patent and Trade Office (“USPTO”) authorize patent agents to practice before the USPTO. Patent agents are allowed to prepare and file patent applications, prepare and file amendments to applications, and render opinions as to the patentability of inventions. Agents cannot advise as to ownership of an invention when a question arises from an employment agreement, advise as to other forms of legal protection (e.g. anti-trust), or advise or represent a client in connection with trademark rights or liabilities. For more information please see http://www.uspto.gov/learning-and-resources/ip-policy/becoming-practitioner
United States Social Security Administration	Section 206(a)(1) of the Social Security Act provides that non-attorneys may represent claimants before Social Security Administration. Representative can act on behalf of a claimant by obtaining information from the claimant’s SSA file, assisting the claimant in obtaining medical records to support a claim, accompany a claimant to interviews, conferences and hearings before the SSA, request reconsideration of SSA determinations, and assist in and question witnesses at SSA hearings. Representatives also receive copies of SSA determinations. For more information please see

	http://www.socialsecurity.gov/representation/index.htm and http://www.ssa.gov/pubs/EN-05-10075.pdf .
United States Citizenship and Immigration Services	Individuals who are not licensed as attorneys can provide limited services to aliens in immigration proceedings when accredited to do so by the Board of Immigration Appeals. Accredited representatives may assist aliens before the Executive Office for Immigration Review’s immigration courts and Board of Immigration Appeals (“Board”), or before the Department of Homeland Security (“DHS”), or both. Some accredited representatives may assist aliens only before DHS. All accredited representatives must be designated by an organization that is recognized by the Board. Organizations must apply to the Board for recognition as well as accreditation of its representatives. The rules for qualifying organizations, requests for recognition, withdrawal of recognition, and accreditation of representatives can be found in the Code of Federal Regulations, 8 C.F.R. § 292.2 and § 1292.2. For more information please see http://www.justice.gov/eoir/recognition-and-accreditation-program .
Non-U.S. jurisdictions	
Ontario, Canada	Licensed paralegals can perform a variety of legal services without an attorney’s supervision including representing clients in Small Claims Court and the Ontario Court of Justice for minor offenses such as traffic violations and trespassing, representing clients in summary conviction offenses where the maximum sentence does not exceed six months, representing clients in limited immigration matters, and representing clients in other minor matters before various administrative boards. For more information please see https://www.lsuc.on.ca/for-paralegals/resources-for-paralegals/
England and Wales	In addition to barristers and solicitors, legal services are provided by Chartered Legal Executive lawyers, who are regulated and paralegals who are not regulated. Most work under the supervision of and for solicitors. According to the National Association of Licensed Paralegals, “There are very few areas in a Solicitor's General Practice in respect of which a solicitor has a legislative monopoly. The main areas are: conduct of litigation, rights of audience in the main courts, certain aspects of a conveyancing transaction and the extraction of a Grant of Representation. However, in the vast majority of other matters, Paralegals have the right to conduct general legal business and also have absolute rights of audience in the Small Claims Court and in the majority of Tribunals. In addition, provided that they are representing their solicitor or qualified litigator employer, paralegals can have rights of audience on most interim application hearings and hearings in Chambers and in family case applications including hearings in chambers in both the High Court and the County Court other than reserved family proceedings. A most important concept in England and Wales is that unlike other countries (particularly America and to some extent Canada) there is no specific offence of the unauthorized practice of law (UPL).” For more information please see http://www.nationalparalegals.co.uk/nalp

EXHIBIT TWO

CONFIDENTIAL

**REPORT OF THE SPECIAL COMMITTEE ON DEFINING THE PRACTICE
OF LAW TO THE STATE BAR OF MICHIGAN BOARD OF COMMISSIONERS**

Introduction

Michigan statutes outlaw the unauthorized practice of law, but do not make it a crime. The sole enforcement officer is the State Bar of Michigan; the only remedy is that of an injunction. What is, and is not, the practice of law is presently entrusted to the common law, but the common law of the State of Michigan is not an efficient mechanism to communicate to the layperson what the “practice of law” is or is not. A uniform definition of the practice of law may reduce litigation and enhance compliance and will assist with the enforcement by the State Bar of Michigan.

Michigan and her citizens continue to suffer economic hardship, and while the demand for non-lawyer help with legal problems grows, so does the supply of unqualified persons, economically motivated and willing to prey. This increases the threat both to the integrity of the legal profession and to the well-being of Michigan citizens. It also makes it more important than ever to provide guidance to non-lawyers in nonprofit programs providing appropriate assistance and information to the public.

Attached hereto under Appendix I is the Special Committee on Defining the Practice of Law’s (Committee)¹ proposed definition of the practice of law. To emphasize the intent of the proposed definition, the Committee has included a preamble describing its purpose.

The proposed definition of the practice of law codifies and highlights existing common law. The definitive rulings of the Michigan Supreme Court and other appellate cases are re-affirmed. The proposed definition achieves two salutary purposes:

1. It provides clear and accessible guidance to those persons who might venture in to proscribed territory about what they may and may not do; and

¹ The Committee consists of distinguished practitioners across a broad constituency:

Stephen Gobbo (Chair), Representative Assembly

Danny Inquilla, Justice Initiatives Committee

Jerome Pesick, Real Property Law Section

Amy Tripp, Probate and Estate Planning Section (also represented Elder Law and Disability Rights)

James Harrington III, Family Law Council, Family Law Section

Judge Elwood Brown, Judicial Conference Section

Anthony Bellanca, Macomb County Bar Association

Hon. Susan Dobrich, State Bar of Michigan Judicial Crossroads Task Force

Linda Rexer, Michigan State Bar Foundation, Solutions on Self-Help Task Force

Christopher Hastings, Standing Committee on the Unauthorized Practice of Law

Committee members were charged with soliciting input from their constituencies, which was considered by the Committee in doing its work. Biographical summaries for Committee members are attached hereto under Appendix

II. Report of Special Committee on Defining the Practice of Law August 17, 2011 Page 2 of 4

2. It establishes parameters for the various and growing number of public service organizations, such as Kent County's Legal Assistance Center, working to assist the growing number of persons who cannot afford lawyers access to legal information and resources in an appropriate manner, by expressly permitting their good work to continue.

² For example, trust mills sell expensive standard form "living trusts" as a part of a standard estate plan, not understanding that placing the family home and other assets into a living trust will cause them to lose their exemption in the calculus for Medicaid benefits, depriving otherwise eligible Michigan citizens of this critical benefit at a time of their lives when they are least able to address the issue.

Overview

The State Bar Standing Committee on the Unauthorized Practice of Law ("Standing Committee") first drafted a proposed definition of the practice of law after Washington adopted the first modern rule-based definition in 2001, but the effort was tabled for lack of interest. Since then, Arizona, the District of Columbia, Utah, and Hawaii have each adopted similar rules. These rules are each, to some extent, a model for the proposed definition submitted with this Report.

Interest in codifying the definition of the practice of law in Michigan grew in the wake of the Michigan Supreme Court's decision in *Dressel v Ameribank*, 468 Mich 557, 664 NW2d 151 (2002), a decision which included the following holding:

"We hold that a person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion and profound legal knowledge." *Dressel*, 468 Mich at 569.

The Standing Committee understood these words to articulate a position that the exercise of legal discretion and profound legal knowledge was a sufficient condition for an actor to be practicing law. Unlicensed persons, however, would argue that the Michigan Supreme Court's holding describes a necessary condition, thus making the performance of many tasks that have for centuries been in the sole domain of licensed practitioners now within the public domain. Lawyers perform many tasks which could be accomplished without the exercise of profound legal knowledge. The key is that lawyers have the training and experience to recognize those situations where a form document, or boilerplate language, will not work. When non-lawyers can hold themselves out as qualified to perform these tasks, the public is at risk, not necessarily because the lawyer would have used profound legal knowledge, but because the lawyer has it available, and can recognize when it is needed.²

In 2009, the Standing Committee resumed its efforts to draft and promote a definition of the practice of law, with the specific goal of clarifying the language discussed above as a sufficient, but not a necessary component of the practice of law. Since then, the economic collapse and the growth in unauthorized legal practices have lent additional urgency to the effort as the State Bar struggles to marshal scant resources to cover a growing problem. Report of Special Committee on Defining the Practice of Law August 17, 2011 Page 3 of 4

³ Related issues abound. For example, title companies, who have long been at odds with the Standing Committee, routinely prepare deeds without the benefit of legal counsel, and, presumably in an effort to immunize themselves from fault in the event the deed is defectively drafted, "comply" with the recording requirement of MCL 565.201a by falsely identifying the buyer or the seller of the property as the drafter of the deed.

In March of 2011, State Bar President Tony Jenkins appointed this Committee, with the following mandate:

Examine a proposed rule-based definition of the practice of law prepared by the Unauthorized Practice of Law Committee and to provide constructive guidance regarding

enhancements, potential benefits to the public and the legal community and potential areas of concern;

Examine alternative approaches to address the unauthorized practice of law and to consider mechanisms to protect persons needing legal assistance from unauthorized legal practices; and

Provide a report of conclusions reached by the Ad Hoc Committee and its recommendations to the Board of Commissioners.

This document is that report.

Findings and Conclusions

The Michigan Supreme Court's opinion in *Dressel* revises its prior conclusion that defining the practice of law is "impossible," to find the task merely "formidable." *Dressel*, 468 Mich at 562. The Committee agrees, and commends the Standing Committee for undertaking this challenge, which has involved scores of hours of legislative and judicial analysis, including exhaustive analysis of the practices of all 50 United States, as well as Puerto Rico and Washington D.C.

The Committee unanimously endorses the proposed definition, and recommends it for inclusion into the Rules Concerning the State Bar of Michigan as Rule 16.1, Definition of the Practice of Law. We believe the proposed definition codifies and clarifies Michigan common law, provides *transparency* into issues arising out of the "practice of law," furnishes necessary guidance to lawyers and others, and will enhance the enforcement efforts of the Standing Committee.

There is no magic bullet. Problems arise out of enforcement imperatives. The resources of the State Bar of Michigan are limited.³ Additional enforcement is within the purview of the Legislature; however, these are separate and distinct issues from "defining" the practice of law. Advancing and marshalling support for relevant legislative opportunities are within the purview of the capable hands of the Standing Committee.

Funding issues and resources for protecting the citizens of the State of Michigan from predatory unauthorized legal practice attacks are properly deferred to future strategic planning or other appropriate State Bar committees, as they are not within the scope of this Committee's jurisdictional mandate. Report of Special Committee on Defining the Practice of Law August 17, 2011 Page 4 of 4

This Committee urges the Board of Commissioners and the Representative Assembly to recognize the *consensus* efforts of the participants on this Committee and the Standing Committee, and consider the proposed definition in *whole cloth fashion*. The proposed definition is the product of a wide range of perspectives, bringing experience from multiple parts of the legal profession, and incredible effort has been exerted to assure that no language in any particular section of the proposed definition is inconsistent with existing case law or other sections.

This Committee is aware that there is among our membership disappointment, sometimes profound or even angry, with the current status of the common law on unauthorized legal practices, particularly in light of *Dressel*, but has resisted suggestions to remake the law into what we wish it were, as that is the province of the Michigan Supreme Court. Instead, the proposed definition acknowledges the Michigan Supreme Court's authority in this regard, including its authority to further interpret the law. The Committee believes that this approach is necessary to gain serious consideration of the Michigan Supreme Court of the proposed rule-based definition of the practice of law.

Respectfully submitted,

Stephen Gobbo, Chair
Anthony Bellanca
Hon. Elwood Brown
Hon. Susan Dobrich
Christopher Hastings
James Harrington III
Danny Inquilla
Jerome Pesick
Amy Tripp
Linda Rexer

APPENDIX I

INTERNAL DRAFT FOR DISCUSSION PURPOSES ONLY.
DO NOT DISSEMINATE

[PROPOSED]

DEFINITION OF THE PRACTICE OF LAW

PREAMBLE

This preamble is part of the comment to this Rule, and provides a general introduction regarding its purpose. Every jurisdiction in the United States recognizes the inherent right of individuals to represent themselves in legal matters. In contrast, the privilege of representing others in our system is regulated by law for the protection of the public, to ensure that those who provide legal services to others are qualified to do so by education, training, and experience and that they are held accountable for errors, misrepresentations, and unethical practices. The following rule defining what constitutes the practice of law in Michigan is promulgated by the Michigan Supreme Court pursuant to its inherent authority to define and regulate the practice of law in this state. The purpose of the rule is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.

RULE 16.1 DEFINITION OF THE PRACTICE OF LAW

(A) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge and skill of a person trained in the law. This includes, but is not limited to:

(1) Counseling or assisting another in matters that require the use of legal discretion and profound legal knowledge.

(2) Selection and/or preparation of any legal document in written or electronic form, including but not limited to deeds, mortgages, assignments, discharges, leases, contracts, releases, trust instruments, wills, codicils, agreements, pleadings, papers, proposed court orders, and other documents purporting to affect or secure legal rights. This does not include preparation of routine forms incidental to a regular course of business.

(3) Representation of another entity or person, including but not limited to representation of entities by officers, directors or agents thereof:¹

(a) in a court;

(b) in a formal administrative adjudicative proceeding or other formal dispute resolution process; or

¹See MCL 450.681

(c) in any proceeding in which a record is established as the basis for appellate, judicial or administrative review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person.

(5) Holding oneself out as authorized or competent to practice law in the State of Michigan, including the use of designations or characterizations such as “esquire,” “esq.,” “attorney at law,” “counselor at law,” “legal representative,” “legal advocate,” or “judge.”

(6) Giving advice or counsel to others about their legal rights or responsibilities, or the legal rights or responsibilities of others.

(B) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to admissions to practice rules, including but not limited to MCR 8.120, MCR 8.126, W.D. Mich. L.R. Civ. 83.1(h), W.D. Mich. L.R. Crim. 57.1 and E.D. Mich. L.R. 83.21.

(2) Acting as a lay representative in an administrative agency or tribunal, when specifically authorized by statute.

(3) Serving in a neutral capacity, for example as a mediator, arbitrator, conciliator, or facilitator in a proceeding that is not subject to judicial review, or, in a proceeding that is subject to judicial review, as provided by statute or court rule.

(4) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(5) Providing assistance to another to complete a form provided by a court for protection under MCL 600.2950; MSA 27A.2950 or MCL 600.2950a; MSA 27A.2950(1) (domestic violence prevention) when no fee is charged to do so.

(6) Acting as a legislative lobbyist.

(7) Providing through a government or tax-exempt legal self help center or program, neutral information and assistance to the public (including making available legal forms or general legal information about procedural or substantive legal topics) without giving legal advice or legal counsel and without other than a nominal charge.

(8) Activities which are preempted by Federal law.

(9) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law.

(C) Nonlawyer Assistance: Nothing in this Rule shall affect the ability of nonlawyers to act under the supervision of a lawyer in compliance with Rule 5.3 of the Michigan Rules of Professional Conduct.

(D) Definitions: The term “pleading” refers to documents as defined by MCR 2.110(A). The term “paper” refers to all other legal documents submitted in court and administrative proceedings.

(E) General Information: Nothing in this Rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public. Nothing in this Rule shall be taken to define or affect standards for civil liability or professional responsibility.

APPENDIX II ₁

BIOGRAPHIES

Special Committee on Defining the Practice of law

Anthony J. Bellanca, Esq.

Bellanca, Beattie & DeLisle, P.C., Harper Woods, MI

Anthony J. Bellanca was admitted to SBM in 1964. His practice has concentrated on real estate, business organizations, transactional law, and related fields. Mr. Bellanca served as the 81st President of the Macomb County Bar Association (MCBA), the second largest volunteer bar association in Michigan. He has been an active committee chair, director, and officer of the MCBA for more than 30 years and represents the interests of the general practice lawyer in Southeast Michigan.

Hon. Elwood L. Brown

St. Clair County Probate Court, Port Huron, MI

Judge Elwood L. Brown was admitted to the SBM in 1979. He has served as a St. Clair County Probate Judge since 1999 focusing on Juvenile and Family law. He previously held the position of County Prosecuting Attorney from 1993 to 1999 and Assistant Prosecuting Attorney from 1981 to 1991. Judge Brown has served as chair of the Judicial Ethics Committee since 2009 and will serve as the President-Elect of the Michigan Probate Judges Association (MPJA) for the 2011-2012 bar year. Other leadership positions include past president of the Prosecuting Attorney's Association of Michigan and past co-chair of the Professional and Judicial Ethics Committee.

Hon. Susan L. Dobrich

Cass County Circuit Court Family Division, Cassopolis, MI

Judge Dobrich has served as the Chief Probate Judge of Cass County since 1995 and is also assigned to the Family Division of the Cass County Circuit Court. Her service includes: the MPJA Executive Board, the MPJA past President, the Governor's Task Force for Juvenile Justice, the Court Improvement Project, the MPJA representative on the Judicial Crossroads Task Force, the Solutions on Self-Help (SOS) Task Force, and the MPJA representative on the Judicial Conference Section. She has been a member of the SBM since November 1980.

Stephen J. Gobbo, Esq.

State of Michigan, Lansing, MI

Stephen Gobbo is chair-elect of the Representative Assembly and is in his second term as a member of the Standing Committee on the Unauthorized Practice of Law (UPL Committee). He is the Legal Affairs Division Director, Bureau of Commercial Services, Michigan Department of Licensing and Regulatory Affairs. He has been involved with civil, criminal, quasi-judicial, administrative law proceedings, and regulatory matters of public bodies for over 30 years. He is a graduate of the Thomas M. Cooley Law School and was admitted to the SBM in 1997.

James J. Harrington, III, Esq.

Law Offices of James J. Harrington III, PLC, Novi, MI

James J. Harrington, III was admitted to the SBM in 1973 and has focused his practice on Family law matters. He has established appellate records in Family law, including the landmark *Kowalesky v Kowalesky* case, regularly cited by many appellate Courts deciding a business valuation claim. He has presented at Family Law Section seminars about appeals and discovery in divorce cases, authored several published articles in his area of practice, lectured at the University of Detroit Mercy Law School, and served as a ICLE faculty member, including the Family Law Institute. 2

Christopher G. Hastings, Esq.

Thomas M. Cooley Law School, Grand Rapids, MI

Christopher G. Hastings has served as chair of the UPL Committee since 2008 and been a member since 2000. He practiced complex civil litigation from 1987 through 2006 at Miller Canfield and Drew Cooper and Anding, before leaving private practice to teach civil procedure at the Grand Rapids campus of Thomas M. Cooley Law School. Mr. Hastings serves on the board of trustees of the Kent County Legal Assistance Center and served on the Local Rules Committee of the U.S. District Court (WD Mich). His most recent publication is “Judging in West Michigan: Celebrating the Community Impact of Effective Judges and Courts,” (2011) with Nelson Miller, Kara Zech Thelen, and Devin Schindler. Mr. Hastings is a graduate of the University of Michigan Law School and was admitted to the SBM in 1987.

B. Daniel Inquilla, Esq.

Farmworker Legal Services of Michigan, Kalamazoo, MI

B. Daniel Inquilla is co-managing attorney of Farmworker Legal Services, a statewide division of Legal Services of South Central Michigan that serves migrant and seasonal farmworkers. He represents clients in matters involving immigration law, employment disputes, and access to government benefits. Mr. Inquilla also serves as a Commissioner on the Hispanic/Latino Commission of Michigan. He is a graduate of the University of Notre Dame Law School and Michigan State University, and was admitted to the SBM in 2000.

Jerome P. Pesick, Esq.

Steinhardt Pesick & Cohen PC, Birmingham, MI

Jerome P. Pesick is the managing shareholder of Steinhardt Pesick & Cohen, P.C. where he practices in the areas of eminent domain, condemnation, and property tax appeals. During his 33 years in practice, he has represented clients in major condemnation projects and in property tax appeal cases involving business properties. Mr. Pesick is a member of the Litigation Section and immediate past chair of the Real Property Law Section. As a member of the Oakland County Bar Association, he served as Chair of the Circuit Court Committee. Mr. Pesick is the author of several articles on eminent domain, and is also a frequent speaker, instructor, and lecturer at state and national eminent domain conferences.

Linda K. Rexer, Esq.

Michigan State Bar Foundation, Lansing, MI

Linda K. Rexer has been the Executive Director of the Michigan State Bar Foundation (MSBF) since 1987 and has provided leadership to improve access to justice, especially for civil legal aid for the poor. The MSBF awards about \$10 million annually in grants. She was a founding member of the Access to Justice Task Force in 1997 and serves on its successor entity, the Justice Initiatives Committee and is a member of its Pro Bono Initiative. She has also provided expertise to other state and national workgroups and tasks forces convened to link providers, judges, and SBM representatives to plan and coordinate civil and criminal legal aid for the poor. More recently, Ms. Rexer served on the Judicial Crossroads Task Force Access to Justice Subcommittee and co-chairs the statewide SOS Task Force. She is a graduate of the University of Notre Dame Law School and was admitted to the SBM in 1978.

Amy R. Tripp, Esq.

Chalgian & Tripp Law Offices PLLC, Jackson, MI

Amy R. Tripp was admitted to the SBM in 1998 and is the former Chair of the Elder Law and Disability Rights Section. She is the author of the Chapter on Special Needs Planning, which appears in the ICLE publication: Advising the Older Client or Client with a Disability. She is a frequent speaker on issues of Elder Law and Special Needs, a member of the prestigious Special Needs Alliance and the Academy of Special Needs Planners as well as an active member of the Probate and Estate Planning Section and the National Academy of Elder Law Attorneys. Ms. Tripp received the Nadene Mitcham Courage and Heart Award (2009) from the Michigan Campaign for Quality Care.

EXHIBIT THREE

(begins on next page)

MEMO

From: Chris Hastings, Chair, Standing Committee on UPL
To: Steve Gobbo, Chair, Ad Hoc Committee on Defining the Practice of Law
CC: Danon Garland
Date: March 14, 2011
Re: Analysis of Other States

At your request, I collated the attached spreadsheet analyzing the manner in which other jurisdictions treat the practice of law.

Of 53 jurisdictions (50 states, Puerto Rico, Virgin Islands and the District of Columbia), 23 purport to have codified (rule or statute based) definitions of the practice of law. To be fair, four of these codified definitions are so weak as to barely deserve the name. My spreadsheet identifies these as “soft” definitions.

My spreadsheet identifies five states--Washington, Arizona, District of Columbia, Utah, and Hawaii--that have defined the practice of law in the last ten years. The definitions of each of these states track one another formally, and inform the definition proposed by the Standing Committee on UPL. I have characterized these definitions as “modern,” in that they contain lists both of what constitutes the unauthorized practice of law, and what does not (exceptions). They are substantially more detailed than prior efforts and contain carve-outs for modern practices such as clinical practice for law students.

Washington, the first state to codify a modern definition (in 2001), did so in the wake of litigation that framed the same issue as *Dressel v. Ameribank*, 468 Mich 557, 664 NW2d 151 (2003). Each definition that came after Washington’s follows the format, albeit not necessarily the substance, of Washington’s definition.

There is a clear trend toward codified definitions of the practice of law. Since 1970, thirteen jurisdictions have codified definitions of the practice of law that supplant or supplement prior common law, although, frankly, the definitions that preceded Washington’s effort have little to recommend. In my view the significant trend is the one that started in 2001.

**Analysis of Codified Definitions of the Practice of Law
March 14, 2011**

State	Rule or Statute?	Year adopted	Latest Revision	Notes
Alabama	Statute	1852	1949	
Alaska	Rule & C. Law	1989		Soft definition
Arizona*	Statute	2002		Modern ^a
Arkansas	Statute	1997		New but not modern
Colorado	Rule	1984	2007	
Connecticut	Statute	1949	2004	
Dist. Columbia*	Rule	2004		Modern ^a
Georgia	Statute	1931		
Hawaii*	Rule	2009		Modern ^a
Kentucky	Rule & C. Law	1971	1978	Soft definition
Louisiana	Statute	1940	1979	
Maryland	Statute & C. Law	1989		Soft definition
Mississippi	Statute	1983		
Missouri	Statute	1939		
North Carolina	Statute	1943	1995	
Rhode Island	Statute	1935		
Tennessee	Statute	1935	2006	
Texas	Statute	1939	1999	
Utah*	Rule	2005		Modern ^a
Virginia	Rule	1978	1999	
Virgin Islands	Statute & C. Law	1976		Soft definition
Washington*	Rule	2001		First modern definition ^a
Wisconsin	Statute	1861	1993	

*Moved from common law to codified definition in the last ten years.

^aDefinitions described as modern identify conduct that is the practice of law as well as conduct that is not

EXHIBIT 4: 50 State Survey of Administrative Probate Thresholds and Limits

State	Administrative Probate?	Method?	Judicial Intervention?	Jurisdictional limits
Alabama	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$3,000
Alaska	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$15,000. Simplified Process: cannot exceed homestead allowance Affidavit: The value of all personal property in the estate, less liens and encumbrances, is \$75,000 or less; or The value of all Arizona real estate in the estate, less liens and encumbrances, is \$100,000 or less at the date of death, and all debts and taxes have been paid. Simplified Process: cannot exceed homestead allowance
Arizona	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	The value of all Arizona real estate in the estate, less liens and encumbrances, is \$100,000 or less at the date of death, and all debts and taxes have been paid. Simplified Process: cannot exceed homestead allowance
Arkansas	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$50,000
California	Yes	Spousal Property Petition, Affidavit, Simplified Probate Process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$50,000. Simplified Process: \$150,000

Colorado	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$60,000. Simplified Process: doesn't exceed value of personal property held by decedent as fiduciary or trustee
Connecticut	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$40,000.
Delaware	Yes	Affidavit	No	\$20,000
D.C.	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Simplified Process: \$40,000
Florida	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$75,000
Georgia	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	if there is no will, the estate owes no debts, and all heirs have amicably agreed on how to divide the property
Hawaii	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$100,000 for both
Idaho	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$100,000. Simplified Process: cannot exceed homestead allowance
Illinois	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$100,000 for both

Indiana	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$50,000 for both
Iowa	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$25,000. Simplified Process: \$100,000
Kansas	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$20,000. Simplified Process: if the court approves it, based on the size of the estate, wishes of the heirs, and other factors
Kentucky	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$15,000
Louisiana		Affidavit, Release of Money in Bank Accounts, Payment of Wages, Intestate estates only	Affidavit: Succession without administration if decedent owned real property	Affidavit: \$75,000. Release of Money: \$10,000. Payment of wages: \$6,000. Intestate Estates: \$5,000
Maine	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$20,000. Simplified Process: cannot exceed homestead allowance
Maryland	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$50,000 or if surviving spouse is only beneficiary, \$100,000
Massachusetts	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$25,000

Michigan	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$15,000
Minnesota	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$20,000. Simplified Process: if the court determines that no property is subject to creditors' claims
Mississippi	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$12,500. Simplified Process: \$500
Missouri	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$40,000
Montana	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$50,000. Simplified Process: cannot exceed homestead allowance
Nebraska	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$50,000. Simplified Process: cannot exceed homestead allowance Affidavit: \$20,000. Effective October 1, 2015, this amount increases to
Nevada	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$100,000 for a surviving spouse or \$25,000 for any other person making a claim. Simplified Process: gross value of estate doesn't exceed \$200,000

New Hampshire	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	(\$300,000 after Oct 1, 2015); or gross value of estate, less encumbrances, doesn't exceed \$100,000
New Jersey	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	<p>if there is a will naming the surviving spouse or, if there isn't one, an only child, as sole beneficiary and is appointed administrator; or if there's no will and the surviving spouse or, if no spouse, an only child is the sole heir and is appointed administrator.</p> <p>no valid will and the value of all property doesn't exceed \$20,000; or no valid will, the value of all property doesn't exceed \$10,000, and there is no surviving spouse or domestic partner</p> <p>Affidavit: \$500,000. Simplified Process: cannot exceed personal property allowance, family allowance, costs of administration, funeral expenses, and medical expenses of the last illness</p>
New Mexico	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	

New York	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$300,000
North Carolina	Yes	Affidavit, Simplified Probate process	Simplified Process: If the surviving spouse inherits everything, a summary probate procedure is available	Affidavit: \$20,000 (\$30,000, not counting spousal allowance, if surviving spouse is sole heir)
North Dakota	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$50,000. Simplified Process: cannot exceed homestead allowance value of estate is \$35,000; or surviving spouse inherits everything, either under a will or by law, and value of the estate is \$100,000 or less
Ohio	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	
Oklahoma	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$20,000. Simplified Process: \$200,000
Oregon	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	if the fair market value of the estate is \$275,000 or less, and not more than \$75,000 of the estate is personal property and not more than \$200,000 is real estate

Pennsylvania	Yes	Simplified Probate process, Release of Money in Bank Accounts, Payment of Wages, Life Insurance Payable to the Estate	Simplified Process: executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate.	Simplified Process: \$25,000. Release of Money: \$3,500. Payment of Wages: \$3,500. Life Insurance: \$11,000
Rhode Island	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$15,000
South Carolina	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$10,000 for both
South Dakota	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$50,000. Simplified Process: if the estate is of any size -- "informal probate" is available regardless of the value of the estate
Tennessee	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$25,000
Texas	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$50,000. Simplified Process: if the value of the property doesn't exceed what's needed to pay the family allowance and certain creditors
Utah	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	Affidavit: \$100,000. Simplified Process: cannot exceed homestead allowance

Vermont	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$10,000
Virginia	Yes	Affidavit	No	\$50,000 Affidavit: \$100,000. Simplified Process: (1) if there is a will, the executor named in the will makes the request, or (2) if there is no will, the surviving spouse or domestic partner makes the request, the estate consists entirely of community property, and the deceased person left no children or grandchildren from another relationship, or (3) PR is not a creditor of the deceased person, and the court determines it would be in the best interests of the beneficiaries and creditors
Washington	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	
West Virginia	Yes	Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$100,000
Wisconsin	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$50,000 for both

Wyoming	Yes	Affidavit, Simplified Probate process	executor files written request with probate court to use simplified process and court may authorize executor to distribute assets w/o regular probate	\$200,000 for both
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October 12, 2015

To: Linda Rexer and Judge Libby Hines

From: WG4

Re: Report and Preliminary Recommendations

Work Group 4 has consolidated its topics into the following two categories:

1. Simplification

This category focuses on simplifying or streamlining system level functions such as court processes/cases, resources/technology, assisting persons of limited means, better/cheaper ways of resolving disputes including potentially removing simple cases from the full blown court process.

Interim Recommendation: Use WG4's "Threshold Questions"¹ as a frame for identifying the most promising simplification techniques and ask State Bar interns or staff to assemble any models used in other jurisdictions in response to those questions; WG4 which will select specific examples for additional discussion in its final report.

2. Business Process Analysis

This category focuses more at the ground level at the organizational operations level to improve efficiencies and effectiveness through processes such as using LEAN for continuous improvement for courts, law firms, legal aid agencies and other entities working on access to justice. This category also includes identifying resources/tools to help especially legal aid, solo and small firms achieve efficiencies which may help lower costs or result in more resources to better assist low-income clients.

Recommendation: Publish results of WG4 LEAN projects together with commentary on how and why the LEAN process can result in more/better access to justice when applied to entities providing legal aid related services to low-income persons and provide information about how to get expert/volunteer/low-cost help to conduct the LEAN process (and any other similar processes, if relevant).

Recommendation: Assemble in a central accessible place online information to educate legal aid lawyers and young attorneys and solo practitioners about existing technology assisted resources: efficiency tools, document assembly, links/aids for quick access to resources and collaboration tools.

¹Threshold Questions for 21st Century Dispute Resolution: We should avoid starting with an assumption which may not be warranted: that the court system as presently constituted is the best template for the future resolution of disputes. Stated as an analogy, the question is whether we are working on a 1963 Chevy in an effort to improve its efficiency, gas mileage and driver satisfaction. If we are, the better starting point may be a whole new platform. In order to respond to this issue, these basic questions must be addressed.

1. Do the courts as presently constituted represent the best platform for civil dispute resolution, especially for people of limited means?
2. If so, for what disputes: all, some and, if some, which?
3. If not, what alternatives should be consisted as options? Examples include: mandatory pre-suit mediation, administrative-style tribunals, different tracks with different procedures, adjudication by non-elected magistrates, summary trials, etc.
4. Where the present structure provides the best platform, what are the procedures and processes which best serve the needs of the litigants? Should the amount of discovery and pre-trial practice be tailored on a case-by-case basis? Should the parties' financial resources be considered when determining the quantum of pre-trial practice? By way of further examples, should initial production of documents and names of witness be compelled (similar to FRCP 26(a)(1)), should the availability of discovery or the extent of discovery be provided only at the discretion of the judge (similar to the AAA Rules for Commercial Arbitration), should the length of depositions be limited, should time limits be placed on trials or should magistrates resolve all non-dispositive motions?
5. What additional tools do courts need (e.g. central research department for trial courts to avoid each locality duplicating research)?

WG 4 noted the importance of these additional topics or considerations (some of which are being handled by other work groups) in addressing its areas: unbundling, public interest lawyer work loads, e-filing, organizational leadership commitment to change, assuring there are resources for the most vulnerable, also not leaving out modest income needs, triage, minimizing costs while maximizing access, application of ideas to all legal services providers (aid, courts, law firms, others), and teaching people to use resources that already exist. Also see FN2 for a list of particular needs identified:²

More detailed information related to the three recommendations above is attached as:

Kubit: Resources for Legal Aid and Solo/Small Firm Practitioners, 10-1-15

Muth: Comments on Simplification, 7-13-15

Linna: LEAN Thinking Program, 9-20-15

² Specific ideas to incorporate in simplification or business analysis plans:

- Self-help centers located in courthouses or elsewhere in all counties
- Civil litigation – Better ways to resolve disputes.
- Michigan Legal Help and ADR – preventative/mitigation.
- Use lay navigators to help SRLs; help both sides in SHCs
- More uniform procedures across local courts
- More efficient use of technology, including social media, e.g. notice of hearings texted to clients; type in basic info and populates all docs for case at court, e-filing data sharing?
- Central research bureau for trial courts, not duplicate research in each locality
- Collaborative law practice with other professionals (i.e., provide therapists to parties in divorce matters); change simple cases to win/win – reduce adversarial aspects
- Attorney Emeritus - to allow emeritus attorneys to still practice and participate, e.g. pro bono, adr
- Disparity of resources – case management, processes, limitations on discovery and trial time, can't afford to pay plea track?
- Incorporate a "Means Test" – What is needed? What is the affordability of the proposed case?
- Avoid litigation in family law matters– divorces could be much easier and kept out of the court with mediation ahead of time.
- Delineate what types of cases would benefit from simpler procedures or handling outside legal system
- Discovery process – Establish a process that will assist In Pro Per parties navigate discovery. Also, how to get attorneys to be more cooperative in the discovery process.
- Flexible court hours to accommodate regular citizen work hours.
- Resources to assist and encourage attorney efficiency.
- Use of LEAN process projects and creations of culture of continuous improvement

In our efforts to expand access to justice, we are well aware that the need for free or low cost direct legal representation greatly exceeds the resources available. For every 13,000+ people in Michigan who qualify for legal aid assistance, there is only one legal aid attorney.

There is much work being done on what new tools we can implement and how we may be able to restructure the system as a whole, but what more can we do now with what we have? How can legal aid attorneys and solo practitioners be more efficient using existing resources? The less time that it takes to serve a client, the more clients that can be served, and for the solo practitioners, the lower the rates can be for the clients.

Due to the high volumes of clients they see, many legal aid attorneys in particular are efficiency experts to some degree. But have they maximized their efficiency? What more can the state bar do to facilitate and support further efficiency?

One area for potential improvement is educating legal aid attorneys on the full capabilities of templates and form letters through the Michigan-wide case management system, Pika. Once a template is correctly coded and uploaded to the Pika system, an attorney can create a customized document for a client with the click of a button. The system pulls the necessary information which already exists in the client's electronic case file. No need for re-typing all that data. The knowledge of how to code and upload a template to this system seems to be limited to a few individuals, and among those that know, do they know the full capabilities of the templates? The Michigan Poverty Law Program is happy to train on this.

Some wonderful resources are already available. The biggest need seems to be educating our legal services lawyers and young attys/ solo practitioners about these resources.

Tools for legal services lawyers & solo/small firm practitioners:

Need:

- efficiency tools
- document assembly
- quick access to resources
- collaboration tools

Efficiency tools:

- [Clio](#): a subscription case management tool - this seems like the future of case management software!
- integration of Case Management software with document assembly tools (Legal Aid of Western Michigan is working on this)
- tools to manage our huge email inboxes: gmail tabs, filters, and categories, [boomerang](#)
- Corporate Gmail account to take full advantage of Google suit (like calendar, [drive](#), [boomerang](#), etc).
- [Evernote](#)
- paperless office using tools like portable scanners ([ScanSnap](#)), apps to capture images using smartphones and easily creates pdfs ([Scanable](#)), and private cloud-based storage for backup on the go.
- [Text expander](#) - create shortcuts to quickly add frequently used text

Document assembly:

- [Document assembly interviews for legal aid attys through MPLP website](#)
- **Pika templates** (Legal aid programs in Michigan all use Pika as their case management software. There is a way to create templates for letters and commonly used documents through Pika, but very few legal aid attorneys seem to know how to create these). There needs to be more training, revision, and sharing of such templates among legal aid programs.
- Google Forms
- Can we create a website or portal like [michiganlegalhelp.org](#) with more in-depth interviews and tools for attorneys?

Quick access to resources:

- ICLE online books (I pull these up on my smartphone in court all the time)
- free legal research tools through Library of Congress
- [Michigan One Court of Justice](#)
- screening tools (like those available at [MPLP](#) and [Mi-SOAP](#))

Collaboration tools:

- [Trello](#)- checklists and project management
- [Google drive collaboration](#) - now has track changes capabilities
- [brief bank](#) (MPLP has one but it is very sparse)

Some legal aid programs in Michigan use a **corporate Gmail account**, which includes security features not available through the free version. With a Corporate account, programs or firms can customize the email addresses, like [@lsscm.org](#)". Some legal aid programs, like Lakeshore Legal Aid, have very clunky and cumbersome email providers, like 1and1, with terrible spam filters and poor organizational tools. The justification seems to be security issues, but these fears appear misguided: [Security of Google apps for work?](#) Corporate gmail accounts seem to be robust, secure, and cheap ways that legal services lawyers and solo/small firms can manage email.

Comments regarding task of Sub-Committee on Business Process Analysis and Simplification. Jon R. Muth, July 13, 2015.

Here are some initial comments I have regarding the work of our sub-committee. I agree with much of the content of the Zorza article.

A. Simplification of Court Processes/Additional Resources for Judges.

Court processes should be simplified in several tranches: filing/service, judicial involvement in the scheduling order, time and activity limits for the complete pre-hearing tasks and hearing. There should be added emphasis on caseflow management with active involvement by a judge or quasi-judicial officer.

There should be mandatory information exchange at outset of litigation.

There should be limitations placed upon or elimination of discovery beyond information exchange, determined on a case-by-case basis.

Pre-hearing materials should be structured and routinized so that judges may quickly focus on the key issues for decision.

Time limits should be placed on trials and hearing. Limits allow a court to better schedule, eliminate waiting time for other cases in the queue and makes lawyers much more efficient in the presentation of a case.

A central state research bureau should be established to assist trial court judges. There is no need for several trial judges in different corners of the state to independently research the same background law at the same time. The less time wasted, the more time there will be for judging.

I think that the Kaizen approach has promise in identifying inefficiencies in individual courts. The problems that I see are that the solutions are more local than universal and that the process of the study has the potential to take on a life of its own, requiring personnel and resources. My impression is that there are a number of measures that may be taken quickly which require little or no study (the "low hanging fruit"). By actually doing something, as opposed to studying or contemplating, momentum is built for further progress. If something that seemed obvious doesn't work, abandon it and try something different (a concept that is actually built into the Kaizen approach and which I like.)

B. Assistance for individuals of limited means.

Self-help centers should be accepted (and funded) as the first resource for self-represented individuals. A self-help center is the appropriate place for triage to take place. It is the focal point for referrals to available services. It can provide a human face along with a technological tool. It can educate litigants through use of videos demonstrating processes. It can provide lists of simplified forms, plain language documents, and lists of materials needed for the presentation of a case. It can be a clearing-house for unbundled services.

There is nothing radically new needed to proceed to further develop this resource. The template exists in courts in Kent, Berrien and Ottawa Counties, among others. If resources can be found, self-help centers can be quickly implemented.

C. Technology.

Technology tools can be useful, but are not a panacea. There is a lot of push by people who want to sell technology or consult regarding technology. I am not convinced that, simply because people of limited means own cell phones, they will be able to navigate court processes with interactive programming absent a human face and direct communication. The experience at the Kent County Legal Assistance Center has suggested the need for a human interaction. Technology also provides an excuse to avoid simplifying processes: the more complex the process the greater the need for technology to navigate it. There is also a significant up-front cost to technology, coupled with very inexact means to assess whether implemented technology is saving money or increasing efficiency and access. The grander the scale, the more likely it is that the solution will be botched (witness the efforts of the State of Michigan to update its computer system several years ago and the initial efforts for Obamacare.)

Access Committee

Provide efficient and greater access to civil justice in the State of Michigan through a Lean Thinking Program that establishes a culture and structure of continuous improvement throughout legal service delivery providers.

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

I. Status Quo

Given the significant need for improving access to civil justice in the State of Michigan, we did not believe maintaining the status quo was an acceptable option.

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

Option Proposed

We are proposing implementing a Lean Thinking Program to improve legal services delivery and access to civil justice in the State of Michigan.

Summary

Lean thinking is the modern name for the Toyota Production System. (Womack, 1996) At its core (Murdock, 2012):

Lean is a philosophy of continuous improvement accomplished through specific methods to identify and reduce “waste.” “Waste” is a technical concept that includes any unnecessary activity. When waste is removed from processes, they become faster, more reliable, and less expensive. These improved processes further Lean’s goals of producing what a customer wants, when the customer wants it, at the lowest possible cost (cost being internal to the provider; the customer pays *price*).

Organizations delivering legal services, including law firms, courts, legal aid associations, and government agencies, historically have paid scant attention to improving services delivery. In fact, scholars recognize that the delivery of legal services today is remarkably similar to the way legal services were delivered 160 years ago. (Barton, 2015) Yet, the legal needs of people and organizations, both in scope and volume, have changed significantly throughout that period. Eighty percent of the legal needs of low income individuals and a majority of the legal needs of middle class individuals are not being met, and the courts are experiencing record backlogs. Relying on a system 160 years old to deliver legal services in the 21st century simply does not work.

A lean thinking approach recognizes that these challenges must be addressed in the context of a world where resources are limited. Rather than starting by asking “what additional resources can we find to meet these challenges,” it asks “how can we use the resources we already have to conquer these challenges.” Put differently, adding more resources to an antiquated system is like adding another coat of paint on a decaying building. We must address the fundamental issues with the system or they will simply bleed through over time and defeat our attempts to make things better. (Toyota Motor Corporation, 1988)

The Lean Thinking Program would use individuals already working in legal services delivery organizations. We provide them with training and guidance in lean thinking methodologies using, at first, individuals with significant experience in lean thinking (called “sensei” in lean thinking programs). Over time, individuals from the organizations implementing lean thinking receive sufficient training and experience to carry forward lean thinking in their organizations with occasional assistance from sensei. Through this approach, we develop a system of continuous improvement relying mostly on those who deliver legal services rather than outside agents. This approach also keeps the cost of a lean thinking program low compared to other programs, engages the individuals in the improvement process making them more committed to seeing it succeed, and establishes systems where improvements occur every day.

The Lean Thinking Program would use a “train the trainer” approach. The initial trainers go through a workshop, typically lasting two full days. The trainers then identify potential projects in their respective organizations. Each project will be the object of a “kaizen event.” The kaizen event lasts two to five days and is an intensive team effort focused on using data to analyze, develop, and implement improvements during the event. (Martin, 2007)

The trainers identify individuals who will participate on the kaizen teams (four to ten persons per team, with the trainer serving as the team leader). The trainer, working with a sensei, will spend part of the four to six week lead period gathering information, identifying metrics and goals for the event, and addressing basic logistics (meeting place, lunch arrangements, etc.).

The kaizen events take place after that four to six-week preparation period. A five-day kaizen event is an action-oriented event. The team implements changes during the event, tests the changes, takes additional measurements, and repeats the pattern completing changes by the fourth day. The fifth day focuses on training the process owners and preparing the event record so the next team can pick up where the prior team left off. The following table shows a typical kaizen event schedule:

4 – 6 weeks leading up to event	Prepare, assemble team, training, gather data, logistics
Day 1	Map current state, gather data and calculate metrics, plan

Day 2 – 3	Design, implement, measure, check
Day 4	Check, finish implementations, begin training
Day 5	Complete training, measure, update map, prepare event package
4 weeks following event	Measure and check

Most improvement approaches depend on time-consuming studies, implementation planning, and attempts at comprehensive solutions. Kaizen events use rapid implementation of corrective actions tailored to specific problems to drive immediate improvement. A kaizen event focusing on a particular process often is followed a few months (or even a few weeks) later by another kaizen event focusing on the same process. Much like putting money in an investment each week builds a larger nest egg than waiting and investing a lump sum at the end of the year, using successive incremental changes builds greater overall improvement.

III. Trends

Lean thinking dates back to the late 1940s when Toyota Motor Corporation began developing the system as a way to reduce costs and improve operations. (Womack, 1996) Since then, lean thinking has grown to become the most widely used approach to improving operations in both manufacturing and services industries. In 2013, The Process Excellence Network, the leading trade organization focusing on process and operational excellence, issued its 3rd *Biennial PEX Network Report: State of the Industry*. The Report was based on two surveys, one of process improvement practitioners and the other of senior executives. Over 50% of the respondents identified lean thinking as the system used in their programs to improve processes and operations. Lean Six Sigma, a close cousin of lean thinking, came in second. The Report further noted that approximately 12% of law departments had adopted a process excellence methodology. (Process Excellence Network, 2013)

Process improvement, in particular lean thinking and Lean Six Sigma, have been used in some areas of the legal industry for at least 40 years. Morgan Lewis & Bockius LLP, a global law firm founded in Pennsylvania, began using Six Sigma in connection with loan services around 1974. (MacDonagh, 2014) Corporate law departments introduced elements of lean and Six Sigma as their parent organizations adopted those process improvement methodologies. For example, the Motorola Law Department and the DuPont Law Department both adopted process improvement methodologies many years ago.

In 2005, Seyfarth Shaw LLP became the first large law firm to embrace lean thinking. Today, through Seyfarth *Lean*, it is known globally for being a leader in the use of process improvement methodologies in the practice of law. (Strom, 2015) Other law firms in the United States, small and large, have begun implementing process improvement methodologies, including Baker Donelson, The Hunoval Law Firm, and The Orleans Law Firm. (MacDonagh, 2014) In government services, the

State of Ohio has adopted lean thinking on a statewide basis through its LeanOhio efforts. As of June 2015, LeanOhio had trained over 700 state employees in lean thinking and Lean Six Sigma. For the period January through June 2015, LeanOhio reported almost 30 projects. Those projects had achieved 70% reductions in lead time (time from start to finish to complete a process), 66% reduction in the number of steps in processes, 50% reduction in the number of forms used, and a 73% reduction in work backlog. (<http://lean.ohiogov/ScorecardResults.aspx>) The projects included kaizen events for the Office of the Attorney General and State of Ohio Supreme Court. Lean thinking also has seen growing use in higher education. Lean thinking administrative and operations initiatives have been launched in more than a dozen universities.

IV. Analysis needed for any option under consideration:

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

Approximately two months after identifying the first pool of lean thinking trainers and initial locations to implement lean thinking, teams can begin kaizen events. Each kaizen event (several could be run simultaneously) would result in efficiency and other improvements within one week of the event starting. When teams focus on processes that have not received much process improvement attention, the kaizen event improvement levels typically are significant (see, e.g., the improvement levels noted above for the LeanOhio projects).

The rate of expansion for the program depends primarily on the (1) the number of sensei available to mentor kaizen teams, (2) the time available for sensei to mentor kaizen teams, and (3) the time available for team members to be trained in lean thinking and participate in kaizen events. There are ways to increase the scope and speed of implementation for the program, such as hiring trained lean thinking consultants to serve as sensei during weeks when several kaizen events are taking place. To the extent funds are available beyond the minimal amounts needed for kaizen event supplies and other administrative activities, implementation of the Lean Thinking Program could be accelerated. The additional funds could be used, for example, for more training and for hiring sensei during kaizen event weeks to increase the number of kaizen events that could be run.

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

Because the program costs very little to run (the cost of supplies for kaizen events and miscellaneous administrative costs), the financial downside is minimal. Kaizen teams always find improvements, so the downside for a kaizen team is achieving improvement, but not as much as was anticipated before the event. The risks associated with a lean thinking program are not, typically, *from* the program, but *to* the program. A complete failure of a kaizen event (extremely rare) simply means the pre-existing process remains in place. However, several factors can undermine a lean thinking program, including:

1. Using it as a means to reduce headcount through eliminating labor content in processes;
2. Underestimating the commitment required for a long-term lean thinking program;

3. Not assigning a program leader;
4. Lack of support from leaders of the involved organizations;
5. Not defining and using clear, understandable metrics; and
6. Doing a poor job of selecting projects for kaizen events.

These risks can be substantially mitigated through proper design of the Lean Thinking Program.

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

We believe that, given the well-established history of successfully applying lean thinking programs to improve services—including the recent 55th District Court Project piloted by LegalRnD – The Center for Legal Services Innovation at MSU Law and jointly funded by the Michigan State Bar Foundation and LegalRnD—additional experimenting or piloting is not necessary. If, however, additional pilot studies were required, LegalRnD would be pleased to participate in designing and conducting the studies.

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

Although lean thinking has been in use for more than 70 years, and used in the legal industry for 10 years, it still is relatively new to legal services providers, especially outside of law firms. The traditional approaches to addressing services delivery issues in the legal industry have involved committing more resources to the problems. Those resources have been in the form of additional labor (more lawyers and other professionals), more technology (expensive software and additional hardware), or more money.

The lean thinking approach to legal services delivery focuses on less. It starts from some simple, but powerful, premises.

First, it presumes that organizations attacking legal services delivery problems will not get significant additional resources and may even see current resource levels cut. Law firms of all sizes are feeling pressure on revenues and are working hard to control costs. They are unlikely to devote significant additional resources to activities unrelated to their core businesses (including pro bono services). Government spending is under pressure and already is struggling to meet funding demands for legal services. Legal assistance organizations have seen spending cuts in recent years and are in direct competition with other organizations helping indigent individuals.

Second, it presumes that there are significant resources devoted today to addressing legal services delivery issues. But, those resources, just as the resources in other legal services delivery organizations such as law firms, could be used more efficiently. Law has been a profession without attention to processes, and without such attention resources cannot be used

efficiently. In simple terms, lean helps organizations more effectively use their existing resources, reducing the need for additional resources.

Third, it attacks problems that are ancillary to, but effect, legal services delivery. The legal profession struggles with high rates of stress, depression, burnout, and other negative consequences of a services delivery model that concentrates on input effort rather than output. Lean focuses on delivering value to clients while limiting inputs to those necessary to achieve the value clients desire. In other words, lean focuses on eliminating waste, which reduces the effort and cost to deliver what the client wants and needs. As the effort is reduced, lawyers experience less stress, more work satisfaction, and higher levels of engagement. While often not the direct benefits sought through implementation of lean thinking, these are very important additional benefits for lawyers.

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

A lean thinking program relies heavily on using individuals who already perform the services. While that means lean thinking requires time from existing employees, organizations that implement lean thinking usually find the savings from the program, including time savings in performing services, significantly outweigh the time investment. Apart from using members of the existing work force, a lean thinking program requires:

1. Training. Lean thinking uses a “train the trainer” approach, with the addition of selected input from teachers or mentors.
2. Event Time. Individuals in the organizations desiring improvement must participate in kaizen events.
3. Administrative Time. Coordinating the various activities of a lean thinking program requires some administrative activities.
4. Other Resources. Lean thinking is a paper and pencil exercise. Teams do most of their work using paper, pencils, Post-It® notes and rolls of white paper. They use these tools to map processes for existing tasks and design new processes. Because much of the work of a lean team is to improve existing processes, they do not need software, tools, or other resources intensive tools to do lean.

Additionally, LegalRnD at MSU Law could partner with the State Bar of Michigan to seek funding through grants to fund the costs, including administration, of the Lean Thinking Program.

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

If the lean implementation team will be working on projects that require fluency in a language other than English, members of the lean team should be fluent in the other language.

G. Implementation Strategies

1. Potential supporters and potential allies

Because lean thinking is being adopted throughout the legal industry, using lean thinking would help leverage what lawyers are being taught in other contexts. It also would give lawyers who haven't learned lean thinking an incentive to become involved in the Lean Thinking Program so that they could learn lean thinking methodologies to apply in their employer organizations.

Adopting a Lean Thinking Program also gives the State Bar of Michigan an opportunity to work with MSU Law, through LegalRnD. The Law College has a LegalRnD curriculum in place that teaches students various elements of lean thinking. LegalRnD currently offers the following courses:

Delivering Legal Services: New Legal Landscape

Quantitative Analysis for Lawyers

Legal Analytics

Designing Legal Services

Entrepreneurial Lawyering

Litigation: {Data, Theory, Practice, & Process}

Complete course descriptions are available at www.LegalRnD.org. LegalRnD supplements this curriculum with guest speakers, internal workshops, workshops open to the public, legal hackathons, experiential learning opportunities, and various other events.

In addition to LegalRnD, MSU's Eli Broad College of Business focuses on lean through its Demmer Center for Business Transformation. The Demmer Center has the "task of providing consulting, advisory, and educational services by faculty members and student teams to help Michigan-based companies strengthen their competitive performance." The Center emphasizes lean, quality processes, and metrics. It currently works with businesses and government entities, in particular through its lean apprenticeship program. LegalRnD has partnered with the Demmer Center to provide lean training, apprenticeship opportunities, and experiential learning to law school and business school students.

2. Potential opponents and potential obstacles

Lean thinking requires that kaizen team participants come to events with open minds, participate enthusiastically in the event, and accept that decisions should be based on data rather than perceptions. Because the elements of the first stage of the Lean Thinking Program (kaizen events) are not complicated, the potential obstacles lie in resistance to change rather than technological or other issues. However, lawyer resistance to change is not limited to lean thinking. In other words, any program aimed at improving access to

justice through changes to the current system will encounter some level of resistance to change.

3. Interested SBM entities

The Lean Thinking Program could be implemented in all aspects of legal services delivery.

4. Other Interested stakeholders or potential partners

As discussed above, LegalRnD at MSU Law would be very interested in implementing the Lean Thinking Program. The Demmer Center at the Eli Broad College of Business is a potential partner.

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

One benefit of lean thinking is that it does not require the use of technology, but it can pave the way for the appropriate implementation of technology and help ensure successful technology implementation. Part of any technology implementation should be a thorough study of processes to identify waste and remove as much of it as possible before implementing technology. Removing the waste brings several benefits. A leaner process is much easier to automate. The automation will not include the automation of waste-spending resources on turning manual steps into automated steps when the steps do not add value. Making processes leaner also typically means that the technology implemented can be simpler since the process is simpler.

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

A Lean Thinking Program could improve all aspects of legal services delivery across the whole spectrum of legal services, from legal aid organizations and courts to law firms and corporate legal departments. Lean thinking can produce tremendous returns on investment in a short period of time.

7. Staging

- a) Does this option need experimentation or piloting?

We believe that, given the well-established history of successfully applying lean thinking programs to improve services—including the recent 55th District Court Project piloted by LegalRnD – The Center for Legal Services Innovation at MSU Law and jointly funded by the Michigan State Bar Foundation and LegalRnD—additional experimenting or piloting is not necessary. If, however, additional pilot studies were required, LegalRnD would be pleased to participate in designing and conducting the studies.

- b) What is the recommended timetable, if any?

The Lean Thinking Program could be rapidly implemented, as discussed above and as illustrated by the 55th District Court pilot project.

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

TBD

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

TBD

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