

Report of the Texas Commission to Expand Civil Legal Services

December 6, 2016

Texas Commission to Expand Civil Legal Services

Hon. Wallace B. Jefferson (Retired)
Alexander Dubose Jefferson & Townsend LLP
Chair of the Commission

S. Jack Balagia, Jr.
Exxon Mobil Corporation

Hon. Ann Crawford McClure
Eighth Court of Appeals

Hon. Jane Bland
First Court of Appeals

Hon. F. Scott McCown (Retired)
The University of Texas School of Law

Faye M. Bracey
St. Mary's University School of Law

Chris Nickelson
The Law Office of Gary L. Nickelson

Darby Dickerson
Texas Tech University School of Law

Harry M. Reasoner
Vinson & Elkins LLP

Hon. William Royal Furgeson, Jr. (Retired)
UNT Dallas College of Law

Hon. Lee H. Rosenthal
U.S. District Court, Southern District of Texas

Eden Harrington
The University of Texas School of Law

Charles W. Schwartz
Skadden, Arps, Slate, Meagher & Flom, LLP

Luz Herrera
Texas A&M University School of Law

Frank E. Stevenson, II
President, State Bar of Texas
Locke Lord LLP

Angelica Maria Hernandez
Linebarger Goggan Blair & Sampson, LLP

William O. Whitehurst, Jr.
Whitehurst, Harkness, Brees, Cheng, Alsaffar
& Higginbotham, PLLC

Joseph C. Matta
Schirrmeyer Diaz-Arrastia Brem LLP

Kennon L. Wooten
Scott Douglass & McConnico LLP

Table of Contents

List of Commission Members.....	i
I. Introduction.....	1
II. Recommendations to the Supreme Court of Texas.....	4
Recommendation 1. <i>The Court should work with the Texas Judicial Council and the Office of Court Administration to obtain comprehensive statistics on self-represented litigants in Texas courts and publish those statistics annually.....</i>	4
Recommendation 2. <i>The Court should form a standing committee to maintain accountability for closing the justice gap and to monitor the effectiveness of reform initiatives.....</i>	5
Recommendation 3. <i>The Court should encourage the State Bar of Texas, the Texas Access to Justice Commission, and local bar associations to create pipelines of services for modest-means clients.....</i>	5
Recommendation 4. <i>The Court should promote both adequate funding of public law libraries and placing navigators in libraries, courthouses, and other public spaces.....</i>	7
Recommendation 5. <i>The Court should promote technological solutions to closing the justice gap and examine whether amendments to lawyer-ethics rules are needed to eliminate obstacles to innovation.....</i>	10
a. <i>Ideas for Technological Innovation and Improvement.....</i>	10
1. Lawyer Referral and Matching Services.....	10
2. The Colorado Judicial Learning Center and Equal Access Center Website.....	12
3. A Hackathon-Type Brainstorming Session.....	13
b. <i>Re-examining Lawyer-Ethics Rules.....</i>	13
Recommendation 6. <i>The Court should support and promote existing and new legal incubators.....</i>	13

Recommendation 7. <i>The Court should consider amending court and ethics rules to address and clarify issues raised by limited-scope representation.....</i>	15
a. <i>Limited-Scope Representation: What It Is and How It Can Help....</i>	15
b. <i>Court and Ethics Rules.....</i>	17
Recommendation 8. <i>A primary objective of future rulemaking projects should be to make the civil justice system more accessible to modest-means clients</i>	18
Index to the Appendix	20

I. Introduction

The Supreme Court of Texas created the Texas Commission to Expand Civil Legal Services in November 2015, after Chief Justice Nathan L. Hecht, in his State of the Judiciary Address to the 84th Legislature, called for the judiciary’s continued focus on expanding access to the civil justice system in Texas.¹ The Court charged the Texas Commission with “gather[ing] information on initiatives and proposals to expand the availability of civil legal services to low- and middle-income Texans, . . . evaluat[ing] that information, and . . . recommend[ing] to the Supreme Court of Texas ways to accomplish that expansion.”²

The Texas Commission was not created in a vacuum. Recent national studies reveal that the civil justice system is not reaching many citizens in need of legal services. For example, a 2014 study conducted in a mid-sized American city found that only 8% of study participants with a prior civil legal problem had contact with a court or tribunal, and fewer than half of that 8% sought the assistance of an attorney.³ Of the remaining 92% of participants who reported a civil legal problem but did not have any court contact, only 5% sought the assistance of an attorney.⁴

In August 2016, the American Bar Association released a *Report on the Future of Legal Services*—the culmination of a two-year effort by the Commission on the Future of Legal Services (the ABA Commission) to “examine[] . . . why meaningful access to legal services remains out of reach for too many Americans.”⁵ Statistics cited in the report are alarming:

- one in five Americans meets the financial requirements for nonprofit legal-aid, but legal-aid programs can assist only a small fraction of qualified applicants;

¹ See Nathan L. Hecht, Chief Justice, Supreme Court of Tex., The State of the Judiciary in Texas, Presented to the 84th Texas Legislature (Feb. 18, 2015) [hereinafter State of the Judiciary Address] (transcript on file with the Court and available at <http://www.txcourts.gov/supreme/news/chief-justice-hecht-delivers-state-of-the-judiciary/>); see also Misc. Docket No. 15-9233 (Nov. 23, 2015) (Order Creating the Texas Commission to Expand Civil Legal Services); Misc. Docket No. 16-9126 (Sept. 1, 2016) (Appointment to the Commission to Expand Civil Legal Services). All administrative orders issued by the Court from 1990 to the present are available at <http://www.txcourts.gov/supreme/administrative-orders/> (last visited Nov. 30, 2016).

² Misc. Docket No. 15-9233, at 2.

³ See REBECCA L. SANDEFUR, AM. BAR FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 12 (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf (on file with the Court).

⁴ *Id.*

⁵ COMM’N ON THE FUTURE OF LEGAL SERVS., AM. BAR ASS’N, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 1 (2016) [hereinafter REPORT ON THE FUTURE OF LEGAL SERVICES], http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf (on file with the Court). For more information about the ABA Commission’s work, see https://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html (last visited Nov. 30, 2016).

- “in some jurisdictions, more than eighty percent of litigants in poverty are unrepresented in matters involving basic life needs, such as evictions, mortgage foreclosures, child custody disputes, child support proceedings, and debt collection cases”;
- “the majority of moderate-income individuals do not receive the legal help they need”; and
- in one state in 2014 (Utah):
 - 98% of defendants in 66,000 debt-collection cases were unrepresented;
 - 97% of defendants in 7,000 eviction cases were unrepresented; and
 - 88% of 14,000 divorce cases involved a self-represented litigant.⁶

Researchers for the National Center for State Courts have published some equally troubling numbers. A 2012 study in five states found that up to 67% of domestic-relations cases and up to 33% of other civil cases involved a self-represented litigant.⁷

Building on the work of the American Bar Foundation, the American Bar Association, and the National Center for State Courts, jurisdictions around the country are studying and experimenting with ways to solve the problem that commentators have coined the “justice gap.” The Texas Commission began its work against this backdrop and—though the ABA Commission’s work was still in progress—with knowledge of that commission’s preliminary findings and recommendations.⁸

Our members brought to the project diverse experiences and viewpoints, but we were unified in the beliefs that all ideas must be on the table and that Texas must be a national leader in expanding access to the civil justice system. We held four in-person meetings.⁹ At the third meeting, we divided into five subcommittees, which then held additional meetings to study and prepare reports on particular topics.¹⁰ We studied reform efforts undertaken in other states; discussed ideas raised by members; and invited testimony from academics, American Bar Association representatives, Texas lawyers, and members of the public. We debated daunting structural initiatives, such as reforming the law-school curriculum, and less daunting initiatives, such as implementing targeted amendments to rules of courtroom procedure and lawyer ethics. We ultimately narrowed our focus to initiatives that further two goals: (1) facilitate the connection of clients with lawyers who will represent them for a modest fee, and (2) help self-represented litigants better navigate the civil legal system. We believe that each recommendation has the potential to further one or both of these goals.

⁶ REPORT ON THE FUTURE OF LEGAL SERVICES, *supra* note 5, at 12–13.

⁷ See Richard Schauffler & Shauna Strickland, *The Case for Counting Cases*, 51 CT. REV. 52, 52 (2015).

⁸ The Chair of the Texas Commission, Hon. Wallace B. Jefferson (Retired), also served as a member of the ABA Commission.

⁹ For meeting agendas and minutes, see <http://www.txcourts.gov/organizations/policy-funding/texas-commission-to-expand-civil-legal-services/meetings-agenda/> (last visited Nov. 30, 2016).

¹⁰ The subcommittee reports are Appendices A–E to this report and are cited throughout.

In this report, we use *modest-means client* as a shorthand term for any person or small business that needs civil legal help but cannot afford traditional legal representation. We use the term in reference to clients and potential clients of the civil justice system: those who make too much for legal aid, those who qualify for legal aid but are turned away, those who participate in the civil justice system with counsel or through self-representation, and those who do not even try. Many commentators use economic terms such as *legal consumer* or *user*, but we chose *client* to preserve the dignity of those whose lives are affected by the failings of the current system and to emphasize the “moral obligation of each lawyer as well as the profession generally” to provide legal services to those who cannot afford them.¹¹

Importantly, the recommendations in this report are a starting point. The justice gap did not occur overnight, and closing it may prove to be an enduring quest. It will take not only bold action, but also years of experimenting and monitoring to determine the reforms that work and that fail, both here and elsewhere. Some states have instituted reforms that we are not recommending for Texas at this time. For example, we had robust discussions about programs that permit nonlawyer professionals to provide certain legal services, such as Washington State’s limited license legal technician program.¹² But we initially urge the Court to prioritize less complicated initiatives, focusing on those that would increase modest-means clients’ access to lawyers. We also decided not to duplicate the efforts of other groups. Though many members expressed interest in exploring whether changes to the Rules Governing Admission to the Bar could help students graduate with less debt, which could help lower the cost of legal services, the Court has established the Task Force on the Texas Bar Exam to do just that, and we look forward to its findings and recommendations.¹³ Finally, some promising initiatives, such as legal insurance, must be studied further before a recommendation from the Texas Commission would be appropriate.¹⁴

As Chief Justice Hecht said in his State of the Judiciary Address, “Justice for only those who can afford it is neither justice *for* all nor justice *at* all.”¹⁵ Because too many Texans do not have access to the civil justice system, we urge the Court’s thorough consideration of the recommendations set forth in this report.

¹¹ TEX. DISCIPLINARY RULES PROF’L CONDUCT pmb1. ¶ 6.

¹² See *In re the Adoption of New APR 28—Ltd. Practice Rule for Ltd. License Legal Technicians*, Order No. 25700-A-1005 (Wash. Sup. Ct. June 15, 2012) (on file with the Court); *Limited License Legal Technician Program*, WASH. ST. BAR ASS’N, <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians> (last visited Nov. 30, 2016).

¹³ See Misc. Docket No. 16-9104 (June 24, 2016) (Order Establishing Task Force on the Texas Bar Examination).

¹⁴ See REPORT ON THE FUTURE OF LEGAL SERVICES, *supra* note 5, at 29–30 (discussing prepaid legal services plans and insurance coverage).

¹⁵ State of the Judiciary Address, *supra*, note 1.

II. Recommendations to the Supreme Court of Texas

Recommendation 1. *The Court should work with the Texas Judicial Council and the Office of Court Administration to obtain comprehensive statistics on self-represented litigants in Texas courts and publish those statistics annually.*

Texas lacks complete data on the number of self-represented litigants in civil cases. Trial court judges report anecdotally and uniformly that the number is high in certain kinds of cases, such as divorce and eviction. The ABA Commission found, and Texas judges agree, that large numbers of self-represented litigants adversely affect the civil justice system by:

- clogging the courts;
- consuming the time of court personnel;
- increasing the legal fees of opposing parties due to disruption and delays;
- increasing the number of cases that advance to litigation; and
- risking that cases are decided on technical errors rather than on the merits.¹⁶

The Court, policymakers, and advocacy groups must have accurate, comprehensive data on the number of self-represented litigants in Texas courts to determine whether initiatives taken to reduce these adverse effects are working. The ABA Commission found that “[l]imited data have impeded efforts to identify and assess the most effective innovations in legal services delivery.”¹⁷ Researchers at the National Center for State Courts have created a comprehensive framework for reporting self-represented litigants and urge that better statistics would allow judges and court administrators to “see patterns of representation and evaluate whether parties are seeking representation at the most appropriate points”; “see where [self-represented litigants] stall out during their cases”; and “provide focused assistance to litigants to help them succeed.”¹⁸

The Texas Judicial Council may be able to obtain more comprehensive statistics through its rulemaking authority. The Texas Legislature has empowered the Judicial Council to require state courts to report case statistics that the Council deems important to the Office of Court Administration.¹⁹ The Judicial Council currently requires all state courts to report to the Office of Court Administration the number of cases *filed* in the court

¹⁶ See REPORT ON THE FUTURE OF LEGAL SERVICES, *supra* note 5, at 15.

¹⁷ *Id.* at 18.

¹⁸ Schauffler & Strickland, *supra* note 7.

¹⁹ See TEX. GOV'T CODE § 71.035(a) (requiring the Texas Judicial Council to “gather judicial statistics and other pertinent information from the several state judges and other court officials of this state”); *id.* § 71.035(b) (authorizing the Council to “require a . . . court official . . . to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court”); see also 1 TEX. ADMIN. CODE § 171.2 (Tex. Jud. Council, General Reporting Requirements) (requiring the Office of Court Administration to maintain reporting instructions and forms for district and county clerks and for justice and municipal courts).

by a self-represented litigant, but does not require courts to track cases involving a self-represented defendant or cases in which the plaintiff becomes self-represented after filing but before the litigation concludes.

If comprehensive statistics cannot be obtained through administrative action, then the Texas Commission urges the Court and the Judicial Council to seek a legislative solution. The Texas Commission encourages the publication of these statistics by the Office of Court Administration so that policymakers and stakeholders have a basis for measuring the size of the justice gap in Texas and the effectiveness of initiatives taken to close it.

Recommendation 2. The Court should form a standing committee to maintain accountability for closing the justice gap and to monitor the effectiveness of reform initiatives.

The Texas Commission also recommends that the Court form a standing committee charged with holding members of the State Bar, Texas law schools, and the judicial system accountable for closing the justice gap and with monitoring the effectiveness of reform initiatives. To be effective, the committee must include leaders from each constituency. The Court should require the committee to make periodic reports that are available to the public. The committee should also be charged with making additional recommendations based on its evaluation of data and prior initiatives.

Recommendation 3. The Court should encourage the State Bar of Texas, the Texas Access to Justice Commission, and local bar associations to create pipelines of services for modest-means clients.

Individual initiatives to connect modest-means clients with lawyers or self-help resources will barely make a dent in the justice gap unless the available legal services in a community are fused together in a pipeline directed toward the legal consumer.²⁰ In a study conducted by the American Bar Association, researchers found that 38% of self-help legal centers do not refer matters to lawyers or lawyer-referral services, even though 10–20% of users could afford either full or limited-scope representation.²¹ The same study found that legal-aid entities do not refer clients whose cases they cannot take to other legal-services providers that could offer legal help to those clients.²² These findings are consistent with the experiences that legal-services providers have reported to Texas Commission members.

²⁰ See generally DARBY DICKERSON ET. AL, REPORT OF THE NAVIGATOR AND PIPELINE PROGRAMS SUBCOMMITTEE OF THE TEXAS COMMISSION TO EXPAND CIVIL LEGAL SERVICES (2016) [hereinafter NAVIGATOR AND PIPELINE PROGRAMS SUBCOMMITTEE REPORT] (Appendix A).

²¹ See STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR. ASS'N, THE SELF-HELP CENTER CENSUS: A NATIONAL SURVEY, 14–15, 20–21, 24–25 (Aug. 2014), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_self_help_center_census.authcheckdam.pdf (on file with the Court).

²² See *id.* at 14–15, 18–19.

The result of these cracks in the system is that people who could afford some representation are either representing themselves or opting out of the judicial system altogether, and those who qualify and apply for services at one organization are left stranded if the organization does not have sufficient resources to assist them.²³

At one end of the pipeline, there must be services to help clients identify legal problems. Two examples are United Way's 2-1-1 service and the concept of an annual legal checkup. The 2-1-1 program is a free, confidential telephone and computer service available 24/7 that connects callers and online users with operators who are trained to diagnose legal problems and route users to appropriate legal resources.²⁴ An annual legal checkup is analogous to an annual medical physical.²⁵ One of the ABA Commission's key recommendations is that "[i]ndividuals should have regular legal checkups, and the ABA should create guidelines for lawyers, bar associations, and others who develop and administer such checkups."²⁶

The pipeline must also include physical and electronic starting points for modest-means clients who know that they have a legal problem but do not know how to find legal help. Navigator programs located in courthouses and public libraries can serve as a starting point for clients who need or desire an in-person consultation or do not have internet access. An adequate pipeline must also include electronic points of entry, such as a website that guides clients through the legal process or connects clients with lawyers. Recommendations 4 and 5 explain and promote these initiatives. Other pieces of the pipeline include legal incubators, legal-aid organizations that serve the poor, private lawyers who specialize in limited-scope representation or full-service representation for a reduced fee, and self-help resources for clients without legal representation. Recommendation 6 calls on the Court to promote the creation of new legal incubators in Texas, and Recommendation 7 advocates for rule changes to facilitate Texas lawyers' use of limited-scope representation to help meet our state's legal needs.

Cooperation and coordination are the heat that welds the available legal-services providers and programs in a community into a pipeline. For example, when a legal-aid organization cannot represent a client who needs legal services, the organization should refer the client to another legal-services provider or assist with the referral, rather than simply turn the client away. To further streamline the referral process, the application form for the first provider contacted should be transferred to the second provider in a seamless transition, so the client does not have to fill out similar forms multiple times.

²³ See generally *id.*

²⁴ See *Help Starts Here*, 2-1-1, <http://www.211.org> (last visited Nov. 30, 2016).

²⁵ See REPORT ON THE FUTURE OF LEGAL SERVICES, *supra* note 5, at 43–45 (explaining and proposing guidelines for legal checkups).

²⁶ *Id.* at 43.

The first step in fusing a legal pipeline is the creation of a comprehensive electronic database that chronicles each service provider and program in the state, the services those programs provide, their location, and whether a program imposes restrictions based on income or other factors. The State Bar and the Texas Access to Justice Commission are uniquely situated to spearhead this project. The Texas Commission thus urges the Court to encourage the State Bar and the Texas Access to Justice Commission to collaborate to create a comprehensive database of modest-means legal programs in Texas.

Once the legal-services providers available in a community have been identified, the Texas Commission recommends that the State Bar and local bar associations form pilot projects to create a pipeline of legal services. Their objective should be to create procedures for coordination among service providers that can be replicated across the state. Goals for the project should include:

- reliable and accurate referral systems that are easy for clients to understand and that will not place clients in frustrating loops;
- a 2-1-1 or legal checkup-type program to help get clients into the pipeline;
- common application materials for participating service providers;
- regular coordination meetings among service providers;
- an education campaign for local lawyers and judges about the pipeline; and
- methods for evaluating the pipeline's effectiveness.

In addition, the Texas Commission recommends that any community that establishes a pipeline also develop educational and outreach programs that will help ensure that potential clients, attorneys, and judges in that community understand the different parts of the pipeline and how they fit together.

Recommendation 4. The Court should promote both adequate funding of public law libraries and placing navigators in libraries, courthouses, and other public spaces.

When a modest-means client encounters a legal problem, often the first place the client turns to for help is a public law library or the courthouse. Libraries and courthouses are physical symbols of knowledge and justice that are free and open to the public, and they are usually centrally located and accessible by public transportation. These characteristics make Texas's existing libraries and courthouses critical components of any legal-services pipeline. More must be done to support their role in closing the justice gap.

The patron base of public law libraries is changing. Texas libraries report that:

- 95% of patrons of the Travis County Law Library are self-represented litigants;²⁷

²⁷ Except where otherwise indicated, statistics and general program information in this section can be found in NAVIGATOR AND PIPELINE PROGRAMS SUBCOMMITTEE REPORT, *supra* note 20.

- the Dallas County Law Library sees or fields calls from more than 200 self-represented patrons per day;
- 95% of Tarrant County Law Library’s 1,300 monthly visitors and 200 monthly callers are self-represented; and
- only 26% of patrons of the State Law Library in Austin are lawyers.²⁸

Libraries are evolving in their mission and services to meet the needs of their changing clientele. The Travis County Law Library is marshalling its budget toward the print and online resources most frequently used by its patrons. In recognition of the library’s changing role, it was recently renamed the Travis County Law Library and Self-Help Center. Pro bono services are provided by Volunteer Legal Services of Central Texas, The University of Texas School of Law, and local lawyers who volunteer independently of any organization. The Travis County Law Library also employs a staff attorney who helps self-represented litigants select and fill out appropriate legal forms.

The State Law Library, funded by the Texas Legislature, has also acted proactively to meet the needs of its patrons. In recent years, the library has developed a collection of 73,000 digital resources, such as e-books and online databases, and made these available to patrons across the state.²⁹ But it cannot maintain this digital collection if the Legislature cuts the library’s budget for the next biennium.³⁰ In addition, despite serving a large number of unrepresented persons, the library’s current budget is insufficient to hire a staff attorney. Because funding is critical for the State Law Library to fulfill its mission, the Texas Commission urges the Court to support the library’s appropriations request during the 2017 legislative session.

Increasing direct funding of public law libraries is critical to providing assistance to self-represented litigants, but it is not enough. Jurisdictions across the country are experimenting with “navigator” programs. These programs have different names and provide different services, but in general, they place trained staff or volunteers in a courthouse, library, or other public space to guide self-represented litigants through the court system. Navigator programs are flexible and can be tailored to meet community needs and operate within the realms of existing resources.

In some programs, the navigator is a lawyer. For example, the Clerk’s Self-Help Center program in Pinellas County, Florida places an attorney-navigator in three locations around the county. Any person, regardless of means, may schedule an appointment to meet with an attorney-navigator about a family-law, small claims, or landlord–tenant matter. Appointments range from 15–60 minutes and cost \$1 per minute. There is no restriction on

²⁸ TEX. ST. LAW LIBRARY, LEGISLATIVE APPROPRIATIONS REQUEST FOR FISCAL YEARS 2018 AND 2019 7 (2016), <https://www.sll.texas.gov/media/37413/legislative-appropriations-request-2018-2019.pdf> (on file with the Court).

²⁹ *See id.* at 1.

³⁰ *See id.*

the number of appointments a person may make, but an attorney-navigator may not represent a client of the Center in court. The modest charge for the appointment sustains the Center financially. Since it opened in 2007, it has provided assistance to approximately 27,000 Floridians.

An attorney-navigator model that has been successful in Texas is run by the Houston Volunteer Lawyers (HVL). The HVL employs an experienced family-law attorney and a bilingual legal assistant who staff a booth in the Harris County District Courthouse. Clients with less pressing legal needs are routed to a second, HVL-run office in the Harris County Law Library, which is staffed part-time by volunteers from Houston-area law firms and law students working under the supervision of a professor. The HVL serves more than 6,000 self-represented litigants per year and its services are free.

Other navigator programs use nonlawyers—often students, court employees, or social workers—to provide legal *information* (not legal advice) and administrative assistance to self-represented court patrons. Staffing navigator programs with law students acting under the supervision of a professor or local lawyer is cost effective and exposes students to the difficulties that modest-means clients face. It could even spark a desire in some student navigators to continue performing modest-means work as a licensed attorney.

Some critics have expressed concern that a nonlawyer navigator may engage in the unauthorized practice of law or leave a self-represented litigant worse off by giving the litigant bad advice. But these concerns can be mitigated by thoroughly training navigators and defining—for both the navigator and the court patron—the kind of assistance that the navigator can and cannot provide. For example, every judicial district in Colorado has at least one “sherlock”—a nickname for Self-Represented Litigant Coordinator.³¹ A directive of the Chief Justice of the Colorado Supreme Court explains in detail what services and assistance a sherlock may provide to a self-represented litigant (e.g., answer questions about court procedures) and what a sherlock is prohibited from doing (e.g., give an opinion about what will happen if a case is brought to court).³² The Texas Access to Justice Commission has drafted a similar policy that clarifies for judges and court staff what assistance may and may not be given in order to promote more uniform treatment of self-represented litigants across the state.³³

As the starting points for many modest-means clients who have identified a legal problem, law libraries and navigator-type assistance programs are two critical pieces of the

³¹ SELF-HELP INFORMATION, COLO. JUDICIAL BRANCH, https://www.courts.state.co.us/Self_Help/information.cfm (last visited Nov. 30, 2016).

³² Official Directive from the Office of the Chief Justice, Supreme Court of Colo., Directive Concerning Colorado Courts’ Self-Represented Litigant Assistance 2–4 (June 12, 2013), https://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf (on file with the Court).

³³ The Texas Access to Justice Commission’s draft policy on assistance to self-represented court patrons and related amendments to the Code of Judicial Conduct proposed by the Commission are on file with the Court.

justice-gap puzzle. The Texas Commission encourages the Court to support the mission and increased funding of public law libraries, endorse and approve the Texas Access to Justice Commission’s policy document on assistance to self-represented litigants, and promote the creation of new navigator programs in Texas. The Texas Commission also urges the State Bar to take a leadership role in creating new navigator programs.

Recommendation 5. *The Court should promote technological solutions to closing the justice gap and examine whether amendments to lawyer-ethics rules are needed to eliminate obstacles to innovation.*

A prominent theme of the ABA Commission’s report is the role of technology in improving access to and delivery of legal services.³⁴ The ABA Commission concluded that, though the legal profession “has not yet fully harnessed the power of technology to improve” access to justice, the profession is “at the cusp of a disruption: a transformative shift that will likely change the practice of law in the United States for the foreseeable future, if not forever.”³⁵ Texas should be a leader in harnessing the power of technology to close the justice gap.

a. Ideas for Technological Innovation and Improvement

Assessing the role of technology in closing the justice gap must be an ongoing project, but here are some initiatives that may serve as starting points.

1. Lawyer Referral and Matching Services

New technological initiatives may take years to develop and put in place, but bar associations can act now to improve an existing tool that matches potential clients with lawyers—lawyer-referral services. Many bar association lawyer-referral services are not helpful to modest-means clients because lawyers’ fees are not always transparent, or because they provide a discounted initial consultation but no discount for the remainder of the representation. For example, the State Bar of Texas Lawyer Referral & Information Service and the Lawyer Referral Service of Central Texas promise a 30-minute initial consultation for \$20, but the client must pay the lawyer’s regular rate to hire the lawyer.³⁶

³⁴ See REPORT ON THE FUTURE OF LEGAL SERVICES, *supra* note 5, at 18–31, 41–42.

³⁵ *Id.* at 18 (quoting Raymond H. Brescia, *What We Know and Need to Know About Disruptive Innovation*, 67 S.C. L. Rev. 203, 203 (2016)).

³⁶ In fact, both websites contain a disclaimer cautioning clients that lawyers who use the service do not provide discounted services. For example, the site for the State Bar LRIS contains this language:

The LRIS does not have any participating attorneys who offer free or reduced fee legal assistance. After the initial consultation, you should be prepared to pay a reasonable fee should you and the attorney decide to work together. Those fees will be determined by an agreement between you and the attorney.

Make sure you understand completely what your lawyer will be charging you.

Lawyer Referral & Information Service, ST. B. TEX., https://www.texasbar.com/AM/Template.cfm?Section=Lawyer_Referral_Service_LRIS_&Template=/CM/HTMLDisplay.cfm&ContentID=33224 (last visited Nov. 30,

The Texas Commission's State Bar of Texas and Other Referral Services Subcommittee reports that the State Bar is considering changes to the lawyer directory on its website that would (1) permit a lawyer to indicate on the lawyer's profile whether the lawyer charges on a flat-fee or sliding-scale basis, and (2) allow clients to search for lawyers who accept flat or sliding-scale fees by practice area and geographic location.³⁷ The Texas Commission urges the State Bar to implement and publicize these changes to the directory and to adopt measures that better connect modest-means clients with lawyers willing to serve them. The State Bar should consider waiving or reducing the fee that a lawyer pays to participate in the referral service in exchange for the lawyer's agreement to take a certain number of cases pro bono or for modest-means clients.

Tailoring features of bar-association-run lawyer-referral services to serve modest-means clients is an achievable short-term goal, but finding technological solutions to the justice gap will require long-term vision and forward thinking. In the future, people will likely shop for lawyers the same way they shop for everything else—through an app. Some lawyer-matching websites and apps already exist, but most do not specifically focus on modest-means clients.³⁸ Some do not list lawyers' rates at all or list only the rate for an initial consultation. There is an opportunity to marshal this technology to serve modest-means clients, and Texas should lead the way by creating an online portal that matches modest-means clients with lawyers.

The lawyer-matching portal of the future will be more advanced than bar-association-run lawyer-referral services and may eventually replace them. To contribute to closing the justice gap, it is crucial that the portal feature lawyers who serve modest-means clients and provide an accurate estimate of the costs of representation before the client contacts a particular lawyer with a view to obtaining legal services from that lawyer. But the possibilities for how the portal might function are endless. For example, the portal might permit the client to post information about the legal problem and allow lawyers to bid on the representation. The portal might allow former clients to rate lawyers and make those ratings available to potential new clients. Where the client's legal needs can be met remotely, the portal could give clients access to Texas-licensed lawyers regardless of where they are located geographically, rather than limit matching by geographic area, as many bar-association referral services do.³⁹

2016) (emphasis in original); *see also* *About Lawyer Referral Service of Central Texas*, LAW. REFERRAL SERV. CENT. TEX., <http://austinlrs.com/about-lrs/> (last visited Nov. 30, 2016).

³⁷ *See* FRANK E. STEVENSON, II ET. AL, REPORT OF THE STATE BAR OF TEXAS AND OTHER REFERRAL SERVICES SUBCOMMITTEE OF THE TEXAS COMMISSION TO EXPAND CIVIL LEGAL SERVICES (2016) (Appendix B).

³⁸ *See, e.g.*, AVVO, <https://www.avvo.com> (last visited Nov. 30, 2016); LEGAL MATCH, <http://www.legalmatch.com/home-redesign/v1/003.html> (last visited Nov. 30, 2016); LAWYERS.COM, <http://www.lawyers.com/> (last visited Nov. 30, 2016).

³⁹ *See* CHRIS NICKELSON ET. AL, REPORT OF THE TECHNOLOGY SUBCOMMITTEE OF THE TEXAS COMMISSION TO EXPAND CIVIL LEGAL SERVICES 2–4 (2016) [hereinafter TECHNOLOGY SUBCOMMITTEE REPORT] (Appendix C).

2. The Colorado Judicial Learning Center and Equal Access Center Website

The Colorado Judicial Department has proactively addressed the justice-gap problem in Colorado. Two of its initiatives are particularly innovative and should be explored in Texas.

In 2013, the Judicial Department opened the Colorado Judicial Learning Center, a space in the Colorado Judicial Center building that contains interactive, educational exhibits that teach visitors about the rule of law, the state and federal constitutions and other sources of law, and the Colorado court system.⁴⁰ The Learning Center's robust website includes a video tour of the Learning Center, information about each exhibit, and lesson plans and other educational materials on the Colorado judicial system for students.⁴¹ Having a facility like the Learning Center in Texas would provide an educational service to the public and could also serve as an entry point to a legal-services pipeline by having a navigator on staff or otherwise directing visitors to resources in the pipeline.

The Colorado Judicial Department is also partnering with local technology companies to develop an interactive website—the Colorado Equal Access Center—that will connect unrepresented litigants to legal resources.⁴² The goal is for the website to be up and running by the end of 2016. The website will be open-source so other states can copy and modify it to fit their needs.

In its first iteration, the Colorado Equal Access Center will focus on three areas: family law, landlord–tenant, and small claims. Other areas will be added later. Like an online tax-preparation service, the website will feature a step-by-step decision tree to help users determine what kind of legal problem they have, the controlling law, and what procedural steps to take. If, after answering the decision-tree questions, the user determines that she may need a lawyer, the decision tree will help the user determine whether to seek limited-scope, private representation; full-service, private representation; or assistance from a legal-aid organization; and it will direct the user to appropriate resources. The website will be available on mobile devices and at courthouses and public libraries statewide. Future iterations may include a chat feature and a Spanish-language version of the website.

A centralized website like the Colorado Equal Access Center holds promise. The Texas Commission recommends that the Court and the Judicial Committee on Information

⁴⁰ See *Colorado Judicial Learning Center*, COLO. CTS., <https://www.colorado.gov/cjlc> (last visited Nov. 30, 2016).

⁴¹ See *id.*

⁴² See generally William Hood & Dan Cordova, *The Colorado Equal Access Center: Connecting Unrepresented Litigants to Legal Resources Through Technology*, COLO. LAW. (Sept. 19, 2016) (on file with the Court).

Technology monitor the development of the Colorado website and consider replicating it in Texas.

3. A Hackathon-Type Brainstorming Session

Involving the tech community is paramount to exploring technological solutions to the justice gap. A “hackathon” is one technique used by bar associations and access-to-justice groups around the country. The sponsoring organization brings lawyers and tech professionals together for a defined time period to create a technological solution to a specific problem related to the justice gap. To ensure the robust participation of Texas’s tech community, the sponsoring organization should seek financial contributions from companies, law firms, and prominent lawyers to offer prizes for the best ideas. The State Bar is uniquely situated to take a leadership role in this initiative, and law schools and their associated universities are also well-situated to contribute to this effort.

b. Re-examining Lawyer-Ethics Rules

The promise of technology will be stunted if ethics rules needlessly stifle innovation. The Texas Commission urges the Court to commission a thorough review of the Texas Disciplinary Rules of Professional Conduct and other lawyer-ethics rules to identify rules that may unnecessarily impede technological advancement in the delivery of legal services and to propose any needed amendments. The Report of the Texas Commission’s Technology Subcommittee identifies several issues that could arise from new technology, including:

- the moment when an attorney-client relationship is formed after a potential client posts information about a legal problem to multiple lawyers on an online portal;
- whether a conflict of interest arises when a lawyer reviews information posted by a potential client online or interacts with the potential client but is not hired;
- whether lawyer-advertising rules affect how a lawyer may solicit modest-means clients online;
- how rules prohibiting barratry affect potential lawyer-matching portals directed to modest-means clients; and
- whether prohibiting lawyers from practicing under a trade name impedes technological advancement in the delivery of legal services.⁴³

Recommendation 6. The Court should support and promote existing and new legal incubators.

A key component of increasing low- and moderate-income Texans’ ability to find legal representation is increasing the number of lawyers who will serve them. Each year,

⁴³ See TECHNOLOGY SUBCOMMITTEE REPORT, *supra* note 39, at 4–5.

students graduate from Texas law schools without full-time legal employment. Legal incubators can provide an opportunity for some of them to learn how to represent low- and moderate-income clients as a solo or small-firm practitioner.

Incubators—new, experimental companies created under the umbrellas of existing companies—started in the business and tech industries. Legal incubators have spread rapidly since the City University of New York Law School created the first one in 2007; today, there are legal incubators in at least 33 states and some foreign countries.⁴⁴

Legal incubators are typically housed in or run by a law school, bar association, private firm, or nonprofit organization. Each functions differently, but in general, they provide office space, training, and mentoring to new lawyers. Veteran lawyers teach new lawyers the practical aspects of running a small or solo law practice, and new lawyers gain real-world experience representing clients in need. Incubators can serve as places to experiment with technology or alternative billing structures. Some incubators require the new lawyers to perform a certain amount of pro bono legal work. Many focus on underserved communities, like immigrants, the elderly and disabled, and veterans.

In just the past year, plans to create several incubators in Texas have been announced. The State Bar of Texas's forthcoming Texas Opportunity & Justice Incubator began taking applications in November 2016.⁴⁵ The incubator will provide office space in Austin, training, and mentoring for a select group of new lawyers for 18 months, with the expectation that the lawyers will open their own practices serving modest-means clients after leaving the program.

The Texas A&M School of Law also recently created a legal incubator, the Texas Apprenticeship Network, which takes a different, more decentralized approach.⁴⁶ The program places each new graduate-apprentice in the office of a solo or small-firm practitioner in a community and practice area of the apprentice's choosing for a three-month span between the bar exam and licensure. The experienced practitioner, who is paid a small stipend by the school, mentors the apprentice on both the substantive law and law-practice management and introduces the apprentice to the community. The apprentice is expected to hang out a shingle once the apprentice becomes licensed.

⁴⁴ See CHARLES W. SCHWARTZ ET. AL, REPORT OF THE LEGAL INCUBATORS SUBCOMMITTEE OF THE TEXAS COMMISSION TO EXPAND CIVIL LEGAL SERVICES 3 (2016) [hereinafter LEGAL INCUBATORS SUBCOMMITTEE REPORT] (Appendix D); see also Standing Committee on the Delivery of Legal Servs., Am. Bar Ass'n, *Incubator Infographic* (November 18, 2016), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_i ncubator_infographic.authcheckdam.pdf (on file with Court).

⁴⁵ See TEX. OPPORTUNITY & JUST., <http://txoji.com> (last visited Nov. 30, 2016).

⁴⁶ See generally Press Release, Tex. A&M Univ. Sch. of Law, Texas A&M University School of Law to Launch Innovative Justice Gap Program (June 23, 2016), <https://law.tamu.edu/docs/default-source/news-documents/texas-apprenticeship-network-press-release.pdf?sfvrsn=2>.

Other incubators and incubator-type programs are in development across the state.⁴⁷ Legal incubators alone cannot close the justice gap. Since the first one was created in 2007, only about 530 lawyers in the country have graduated from an incubator.⁴⁸ But incubators have an important part to play in the modest-means pipeline. They can meet the needs of some clients and some new law-school graduates; they can teach lawyers how to make a living serving modest-means clients; and they can serve as a visible reminder to the legal community that serving clients who are unable to pay full price “is a moral obligation of each lawyer as well as the profession generally.”⁴⁹ The Texas Commission thus urges the Court to endorse and promote both existing incubators and the creation of additional legal incubators in the state.

Recommendation 7. *The Court should consider amending court and ethics rules to address and clarify issues raised by limited-scope representation.*

a. Limited-Scope Representation: What It Is and How It Can Help

Limited-scope representation—also called “unbundling”—is a legal-services model that enables litigants who would otherwise be self-represented to receive some assistance of counsel.⁵⁰ In short, a lawyer provides discrete, agreed-upon legal services to a client rather than making a general appearance or handling all aspects of the client’s legal problem.⁵¹ Examples of tasks that may be appropriate for limited-scope representation include:

- advising a client about procedures for filing a claim;
- appearing on behalf of a client at a single hearing;
- preparing or “ghostwriting” a letter or court document;
- preparing or responding to a demand letter; and
- negotiating a settlement.

⁴⁷ See LEGAL INCUBATORS SUBCOMMITTEE REPORT, *supra* note 44, at 4–5.

⁴⁸ STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS’N, 2016 COMPREHENSIVE SURVEY OF LAWYER INCUBATORS 12 (August 2016), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_comprehensive_survey_lawyer_incubators.authcheckdam.pdf (on file with the Court).

⁴⁹ TEX. DISCIPLINARY RULES PROF’L CONDUCT pmb1. ¶ 6.

⁵⁰ See generally KENNON L. WOOTEN ET. AL, REPORT OF THE LIMITED SCOPE REPRESENTATION SUBCOMMITTEE TO THE TEXAS COMMISSION TO EXPAND CIVIL LEGAL SERVICES (2016) [hereinafter LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT] (Appendix E).

⁵¹ See STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS’N, UNBUNDLING FACT SHEET (June 2, 2011), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_fact_sheet.authcheckdam.pdf (on file with the Court).

Limited-scope representation is not appropriate for every case or client. It is not suitable for matters that are complex or that cannot be divided into discrete legal tasks.⁵² But it can and is being used successfully in many types of civil legal matters to provide some assistance to litigants who cannot afford full-service representation. One commentator has noted that limited-scope representation “is likely to be used more in uncontested and modestly-contested family law cases than in any other field of litigation.”⁵³ Other cases that may lend themselves to limited-scope representation are consumer law, probate, insurance coverage, landlord–tenant, and small claims.⁵⁴ Outside the litigation context, it may be suitable for real-estate and small-business transactions.

Promoting the increased use of limited-scope representation in Texas could provide affordable legal services for some clients, spur the development of more cost-efficient legal-services models, and bolster the practice of law in underserved communities.⁵⁵ Some lawyers and judges have expressed concerns about limited-scope representation, including that:

- a lawyer’s involvement in only part of the case could leave the client worse off;
- the client may not know how to proceed at the conclusion of the representation;
- the court and opposing counsel will not know whether to send court papers and legal notices to the limited-scope attorney or the client; and
- the court may refuse to permit a lawyer retained under a limited-scope agreement to withdraw from a case after the lawyer has completed the agreed-upon tasks.

But these concerns can be mitigated by careful case evaluation by the lawyer, clear lawyer–client agreements, and rules that address issues that frequently arise from limited-scope representation.

The Texas Access to Justice Commission’s website provides many resources on limited-scope representation, including templates for a service agreement, a task- and issue-assignment checklist, a notice of limited representation, and a motion to withdraw.⁵⁶ Although the Texas Disciplinary Rules of Professional Conduct allow for it, the Texas Rules of Civil Procedure lack specific guidance on how to handle limited-scope representation in Texas courts.

⁵² See M. Sue Talia, *Limited Scope Representation*, in STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS’N, REINVENTING THE PRACTICE OF LAW 7 (Luz Herrera ed., 2014) [hereinafter REINVENTING THE PRACTICE OF LAW] (on file with the Court); see also Comm. on Prof’l Responsibility & Conduct, St. Bar of Cal., *An Ethics Primer on Limited Scope Representation*, ETHICS HOTLINER, Fall 2004, at 2, http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=_gb8teBEN0s%3D&tabid=834 (on file with the Court).

⁵³ Phillip C. Friday, *Limited Scope Representation: One Answer to Pro Se Litigation*, IN CHAMBERS, Fall 2013, at 9.

⁵⁴ See *id.* at 10; see also REINVENTING THE PRACTICE OF LAW, *supra* note 52.

⁵⁵ See LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT, *supra* note 50, at 3.

⁵⁶ *Limited Scope Representation*, TEX. ACCESS TO JUST. COMM., <http://www.texasatj.org/limited-scope-representation> (last visited Nov. 30, 2016).

The Texas Commission recommends that the Court (1) solicit input from the bar on the use of limited-scope representation to provide some affordable legal assistance to modest-means clients who otherwise would proceed unrepresented, and (2) commission a review of Texas court rules to determine whether amendments should be made to promote the use of limited-scope representation in Texas.

b. Court and Ethics Rules

Approximately twenty states and one Texas county (Travis) have adopted procedural rules to govern limited-scope representation in civil court proceedings.⁵⁷ Topics often addressed by these rules include:

- disclosure of “ghostwriting”—whether a lawyer who prepares legal papers to be filed with the court must disclose in those papers that the lawyer prepared them for the client;
- how a lawyer gives notice to the court and third parties that she is making a limited appearance;
- serving court papers and notices while a limited appearance is in effect; and
- how a lawyer withdraws from a pending court case after completing limited-scope representation.⁵⁸

The jurisdictions with limited-scope-representation rules do not approach these topics uniformly. The Report of the Limited Scope Representation Subcommittee highlights alternative approaches to each topic and includes a chart summarizing each state’s rules.⁵⁹ Because the study and drafting work needed to promulgate statewide procedural rules on limited-scope representation could take time, the Texas Commission encourages the Court to develop a local-rule template that counties can adopt in the interim and to enlist the help of the Office of Court Administration and the district and county clerks in measuring the rule’s effectiveness.⁶⁰

Finally, the Court should also consider whether the Texas Disciplinary Rules of Professional Conduct should be amended to align more closely with the ABA Model Rules of Professional Conduct on limited-scope representation. There are two key differences between the applicable Texas and ABA rules.

⁵⁷ See LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT, *supra* note 50, at 8.

⁵⁸ See *id.* at 8–9.

⁵⁹ See *id.* at Exhibit 1.

⁶⁰ The Court has previously approved local-rule templates for widespread adoption on topics like electronic filing that were later incorporated into the statewide procedural rules. See, e.g., Misc. Docket No. 11-9118 (June 28, 2011) (Final Approval of Amendments to the Texas Rules of Appellate Procedure and Templates for Local Rules Governing Electronic Copies and Electronic Filings in the Courts of Appeals).

First, while Rule of Professional Conduct 1.02(b), consistent with its Model Rule counterpart, permits limited-scope representation, the wording of the rules differs in two ways that may be important.

ABA Model Rule 1.2(c)	Texas Disciplinary Rule of Professional Conduct 1.02(b)
“A lawyer may limit the scope of the representation if the limitation is <i>reasonable under the circumstances</i> and the client gives <i>informed</i> consent.” (Emphasis added)	“A lawyer may limit the scope, objectives and general methods of representation if the client consents after consultation.”

The first is that Model Rule 1.2(c) only permits a lawyer to limit the scope of representation “if the limitation is reasonable under the circumstances,” whereas Rule 1.02(b) does not contain that limitation.⁶¹ The second is that Model Rule 1.2(c) requires that a client give “informed consent,” but under Rule 1.02(b), consent after consultation suffices.⁶² Amending Rule 1.02(b) to align more closely with the language of its Model Rule counterpart may allay some of the concerns that have been expressed about limited-scope representation.

Second, Model Rule 6.5 (“Nonprofit And Court-Annexed Limited Legal Services Programs”) relaxes the conflict-of-interest standards for lawyers that provide short-term, limited legal services under a program sponsored by a nonprofit organization or a court.⁶³ The comments to the rule recognize that the programs contemplated by the rule normally operate under circumstances that make it infeasible for a lawyer to screen for conflicts of interest, which a lawyer generally must do before undertaking legal representation. Forty-six states have adopted Model Rule 6.5 or a substantially similar rule.⁶⁴ Texas has not. Incorporating Model Rule 6.5 into the Texas Disciplinary Rules of Professional Conduct may help to reduce lawyers’ concerns about engaging in limited-scope representation and promote the practice in Texas.

Recommendation 8. *A primary objective of future rulemaking projects should be to make the civil justice system more accessible to modest-means clients.*

The Texas Commission’s final recommendation is that, where appropriate, a primary objective of future projects to make or amend the rules that govern the civil justice system in Texas should be to make the system more accessible to modest-means clients.

⁶¹ Compare MODEL RULES OF PROF’L CONDUCT r. 1.2(c), with TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.02(b).

⁶² See MODEL RULES OF PROF’L CONDUCT r. 1.2(c); TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.02(b).

⁶³ See MODEL RULES OF PROF’L CONDUCT r. 6.5 & cmts.

⁶⁴ See LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT, *supra* note 50, at 7.

For example, projects involving rules of civil or appellate procedure should focus on streamlining court procedures to make litigation less costly and easier for self-represented litigants to navigate. The Court has already begun this effort by asking the Supreme Court Advisory Committee to review all of the discovery rules and recommend changes to increase efficiency and decrease the cost of litigation.⁶⁵

The Court should also consider whether changes to the Rules and Regulations Governing the Participation of Qualified Law Students and Qualified Unlicensed Law School Graduates in the Trial of Cases in Texas could improve modest-means clients' access to legal representation. Rule I recognizes the profession's "responsibility to provide competent legal services for all persons" and states that the rules are promulgated in furtherance of that responsibility. But Texas's rules are more restrictive than those of many other states. For example, Rule II(B) requires that a student have completed at least two years of law school or, if the student is participating in a clinic for academic credit, be in the second semester of the second year of law school. But other states' rules permit a first or second-year student to obtain a student bar card under certain circumstances.⁶⁶

Changes to generally applicable court rules may only have an indirect, incremental effect on the justice gap. But in order to close the gap, Texas must attack it from every angle. The Court should take every opportunity to make a change—however modest—that could increase access to the civil justice system.

⁶⁵ Letter from Nathan L. Hecht, Chief Justice, Supreme Court of Tex., to Charles L. "Chip" Babcock, Chair, Supreme Court Advisory Comm. 2 (Apr. 18, 2016) (on file with the Court).

⁶⁶ See generally TEX. TECH UNIV., FIFTY-STATE SURVEY: STUDENT BAR CARDS (2016) (on file with the Court).

Index to the Appendix

- Appendix A** Report of the Navigator and Pipeline Programs Subcommittee of the Texas Commission to Expand Civil Legal Services
- Appendix B** Report of the State Bar of Texas and Other Referral Services Subcommittee of the Texas Commission to Expand Civil Legal Services
- Appendix C** Report of the Technology Subcommittee of the Texas Commission to Expand Civil Legal Services
- Appendix D** Report of the Legal Incubators Subcommittee of the Texas Commission to Expand Civil Legal Services
- Appendix E** Report of the Limited Scope Representation Subcommittee of the Texas Commission to Expand Civil Legal Services

Report of the Navigator and Pipeline Programs Subcommittee of the Texas Commission to Expand Civil Legal Services

Members: Darby Dickerson (Chair), Hon. William Royal Furgeson, Jr. (Co-Chair),
S. Jack Balagia, Jr., Hon. F. Scott McCown, Harry M. Reasoner

September 30, 2016

A. Navigator Programs

1. Overview

One opportunity to help meet the legal needs of citizens of low or modest means is for communities to create navigator, or self-help, centers. The 2016 *Report on the Future of Legal Services in the United States* lists “[c]ommunity based legal resource centers (libraries, retail, etc. during night/weekend hours)” as a way to help provide “accessible and affordable” legal services to the American public. American Bar Association Commission on the Future of Legal Services, [*Report on the Future of Legal Services in the United States*](#) 70 & 1 (2016).

In a nutshell, Navigator Programs help guide citizens through the court system and legal process, typically in matters for which self-representation is common in the jurisdiction, such as divorce, probate, landlord-tenant disputes, and consumer issues. Navigator Programs advance the efficient administration of justice because self-represented litigants who use the service typically will be better prepared and will more frequently arrive with both correct and complete documents.

Navigator Programs are flexible and can be molded to meet community needs and to operate within the resources available. They can also evolve over time. Many jurisdictions have started Navigator Programs on a pilot basis, and have then evaluated the programs to determine how best to continue or expand them.

a. Locations

Navigator Programs can be based in courthouses, law or general libraries, malls, or other locations easily accessible to citizens of low and modest means. A Navigator Program might include multiple locations. For example, a Navigator Program might have a primary location in a county law library or courthouse, but then have a “branch” in a local mall. Or a Navigator Program might have locations outside a courthouse coupled with a “Courthouse Concierge Desk.” Navigator Programs might also be [virtual](#) or mobile (like a book-mobile). See generally National Center for State Courts, [*Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources*](#) (2008).

b. Services Provided

Navigator Programs can provide a range of services to self-represented individuals. Navigator Programs typically provide legal information, not legal advice; some also provide emotional support. *See, e.g.,* Bethany Jackson et al., A [Roadmap for Reform: A Continuum of Interventions for Access to Justice in Oklahoma](#) 28 (Dec. 2015) [hereinafter “*Oklahoma Report*”]. In New York, for example,

[t]he Navigators, all volunteers [who may be lawyers or non-lawyers], also assist litigants in filling out forms; accompany litigants while they are before the judge, but without speaking directly to the court (unless asked by the court to do so); provide litigants with notes or reminders about issues they wanted to raise (which pro se litigants often forget under the pressure of standing before a judge); and explain to litigants in common English what occurred during the proceeding.

New York Legal Ethics Reporter, Ronald C. Minkoff, [Access to Justice and a New Definition of Professionalism](#) (Sept. 1, 2015).

It is possible for a Navigator Program to provide legal advice if licensed attorneys—whether staff or volunteers—are available on a regular basis.

c. Staffing Models

Navigator Programs are typically manned by a combination of paid staff and volunteers who can guide citizens to materials, forms, and other information that will help them navigate the legal process. Although some jurisdictions might prefer to have attorneys supervise non-lawyer staff and volunteers, and to otherwise assist the program, many Navigator Programs are staffed by non-lawyers such as law librarians, court staff, paralegals, law students, college students, social workers, and other volunteers. *See Oklahoma Report* at 28.

d. Part-Time Models

Jurisdictions that cannot afford a full-time Navigator Program might develop programs that operate on a more limited, but regular, basis. For example, a jurisdiction might have Navigator services available certain days of the week or month. Or a jurisdiction could provide Navigator services in a different format.

As one example, Salt Lake City offers the Pro Se Calendar Project, which allows citizens to obtain assistance and legal advice at the courthouse once a week:

The program works like this: court clerks, working for commissioners, place all of the cases where the parties are not represented by an attorney on the same day on a dedicated court calendar. On those days, Legal Aid Society of Salt Lake, the Self-Help Center, Law Office of Virginia Sudbury (LOVS), volunteer attorneys, mediators, paralegals, clerks, judicial assistants and bailiffs greet people at court and offer pro se litigants the opportunity to have a volunteer attorney represent them on a limited scope basis for their hearing. If the parties want assistance, each party is assigned an attorney. The attorneys meet with their client, discuss the issues, and attempt to negotiate a settlement. If the case cannot be resolved by a negotiated agreement, the attorneys represent the parties before the Commissioner, who makes a decision. By negotiated agreement or Commissioner decision, the resulting order is drafted by Self Help Center staff. The order is reviewed by the attorneys for accuracy, signed by the Commissioner, and both parties leave with a copy of the court order.

The success of the program has been significant. Since the Pro Se Calendar's inception in the summer of 2014, volunteers have represented many hundreds of pro se clients, completely free of charge. During that time about hundreds of orders have been drafted – this means that people walked out of court the same day with custody orders, divorce decrees, or other agreements. Over a hundred attorneys have volunteered their time at the Pro Se Calendar pro bono, some of them attending nearly every week.

[Supporting Materials for the Louis M. Brown Award for Legal Access, Pro Se Clinic Calendar](#) at 1.

e. Funding Models

Funding is a significant concern for Navigator Programs. Different programs use different funding models. Some are funded with court or filing fees; others are funded or supplemented through a court or county budget; some have started with foundation funds and other donations, and still others are funded with small fees charged to citizens who use the service.

Some Texas counties already have successful Navigator Programs, while others are actively discussing how to start Navigator Programs. Texas can also learn from experiences in other jurisdictions. Below we provide information about Navigator Programs in Travis County, Dallas County, Tarrant County, and Harris County, and information about successful programs in Pinellas County, Florida and Kings County, New York. We also provide thoughts about Keys for Success and Potential Obstacles to Success, Questions and Decision Points, and recommendations for Suggested Next Steps.

2. Texas Navigator Programs

a. Travis County

The Travis County Law Library is not your grandparents' law library. Its [website](#) reflects that the county has dramatically re-imagined the role of a modern public law library to help close the justice gap. As a first step, the county renamed the library as the Travis County Law Library and Self-Help Center.

Rethinking how public law libraries provide services is happening across the country. [*Report: The Sustainable 21st Century Law Library: Vision, Deployment and Assessment for Access to Justice*](#) (Zorza 2012) (consultant's report funded mostly by the Chicago Bar Foundation on converting the Cook County Law Library from a traditional library to a library and self-help center).

Because of the internet, traditional library patrons no longer need expensive books. Today's library patrons need legal information available in a way that facilitates self-representation. The mission of the county law library remains the same—providing legal information to the public. What has changed is who needs information and in what format.

Instead of lawyers or judges, Travis County patrons are now about 95% self-represented litigants. Instead of buying expensive books that are rarely used, Travis County purchases research tools and personal help for self-represented litigants. While the library maintains Lexis online, the only books it maintains are those actually and regularly used by both self-represented litigants and traditional patrons.

The county law library has a sustainable source of funding. Specifically, Local Government Code § 323.021 allows counties to assess a \$35 filing fee to establish, maintain, and fund a county law library.

i. Services and Programs

The library still provides the following traditional services:

- Reference services;
- Public access to books and Lexis online; and
- Contract, purchase, and processing of books and online services for the courts

But the library has added the following self-help services:

- Reference attorney review of completed forms;
- Family law program (described below);

- Driver's license program (described below);
- Volunteer Legal Services branch office in the library;
- UT Law School Pro Bono Clinic in the library; and
- Drafting and publishing legal forms to address the needs of self-represented litigants.

ii. Numbers Served

With its change in mission, the county law library is keeping itself relevant to the administration of justice. Below are the patron contacts (in-person, phone, and email) for the last three fiscal years:

- FY14 = 38,000
- FY15 = 44,660
- FY16 (projected) = 45,008.

iii. Family Law Program

One of the Self-Help Center's most successful programs is the Family Law Program. For self-represented litigants attending the civil uncontested docket, the courts require review of final orders by a reference attorney who works at the county library. The reference attorney ensures paperwork is properly completed. This program serves a substantial number of people:

- FY14 = 4,042
- FY15 = 4,278
- FY16 (projected) = 7,578.

iv. Driver's License Program

Building on the success of the Family Law Program, at the request of the county courts at law, the county law library now assists unrepresented defendants who petition the county courts for occupational driver's licenses or for driver's license reinstatement. Consequently, more low-income drivers will be able to drive to work legally. Because petitioners must pay outstanding tickets and secure insurance to qualify for an occupational driver's license, fine collection by justice and municipal courts is improved and the number of uninsured drivers is reduced. In FY15, the program:

- assisted with 1,681 driver's license issues;
- assisted with 279 occupational driver's licenses granted by county courts; and
- assisted with dismissing 435 driving-without-a-license cases.

In addition, the county had a 3% re-arrest of assisted litigants, compared to historical recidivism of 19.9%.

v. Benefits Outside Travis County

The benefits of the program have spread outside of Travis County. The reference attorney drafted court forms that the library posted on the [statewide legal information website](#). In 2015, self-represented litigants accessed this information 22,546 times.

vi. Funding

The Travis County program is robust enough that the \$35 filing fee does not fully cover the cost. Additionally, as filings have fallen, fee revenue has fallen. The commissioners court has stepped up to contribute a quarter of the total library budget from the county general fund. This contribution pays for books, online services, and other direct services to the courts, including half of the two reference attorneys. But even without an allocation from the general fund, the \$35 filing fee revenue provides a significant budget.

b. Dallas County

Dallas County is exploring a Navigator Program. A Navigator Task Force has been established and has met two times. The Task Force is considering a Navigator Program for self-represented parties in the Dallas civil courts, with collaboration between the Dallas Bar Association (DBA), the Dallas Family Courts, the Dallas 5th Court of Appeals, Dallas County, and the two Dallas-based law schools: UNT–Dallas College of Law and SMU School of Law. State Bar of Texas President Frank Stevenson; DBA President Jerry Alexander; Dallas County Judge Clay Jenkins and his library and budget staff; 5th Court of Appeals Justice Liz Lang-Miers; and Family Court Judge Tena Callahan are part of the Task Force, which is chaired by attorney Robert Tobey.

General agreement exists that self-represented parties in civil courts need help. Currently, these individuals normally are referred to the Dallas County Law Library for help. On an average day, the law library sees between 200–250 people seeking help with their cases. The number varies from day to day and does not include telephone calls received each day. The law librarians and staff do their best to assist, normally referring people to forms, directing them to law books, explaining the court process, providing directions, or furnishing information about lawyer-referral services. But no legal advice can be provided and, therefore, most citizens do not receive the level of help they desire or need.

The greatest need is in the family courts. Judge Callahan believes that if self-represented litigants could merely receive some simple or straightforward legal advice, family cases could move forward more expeditiously. Merely having the forms completed correctly would make a significant difference. The forms involve not only those for simple divorces,

but also for routine forms for family matters that might be more complicated. Accordingly, creating a Navigator or self-help program in the courthouse would pay big dividends in the family courts.

Despite agreement that a self-help program for Dallas County would be beneficial, the Task Force is struggling to find the best way to implement such a program. The first problem is expense. The Dallas County budget does not include funds for such a program, and it is unlikely that funds can be found. Some have suggested that court costs should be increased to cover the program, but many believe court costs are already too high. It is thus anticipated that any proposal to increase court costs would be met with strong opposition. The Task Force is exploring other funding sources and less expensive alternatives to a program staffed by one or more attorneys.

One suggestion is to hire a family-law paralegal, who would work under the direction of a lawyer in one of the county legal departments. Supervision would be necessary to avoid claims of unauthorized practice of law. Using a paralegal would reduce costs, which possibly could be absorbed by other county departments that would benefit from the help given to self-represented parties. The idea would be to pilot the program with a paralegal, then evaluate the results to determine whether adding an attorney might be both helpful and possible.

A second problem is location. The law library's leadership does not in favor a library-based program because of space and possible disruption concerns. Thus, the Task Force is exploring different venues within the courthouse.

The Task Force's next steps are to (1) consider the intermediate approach using a paralegal; (2) determine funding and paralegal supervision; and (3) find a suitable location for the program in the courthouse. Fortunately, all interested parties are actively committed to and participating in finding a workable solution.

c. Tarrant County

Fort Worth currently does its best to deal with self-represented parties through the Tarrant County Law Library, which serves approximately 1,300 visitors and fields about 200 calls per month. 95% of the library's monthly visitors and callers are unrepresented. Like the Dallas County Law Library, the Tarrant County Law Library refers self-represented parties to forms and other materials. Presently, the county has no plans to expand the services.

d. Harris County

For the past ten years, the Houston Volunteer Lawyers Program (HVLP) has operated a pro se litigant "assistance booth." The program has been funded with foundation funds and no government or county funds.

HVLP operates the “booth” on the 17th floor of the new Harris County District Courthouse, and in basement space provided by the Harris County Attorneys’ Office in the Harris County Library. All space is provided free of charge.

The 17th floor space is open from 8:30 a.m. until 2:00 p.m. daily. It is staffed by a 25-year family-law lawyer who is paid about \$90,000 per year, plus benefits valued at about \$40,000 per year. That lawyer supervises a legal assistant/translator who is paid, with benefits, about \$45,000 per year. The program also pays the county for IT, phone service, and parking spaces. All in, the program costs about \$170,000-\$180,000 per year. The booth staff triage clients, so that those who are facing less pressing deadlines can be routed to the law library location.

The library basement space is not staffed full time, and all staff are volunteers. Andrews Kurth staffs the space one day per week, and other firms plus South Texas law students (supervised by a professor) rotate for an additional one-half day of the week. The library location has the added benefit of making computer access, including Westlaw, available to pro se litigants free of charge. There are more than 30 computer terminals available in the library. HVLP collaborates closely with the staff to help pro se litigants navigate their way through the forms and codes, so they can adequately represent themselves.

The HVLP program serves 6,000-7,000 people per year, which is more than all other HVLP programs and clinics combined. Ninety-five percent of the work is family law, with remainder generally probate and landlord-tenant. Harris County family courts require pro se litigants to visit the booth before they can complete their cases. This program serves an important purpose because 80% of qualified legal-aid applicants do not receive the help they need.

An advantage to having this program privately funded is that HVLP controls the work and other decisions, and those working in the program have the benefits of protections from the HVLP umbrella insurance policy. In addition, there are times when the provision of legal information by HVLP might be adverse to work being done by the county in challenging civil pauper affidavits.

3. Non-Texas Programs

a. Pinellas County, Florida

In October 2007, Pinellas County opened the award-winning [Clerk’s Self Help Center](#). Since inception, the Center has helped almost 27,000 citizens. Citizens who do not have a private attorney can receive affordable, trustworthy legal assistance at three locations throughout the county. The Center was developed in collaboration with the offices of the Clerk of the Circuit Court and Comptroller, the Sixth Judicial Circuit, the

Community Law Program, and the Clearwater Bar Association to help citizens navigate their case through the legal system. The service is available to anyone, with no income restrictions; users need not be residents of Pinellas County. Attorneys accepting appointments are contracted through local bar associations and not by the Clerk's Office. The attorneys may not represent the individual in court.

Citizens make an appointment online or by walking into any location. The appointment fee is paid at the time the appointment is scheduled and is non-refundable. Citizens may pay with a credit card, check, or cash. The online schedule is available 24/7. The service charge for using a credit card is not billed to the citizen, but is billed to the Clerk, who pays using funds generated from the Center. Appointments cost \$1.00 per minute, for a minimum of 15 minutes and a maximum of 60 minutes. The Center is funded with these fees.

An individual may use the Center's services as many times as necessary to navigate his or her case through the legal system. Four full-time members of the clerk's staff support the three Center locations.

The Clerk's office may statutorily assist with family, small claims, and landlord-tenant matters. Attorney consultations are just one facet of the customers' experience at the Center. Other services include notary services and the purchase of forms. The local Hispanic Outreach Center provides a Spanish language interpreter at one location on Friday mornings.

The Clerk's Office has graciously provided the Subcommittee with many of its forms, which are on file with the Court.

b. Kings County, New York

The Kings County Program was recently described in the [*Oklahoma Report*](#) at 28:

One of the most comprehensive court navigator programs is in New York, where a three-tiered pilot project is underway in the Kings County Housing Court. Each tier in the program offers a different range of services. The most basic navigators are "Housing Court Answers" (HCA) volunteers who provide basic intake and emotional support to litigants who qualify for the program. The second tier, "A2J Navigators," are court-trained and approved navigators who provide emotional support for the litigants throughout the litigation and respond to certain factual inquiries by the judge. The last tier, "University Settlement," are court employed navigators who offer comprehensive legal assistance—such as answering factual inquiries and providing social services—for complex cases. The Kings County Housing Court program offers a good snapshot of the various types of court-based navigator programs taking place around the country. . . .

As of this writing, an evaluation of the New York programs is underway but not yet released. However, based on existing information, there is reason to believe that the HCA navigator program is modestly successful. For example, a study of the HCA court navigator program found that 85 percent of litigants strongly believed the HCA navigators answered their questions. Fifty-one percent strongly agreed that the court navigators helped litigants understand what was going on in their case, and forty-nine percent strongly agreed that court navigators helped them feel that progress was being made in their case. Case outcomes show that tenants who were receiving court navigator assistance paid an average of \$54 less than what the landlord originally demanded. On the other hand, litigants who did not receive assistance generally paid an average of \$121 more than what the landlord originally demanded. Additionally, litigants tended to assert more defenses with court navigator assistance in their cases.

For additional details about this program, see [Minkoff](#), *supra*.

3. Keys to Success

In evaluating the different actual and proposed Navigator Programs, the Subcommittee concludes that the following items are critical to a program's success:

- Locations that are open and staffed when those of low and modest means are available to visit without missing work or school.
- Locations that are convenient for those of low and modest means to access using public transportation or that have free or inexpensive parking nearby.
- Setting specific goals for the program. For example, the Legal Information Society of Nova Scotia recently launched a pilot Public Navigator Program; the “[k]ey goals of the project include helping self-represented individuals:
 - Understand their issue(s) and options
 - Gain confidence with making a decision for conflict resolution
 - Have satisfaction with the process
 - Reduce the number of formal court processes
 - To have proper documentation when proceeding with court-based action.”

Ann O’Connell, [Bridgewater Court to Host First Public Navigator Program](#), South Shore Breaker, Feb. 17, 2016.

The goals of a program could be narrow, or more varied. For instance, a Navigator Programs could help in other ways, such as coordinating volunteer mediation and other ADR programs.

- An adequate, reliable, and steady funding stream.
- Recruiting, training, and retaining sufficient staff and volunteers. Training should include matters such as how to use the resources, such as forms, at the Navigator, but also how to interact respectfully with individuals from a variety of backgrounds and cultures, and how to refer individuals to other pro bono and low-bono services that might prove more effective for the individual.
- Law-school participation. Law students might participate either through a clinical program or a more informal pro bono or public-service program.
- Meaningful language access, which would include staff or volunteers who speak the most common languages spoken in the area, and printed materials in a variety of languages. Printed materials would include information and maps of courthouses, instructions about how to complete common forms and documents, pamphlets on common legal issues such as divorce and landlord-tenant disputes, and program referral information.
- Web presence in an easy-to-use format. Online scheduling options for both potential clients and volunteers would be a plus.
- Effective outreach to ensure that the public, bar, and judiciary are aware of the resources.
- Effective outreach and coordination to ensure that attorneys and judges support and cooperate with the program.
- Avoiding the unauthorized practice of law.
- Ensuring that citizen-users understand the role of staff and volunteers, and their own responsibility.
- Providing malpractice insurance coverage.
- Easy-to-access training materials for volunteers helping with the project. The New York City Housing Court Navigator Program, for example, provides training for lawyers, law-student and college-student volunteers, social workers, and others. The training includes a [website](#) with an embedded video, and a [manual](#). An April 2016 video

of the Deputy Chief Administrative Judge for New York City Courts discussing the N.Y.C. program is available on [YouTube](#).

- Developing an evaluation system that solicits feedback from citizen-users, staff members, and volunteers, and then using information from the evaluations to improve the program.

4. Potential Obstacles to Success

Below are several critical issues that, if not anticipated or resolved, could prove obstacles to starting or maintaining a successful Navigator Program:

- Lack of funding or insufficient funding.
- Lack of buy-in from the legal profession and other key constituencies, such as the county law library and potential volunteers.
- Attempting to help with a wide range of legal issues, as opposed to limiting the programs to the most common legal issues experienced by citizens of low and modest means.
- Lack of public outreach to educate citizens about the program.
- Lack of coordination with other access-to-justice programs.

5. Questions and Decision Points

Below are several questions that jurisdictions considering a Navigator Program would need to address:

- Should the Navigator staff and volunteers provide only legal information, or should licensed attorneys also be able to give legal advice? Where is the line between information and advice, and how will staff and volunteers be trained to understand the difference and to avoid the unauthorized practice of law? Attached is a memorandum to the San Antonio Bar Association prepared during consideration of evolving the Bexar County Law Library. The memo explains how the library helps but stays within its proper bounds.
- Do we need a court rule to address issues, including the unauthorized practice of law, related to those staffing or volunteering in a Navigator Program?
- At what point might an attorney-client relationship be created with a citizen?

- How will issues of malpractice liability be addressed?
- Will the program be limited to certain types of legal matters, such as divorce or landlord-tenant issues?
- How will volunteers be recruited and retained?
- Who will develop and run training for staff and volunteers?
- What methods can be used to gain the support of attorneys and judges?
- What organization or entity is best suited to oversee the work of a Navigator Program?
- What key constituencies must be engaged?
- Should the program engage in means testing, or should it be open to anyone?
- In what languages should services and materials be provided?
- What are the best locations for the program?
- What sort of web presence is necessary or desirable?
- Should the program start on a part-time basis?
- What is the best funding model in a particular jurisdiction?
- How will the program be marketed to citizens?
- How can Navigator Programs best be integrated with other low-income and modest-means programs so that citizens can find the services that best meet their needs?
- How, when, and by whom will the success and impact of the program be evaluated?

6. Suggested Next Steps

The Subcommittee recommends the following as possible next steps regarding Navigator Programs:

- Develop a comprehensive list of all Navigator Program, and similar programs, in Texas.
 - Consider ways to facilitate contact and sharing among existing programs.

- Collate materials about each program and post them on websites that will educate citizens, attorneys, and judges about the different programs.
 - Work with Navigator Program directors to develop a set of statewide Best Practices.
 - Work with Navigator Program directors to develop materials that can be used to start similar programs in other cities and counties.
 - If the programs are not yet evaluating their outputs, work with them to develop an effective evaluation system, then review the results.
- Only about 34 of Texas’s 254 counties currently maintain a county law library. See [Texas State Law Library List](#) from May 2016. Of these, almost all have a traditional focus. Because law libraries are one logical location for Navigator Programs (and many already have a funding source), consider meeting with the heads of all county libraries—either in a specially called meeting or at a time when the librarians might otherwise be meeting, such as during a SWALL annual conference—and hold a discussion about the merits of shifting from a traditional county law library model to a library and self-help model. We also suggest engaging the library directors and deans of the Texas law schools in any such meeting.
 - Contact the Texas Association of Counties to see if that organization might be interested in co-sponsoring a statewide meeting on Navigator Programs. TAC, among its many programs and activities, provides training programs for constitutional county courts, which may in turn be a possible source of both support and funding.
 - Study whether the definition of unauthorized practice of law should be revised to carve out protections for Navigator Programs.
 - Study whether any other rule, or rule changes, are needed to allow Navigator Program to run effectively.

B. Pipelines

1. The Pipeline Concept

Will Hornsby, staff counsel for the ABA Standing Committee on the Delivery of Legal Services, has stated that one way our Commission could make a unique contribution is to figure out how to create a true pipeline for access to justice.

Each year, the legal needs of millions of people go unmet. An entry on the ABA Committee’s [“Ideas Page”](#) explains the dilemma and the pipeline concept:

For example, the ABA Self-Help Center Census determined that 3.7 million people turn to self-help centers a year. The survey found that 38% of those centers do not refer matters to lawyer referral services even though 10 to 20

percent of center users can afford either full or unbundled legal services. This would amount to over 200,000 fee-paying people who are not being pipelined into the legal marketplace from this one conduit. Similarly, legal aid entities often screen out potential clients because they either have a matter that the legal aid system does not address, e.g. a personal injury, or they have too much money to qualify for legal aid. See Legal Genie for one legal aid program that helps connect people to appropriate marketplace resources - <http://www.legalgenie.com/partner-general-information/>

Millions of people each year are proceeding through the use of online DIY forms. For some, these resources, provided by government entities as well as for-profit services, provide forms and accompanying information that are sufficient. Others could benefit from consultations or additional assistance from lawyers. Requirements that websites with legal forms provide information about how to find a lawyer would be of great value to those attempting self-help. For an example of this being done on a voluntary basis, see <http://www.uspto.gov/trademarks-getting-started/using-legal-services/do-i-need-trademark-attorney.>

Often people have a problem but do not realize they have a legal solution. Millions of people call United Way's 211 service. Call for Justice Inc. is a Minnesota non-profit that trains 211 operators to diagnose legal problems and route callers to the most appropriate legal resource. On a local basis, reaching a midlevel city, Call for Justice helped place 30,000 callers in a year. Obviously, a national expansion of this type of service would reach millions. See <http://callforjustice.org/>

Similarly, efforts to create collaborative partnerships will expand engagement. The best example is the medical-legal collaboration. See <http://medical-legalpartnership.org/>. While this model should be expanded, the legal community can benefit even more by seeking out other strategic partners to expand on the idea of collaborative engagement.

A pipeline program would start at a point that helps people [identify legal issues before those issues become problems](#) (e.g., lack of a living will). Examples of this piece of a pipeline include the 211 program described above and the ABA's "legal check-up" program, which is currently being developed. As we understand it, the legal check-up would allow an individual to meet with an attorney once a year to discuss his or her personal situation against a checklist—just as a physician would go through a checklist during an annual physical examination. Other "preventative" programs might include training social workers, patient advocates in hospitals, and certain insurance workers to ask questions that would help clients identify legal issues.

A pipeline would also ensure that all access-to-justice programs in an area coordinated with each other. If a person sought help from legal aid but either did not qualify financially or

was not assigned to an attorney, the legal-aid organization would not simply reject the case, but instead would provide the individual with information about other services they might use, and might even initiate and assist with the referral. For example, the legal-aid organization might refer the individual to an incubator program, a Navigator Program, or an attorney who has agreed to work on a fixed-fee basis or who will accept a limited-scope arrangement. To the extent that application forms could be transferred from one service to another without the potential client having to complete similar forms multiple times, such streamlining would help build a better pipeline.

2. Subcommittee Recommendations

The Subcommittee recommends that this Commission, with the assistance and cooperation of the Texas Access to Justice Commission or another permanent organization, identify two Texas cities or counties that would be willing to develop a pipeline program within 24 months. We recommend that one city or county be in a metropolitan area and that the other be a more rural area.

After securing buy-in from key constituencies, a coordination meeting should be held in each jurisdiction. A representative from each service provider, or potential service provider, should be invited to attend to share information about his or her own organization and to learn about the other organizations. A portion of the meeting would be used to explain the pipeline concept and to allow participants to brainstorm how the pipeline might be constructed and maintained, and to discuss resource needs and possible obstacles to success.

Other steps in building a local pipeline would likely include:

- Ensuring that all low-income and modest-means programs in the jurisdiction have been identified.
- Building reliable and accurate referral systems that will be easy for those of modest means to understand, and that will not place people into frustrating loops.
- Creating a 211 or legal check-up program to help individuals of low and modest means adopt a preventative approach to legal issues.
- Developing a website, or webpage on an existing website, that includes information about each program, with FAQs about which program is likely to be most suitable for different types of individuals and issues.
- Developing shared materials to enhance consistency and eliminate unnecessary duplication. Shared materials might include client applications, brochures, templates, and other materials.

- Holding regular coordination meetings so that representatives of each participant organization can (a) ensure that referrals are being made appropriately and effectively, (b) share updates, and (c) continue to enhance coordination.
- Ensuring that attorneys and judges in the jurisdiction understand the pipeline.
- Ensuring that individuals who work or volunteer with organizations within the pipeline understand the pipeline and how the different sections fit together.
- Developing materials that would allow other jurisdictions to replicate the pipeline.
- Developing evaluation guidelines.

Overall Recommendation

The Subcommittee also recommends that the Commission make the pipeline concept a priority in its final report and arrange for the concept to be discussed at meetings of judges and bar leaders so that other jurisdictions might understand and potentially adopt the concept, which would help to make justice accessible to millions of individuals, especially those of low and modest means.

MEMORANDUM

To: SABA
From: Lamont A. Jefferson and Brad Smith
Date: June 12, 2008
Subject: Bexar County Law Library Self Help Center

ISSUE 1

Validity of an Income Eligibility Requirement

Whether under Federal and Texas law, limiting access to the Bexar County Law Library Self-Help Center (the “Center”) by imposing an indigency requirement passes constitutional muster and is legally valid.

Short Answer

Because the access would be based on wealth, the indigency requirement would pass constitutional muster and is likely valid if the reason for the wealth distinction is *rationally related to a legitimate state interest*.

Discussion

Indigent Requirement

A distinction that limits access to a government program on the basis of whether an individual is indigent is a distinction based on wealth. Neither the wealthy, nor the indigent are suspect classes under the Equal Protection Clause of the U.S. Constitution. *Vance ex rel. Wood v. Midwest Coast Trans., Inc.*, 314 F. Supp.2d 1089, 1093 (D. Kan 2004). Where wealth is involved, equal protection does not require absolute equality or equal advantages. *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1, 24 (1973). The Equal Protection Clause gives states wide latitude in implementing social and economic legislation, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic process. *City of*

Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985). Under both Federal and Texas law, a program making a distinction on the basis of wealth will be sustained if the reasoning for the distinction is rationally related to a legitimate government interest. See *Alcan Aluminum Corp. v. BASF Corp.*, 133 F. Supp.2d 482, 501 (N.D. Tex. 2001).

Application

The indigency requirement would likely survive constitutional muster because the requirement only need be rationally related to a legitimate government interest. Similar programs have been upheld under an equal protection analysis. See *Zabriskie v. Court. Admin*, 172 Fed. Appx. 906, 910 (11th Cir. 2006) (holding a pro se litigant's equal protection rights were not violated when he was denied access to a self help center because his denial was rationally related to the government interest of maintaining order and security); see also *S. Christian Leadership Conference v. Supreme Court of La.*, 252 F.2d 781, 789 (5th Cir. 2001) (sustaining indigence requirement over equal protection challenge because the requirement was rationally related to the stated purpose of providing representation to those who could not afford it for themselves). Because there is currently no clearly articulated reason for the indigency qualification, Commissioners Court should be prepared to articulate a reason which is rationally related to a legitimate government interest. Protecting the earning capacity of the Family Law Bar would not likely qualify as a legitimate state interest.

ISSUE 2

Possible Legal Exposure

Whether the establishment of the Center creates a reasonable risk of exposure to legal liability to Bexar County.

Short Answer

If the Center includes an indigency requirement, the Center would be subject to challenge by a citizen who is refused service, unless the County can articulate why the distinction is rationally related to a legitimate state interest (discussed above).

Absent a constitutional challenge, liability exposure would be quite remote because governmental immunity would preclude suits against the County for any erroneous advice or information that may be disseminated through the Center.

Discussion

The discussion of a possible constitutional violation under an equal protection theory is analyzed above. Governmental immunity does not protect the County from an equal protection violation. See *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 59 (1996) (the Fourteenth Amendment allows federal power to intrude upon the province of the Eleventh Amendment and therefore, to abrogate states' Eleventh Amendment immunity from suit)

Aside from a possible constitutional challenge, the County should face little exposure from the operation of the Center, with or without an indigency requirement. The operation of a library is a governmental function that is specifically listed in the Texas Tort Claims Act ("the Act"). TEX. CIV. PRAC. & REM. CODE § 101.025 (Vernon 2007). The Act provides for limited waiver of governmental immunity. Waiver of governmental immunity under the Act only applies to the operation or use of a motor vehicle or the use of tangible property. TEX. CIV. PRAC. & REM. CODE § 101.021 (Vernon 2007). Absent waiver, a county is immune from liability arising out of the execution of a governmental function. See *Poncar v. City of Mission*, 797 S.W.2d 236, 239 (Tex. App.—Corpus Christi 1990, no writ)

The most likely claims to arise from the operation of the Center would be based on the receipt of bad legal advice or information. The most probable causes of action for those acts are claims for legal malpractice, or claims for negligent misrepresentation. Neither claim qualifies for waiver of immunity under the Act. See *Amonette v. City of Pasadena*, No. 01-96-01512-CV, 1998 WL 255103, *4 (Tex. App.—Houston [1st Dist.] May 21, 1998, no pet.) (holding claim for property damages resulting from a negligent representation barred because of governmental immunity).

ISSUE 3

Risk of Creation of Attorney/Client Relationship

Whether the operation of the Center would create the risk of the inadvertent establishment of an attorney/client relationship.

Short Answer

A number of circumstances surrounding the Center should dispel any notion that an attorney client relationship is established. Participants will be asked to sign acknowledgements that no attorney/client relationship is established and they will be provided information expressly

subject to that acknowledgement. On a practical level, the sheer number of anticipated users should dispel any notion that the lawyers in the Center are representing the participants.

Discussion

The attorney client relationship is a contractual one whereby an attorney agrees to render professional services for a client. *Tanox v. Akin Gump, Strauss, Hauer & Feld, LLP*, 105 S.W.3d 244, 254 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). The relationship may be expressly created by contract, or it may be implied from the actions of the parties. *Id.* Importantly, the question of whether there is a meeting of the minds necessary to establish the relationship must be based on objective standards and not on the parties' subjective intent. *Id.* By all indications, the Center will be very popular and the two lawyers in the Center will be stretched thin by the sheer numbers of users. This fact, combined with the disclaimers that all users will be required to sign should prove effective shields against any argument that an attorney/client relationship was inadvertently created.

ISSUE 4

Unauthorized Practice of Law

Whether the operation of the Center would create the risk of the unauthorized practice of law.

Short Answer

No. The information provided to users of the Center will be given by lawyers or their staff.

Discussion

The Texas Government Code prohibits a person from the practice of law unless that person is a member of the state bar. TEX. GOVT CODE § 81.102 (Vernon 2007). The practice of law is defined as follows:

[T]he "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

By employing licensed attorneys as library staff, the Center avoids the possible risk that a staff member might be accused of the unauthorized practice of law. Although the aim of the program is to offer “legal information” rather than “legal advice,” the line of distinction between these concepts is not a bright one. *See Merrick v. Amer. Sec. & Trust Co.*, 107 F.2d 271, 287 (D.C. Cir. 1939) (stating that no clear distinction can be made between legal information and legal advice). Nevertheless, there is no danger that the Center will be engaged in the unauthorized practice of law, even if the information shared is construed as “legal advice,” since the lawyers providing that information are legally authorized to provide legal advice.

ISSUE 5

Funding for the Program

Whether raising the funds for the Center by increasing filing fees is proper under applicable statutes.

Short Answer

Yes. The Center is being funded under § 323.021 of the Local Government Code which allows counties to establish, maintain, and fund a county law library. The statute allows a fee of up to \$35, assessed as a filing fee, for the creation of a law library fund. *Id.*

Discussion

The Center is being funded under § 323.021 of the Local Government Code which allows counties to establish, maintain, and fund a county law library. TEX. LOC. GOV'T CODE §323.021 (a) (Vernon 2007). The statute allows a fee of up to \$35, assessed as a filing fee, for the creation of a law library fund. *Id.* The law library fund may be used for the following purposes:

- Establishing the law library;
- Purchasing equipment and materials;
- Purchasing computers, software, and other electronic research needs for judges.

Computer research expenditures for judges may not exceed \$175,000 per year. TEX. LOC. GOV'T CODE §323.021(d). This is the only specific restriction on the use of funds provided for in the statute. In addition to the clear language of the statute, the legislative history makes

plain that this dollar restriction applies only to expenditures for judges' computer use. *See Senate Committee Report Legislative Budget Board, In Re: HB1107 by Hartnett (Relating to the use of money in the county law library fund, May 9, 2001.* Otherwise, use of the law library fund is left to the discretion of the county commissioners. TEX. LOC. GOV'T CODE § 323.021(e). The statute allows the commissioners court to "vest management of the library in a committee selected by the county bar association." TEX. LOC. GOV'T CODE § 323.024(b). There are no reported cases construing the statute; however, establishing and maintaining a law library necessarily includes staffing the library. The statute specifically references the option of retaining a county law librarian. TEX. LOC. GOV'T CODE § 323.021(c).

Finally, former Attorney General of Texas, Greg Abbot, addressed a similar issue in an Attorney General opinion on § 323.021 of the Local Government Code. The opinion states, "A commissioners court may use fees collected under section 323.023 of the Texas Local Government Code to provide online legal research services for the general public, judges, and attorneys, and incidental benefit to private attorneys would not render the expenditure unconstitutional under article III, section 52(a) of the Texas Constitution." *Tex. Atty. Gen. Op. GA-0078, 2003 WL 21269137(2003).*

Report of the Limited Scope Representation Subcommittee of the Texas Commission to Expand Civil Legal Services

**Members: Kennon L. Wooten (Chair), Hon. Jane Bland,
Hon. Ann Crawford McClure, Hon. F. Scott McCown,
Chris Nickelson, Hon. Lee H. Rosenthal**

September 29, 2016

The Supreme Court of Texas created the Texas Commission to Expand Civil Legal Services in November 2015 to examine ways to reduce the widening justice gap in Texas—a gap that reflects Texans’ unmet needs for civil legal services.¹ The justice gap is not unique to Texas. The cost of legal services has become prohibitive for most Americans. For example, in a 2013 study conducted in a Midwestern city typical of many US communities, researchers found that, of the people surveyed with a civil-justice need, 46% relied on self-help, 16% relied on help from family and friends, and 16% did nothing; only 22% engaged a lawyer to address that need.²

Although Texas has not gathered similar data to determine the level of self-representation in Texas’ state and federal courts, the available data suggest that the number of self-represented litigants in Texas is rising dramatically. This rising number of self-represented litigants strongly suggests that many Texans have unmet needs for civil legal services. In many instances, it is because they cannot afford a lawyer.

One way to address the unmet legal needs that define the justice gap is through limited scope representation. Limited scope representation allows lawyers to assist clients with discrete legal tasks—like writing a letter, filling out forms, drafting court documents, or making a single court appearance—rather than providing representation in all aspects a legal matter and without creating the full range of duties for a matter. The Commission has studied state practices and has heard from experts about how to frame limited-scope-representation rules for wider availability. It has studied the ways that

¹ See Sup. Ct. of Tex., Misc. Docket No. 15-9233, *Order Creating the Texas Commission to Expand Civil Legal Services* (Nov. 23, 2015).

² Additional information about the Community Needs and Services Study, which was funded by the National Science Foundation and American Bar Foundation, is available in a 2014 report, [Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study](#), authored by Rebecca L. Sandefur. For additional information relating to unmet needs in the realm of access to legal services in the United States, see pages 11–14 of the [ABA Report on the Future of Legal Services in the United States](#), issued in August 2016.

other states have implemented these kinds of rules. This report summarizes the findings and recommendations of the Commission’s Limited Scope Representation Committee.

Limited Scope Representation Committee’s Goals

The Commission’s and Limited Scope Representation Committee’s discussions regarding limited scope representation yielded the following goals for the committee:

- Define limited scope representation.
- Identify how limited scope representation might reduce the justice gap.
- Identify risks associated with the use of limited scope representation.
- Identify current rules and statutes addressing limited scope representation, and identify potential statutory or rule revisions that warrant further consideration.
- Compile a list of resources and reference materials for rule-makers and other interested parties.
- Follow up as directed by the Commission.

1. Limited Scope Representation Defined

Limited scope representation happens when a lawyer provides discrete, agreed-upon legal services to a client, rather than handling all aspects of a legal problem.³ In court proceedings, the lawyer and client agree to limit the scope of the lawyer’s involvement in the legal action to agreed-upon tasks. For example, a lawyer may advise a client about procedures for filing a claim, appear at a single hearing, or prepare or “ghostwrite” a letter or court document, but that lawyer will not make a general appearance as counsel of record in the case. Other kinds of tasks include preparing or responding to a demand letter or negotiating a settlement. A lawyer who provides limited scope representation may charge an hourly rate or a flat fee for specific services by task. Like any other rates a lawyer charges, limited-scope-representation rates are subject to the requirements set by law and the Texas Disciplinary Rules of Professional Conduct.

2. Using Limited Scope Representation to Address Needs within the Justice Gap

The committee discussed needs in the justice gap and the ways in which limited scope representation might help to address them. These needs include the following:

³ The [American Bar Association’s \(ABA’s\) 2011 Unbundling Fact Sheet](#) and the [Texas Access to Justice Commission’s 2011 Limited Scope Representation Fact Sheet](#) contain definitions of, and other information about, limited scope representation. As indicated in the ABA’s Unbundling Fact Sheet, limited scope representation is also referred to as “unbundling.”

- *Matching Consumers with Affordable Civil Legal Services:* Law cannot be set apart from the world surrounding it. Technology and the communication age have resulted in a global shift in the relationship between consumers and providers of services. Legal services are no exception. Only two categories of legal consumer existed in the past—the self-represented and the lawyer-represented. In recent years, however, many non-legal service providers have conceived models that provide resources to the legal consumer who chooses not to engage a lawyer. Some of these consumers, particularly those with limited income and tight budgets, present an unmet need for affordable legal representation. In contrast to self-help options and the risks they can present, a lawyer can provide valuable advice beyond forms and databases and effectively assist with or perform discrete legal tasks for a client. This targeted legal representation helps people navigate the legal system better than they would without representation, on an affordable basis, and it presents a business opportunity for underemployed lawyers.

- *Developing Cost Efficient Legal Services Models:* A limited-scope provider may develop expertise in providing specialized service in areas widely needed by large numbers of consumers. This expertise could extend to adopting specialized technology allowing for the quick preparation and review of court and other legal documents most in demand. Mobile outreach and alternative settings to traditional law offices for specific legal tasks are possibilities. In this sense, technology can facilitate legal innovation to simplify the legal process.

- *Promoting Attorney Involvement:* Lawyers want limited-scope-representation opportunities to provide civil legal services to underserved communities. But lawyers are reluctant to represent clients who have no or limited ability to pay for legal representation without an option to limit the scope of the work to specific tasks. A limited-scope agreement provides greater certainty that both the client and the lawyer know the representation will be task-specific and often short-lived. This certainty, and the discrete nature of the representation, can facilitate both affordable limited scope representation and greater lawyer volunteerism.

3. Risks Relating to Limited Scope Representation

The committee has noted concerns that could arise with broader use of limited scope representation. Chief among these concerns are the following:

- *Client Satisfaction at the Conclusion of the Representation:* With piecemeal representation, a client may not know how to proceed at the conclusion of the

representation. This can lead to requests for additional legal services, which can lead to requests for additional funds from a client who cannot afford to pay more money to a lawyer. The remaining legal problem also might swallow any forward progress made by the lawyer who handled part of the matter. Some lawyers and judges question whether a lawyer will have an incentive to be judicious in allocating time and resources unless the lawyer makes a general appearance in a case or otherwise assumes the full responsibilities of legal representation in a matter. In other words, in their view, a lawyer will better represent a client knowing that the representation ends when the case or matter has concluded. Critics of limited scope representation believe the risk of malpractice claims is higher when a lawyer is involved with only discrete aspects of a case or matter. They caution that a lawyer may have insufficient understanding of the broader context to provide sound legal advice for discrete aspects of the case or matter.

- *Undue Burden on the Courts and Third Parties:* A lawyer who appears on a limited basis in an adversarial proceeding can place an additional burden on courts and on parties, who must determine who should receive court papers, notice of hearings, and other documents, and who must contend with a self-represented party who undertakes the tasks the lawyer did not agree to provide.
- *Mission Creep:* Lawyers may be hesitant to engage clients for limited-scope work in litigation matters, for fear that a court will require them to continue representation even after they complete agreed-upon tasks. Conversely, broader availability of limited scope representation could encourage more clients to choose limited scope representation over the full-service representation that they need.

Supporters of limited scope representation respond to these concerns by observing that a lawyer who represents a client on a limited basis must meet the same obligations of professionalism required for any other lawyer. The scope of the work is limited, but the lawyer's ethical obligations are not. A lawyer-client relationship, and all that it entails, exists for the tasks at hand. Existing data suggests that the malpractice risk for limited scope representation is no higher than the malpractice risk in full-service representation.

Supporters also point out that legal advice and help in connection with specific tasks is better than no legal advice at all, and that most limited-service clients are converting from self-representation rather than full-service representation. All levels and types of Texas state and federal courts are seeing exponential increases in self-represented litigants. An unbundling of legal services can meet some needs that will

otherwise go unmet because full-service representation is beyond the financial reach of many Texas consumers. Finally, limited-scope-representation supporters note that the American Bar Association (ABA) and other states have crafted rules to address the requirements and risks associated with limited scope representation.⁴

Limited scope representation is not for every case or client. One commentator has noted that “[l]imited scope representation is likely to be used more in uncontested and modestly-contested family law cases than in any other field of litigation.”⁵ Limited scope representation may also be suitable for certain cases involving, for example, consumer-law issues, probate issues, insurance-coverage issues, and landlord-tenant issues, as well as for small-claims cases in which the amount in controversy does not justify the cost of full-service representation.⁶ Outside the litigation context, certain transactions involving small businesses or real-estate matters may be well-suited for limited scope representation. But limited scope representation is not well-suited for any matter or case that cannot be unbundled into discrete legal tasks due to its complexity, the existence of highly technical issues, or any other reason.⁷ Moreover, regardless of the subject matter of a particular matter or case, limited scope representation is not well-suited for certain types of clients—e.g., clients who either need or expect help with each legal task at hand.

⁴ Many publications address benefits and risks relating to limited scope representation. Examples include: (1) ABA Section of Litigation, *Handbook on Limited Scope Assistance* 10–13 (2016); (2) ABA Standing Committee on the Delivery of Legal Services, *Reinventing the Practice of Law* 3–8 (Luz Herrera ed., 2014); (3) Colorado Bar Association, *Practical and Ethical Considerations to Integrating Unbundled Legal Services—A Toolkit for Court Leadership* 34–36 (2015); (4) Institute for the Advancement of the American Legal System, *Unbundling Legal Services: Options for Clients, Courts & Counsel* 2–4 (2015); and (5) State Bar of California Committee on Professional Responsibility and Conduct, *An Ethics Primer on Limited Scope Representation* 2 (2004).

⁵ Phillip C. Friday, *Limited Scope Representation: One Answer to Pro Se Litigation*, In Chambers, Fall 2013, at 9.

⁶ See ABA Standing Committee on the Delivery of Legal Services, *Reinventing the Practice of Law* 7 (Luz Herrera ed., 2014); Phillip C. Friday, *Limited Scope Representation: One Answer to Pro Se Litigation*, In Chambers, Fall 2013, at 10; State Bar of California Committee on Professional Responsibility and Conduct, *An Ethics Primer on Limited Scope Representation* 2 (2004).

⁷ See ABA Standing Committee on the Delivery of Legal Services, *Reinventing the Practice of Law* 7 (Luz Herrera ed., 2014); State Bar of California Committee on Professional Responsibility and Conduct, *An Ethics Primer on Limited Scope Representation* 2 (2004).

4. Legislation and Rules Relating to Limited Scope Representation

a. Legislation

As indicated above, family law is one area in which the numbers of self-represented litigants is dramatically increasing. In 2011, the Texas Legislature adopted the Texas Collaborative Family Law Act, which incorporates limited scope representation into family law cases in connection with pretrial resolution of family law disputes. The State Bar of Texas has a Collaborative Law Section that devotes its efforts to educating the legal and client communities in the area of collaborative law.

At this time, the committee does not anticipate that any legislative proposals in the area of limited scope representation are needed for the upcoming legislative session. The majority of states that have developed limited scope representation processes have done so through their ethics rules and their courts' procedural rulemaking powers.

b. Rules

Like the ABA's Model Rules of Professional Conduct and the ethics rules in almost every other state in the United States,⁸ the Texas Disciplinary Rules of Professional Conduct allow clients and lawyers to agree to limited scope representation. Texas Rule 1.02(b) states: "A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation." ABA Model Rule 1.2(c) states: "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." As indicated, Model Rule 1.2(c)—unlike Texas Rule 1.02(b)—requires any limitation on the scope of the representation to be "reasonable under the circumstances" and requires further that the client provide "informed consent," as opposed to mere consent after consultation.⁹

⁸ According to the ABA, as of 2011, 41 states had adopted Model Rule 1.2(c) or a substantially similar rule. See the [ABA's Unbundling Fact Sheet](#). Independent research and a 2014 Chart Summarizing Adoption of ABA Model Rule of Professional Conduct 1.2(c), however, reveal that the states which have not adopted Model Rule 1.2(c) or a substantially similar rule nonetheless have ethics or procedural rules that allow limited scope representation to occur in civil proceedings. California appears to be the lone state that does not have an ethics rule addressing limited scope representation; however, California addresses limited scope representation through rules of procedure instead, and those rules explicitly allow limited scope representation to occur. See [2014 ABA Chart: Adoption of ABA Model Rule of Professional Conduct 1.2\(c\)](#).

⁹ The Texas Rule 1.02(b) was adopted in 1989 and took effect in 1990. It has not been amended since it took effect. Model Rule 1.2(c) was amended as part of "Ethics 2000, the ABA endeavor to review and amend the ABA Model Rules of Professional Conduct, which began in 1997 and concluded with adopted revisions to the Model Rules in 2002." ABA Standing Committee on the Delivery of Legal Services, *An Analysis of Rules that Enable Lawyers to Serve Self-Represented Litigants* (hereinafter referred to as the "[ABA White Paper on Unbundling](#)") 3 (2014). Prior to the Ethics 2000 amendment, ABA Model Rule 1.2(c) read as follows: "A lawyer may limit the objective of the representation if the client consents after consultation."

Unlike the Texas Disciplinary Rules of Professional Conduct, the ABA Model Rules of Professional Conduct also contain provisions (in Model Rule 6.5) that relax conflict-of-interest standards for lawyers providing short-term limited legal services under a program sponsored by a nonprofit organization or court. Comments to Model Rule 6.5 recognize that the programs contemplated by the rule normally operate under circumstances that make it infeasible for a lawyer to screen for conflicts of interest as is ordinarily required before a lawyer undertakes legal representation. Model Rule 6.5 would likely facilitate limited scope representation by Texas lawyers if it were adopted as a provision of the Texas Disciplinary Rules of Professional Conduct. As of the date of this report, 46 states have adopted Model Rule 6.5 or a substantively similar rule.

While Texas Rule 1.02(b) authorizes limited scope representation, it does not address the obligations that a lawyer who engages a client on a limited basis might have, including: (1) the kind of notice, if any, to give to the court and to adversarial parties of the representation; (2) the kind of disclosures, if any, to make to the client, the court, or adversarial parties when the representation ends or the lawyer otherwise withdraws from the representation; and (3) how to handle amendments to the scope of the representation.

The Supreme Court of Texas has not adopted statewide procedural rules that define a lawyer's obligations any differently for limited scope work. Statewide procedural rules govern a lawyer's withdrawal of representation in civil court proceedings, regardless of the degree of representation the lawyer has been providing. Rule 10 of the Texas Rules of Civil Procedure and Rule 6.5 of the Rules of Appellate Procedure provide that a lawyer must obtain the permission of the court to withdraw from representing a party in a pending case, after notifying the client and all parties to the case in writing, and the client may object to the motion. A court is not required to grant the motion to withdraw, and may impose further conditions upon granting leave to withdraw. Does the Texas ethics rule that allows limited scope representation, coupled with the procedural rules governing withdrawal, sufficiently address a lawyer's obligations when the lawyer is engaged on a limited basis in a case?

The ABA Reporter's Explanation of Changes provides as follows:

The [Ethics 2000] Commission recommends that paragraph (c) be modified to more clearly permit, but also more specifically regulate, agreements by which a lawyer limits the scope of the representation to be provided a client. Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low or moderate-income persons who otherwise would be unable to obtain counsel.

ABA White Paper on Unbundling 4 (2014).

The Supreme Court of Texas has approved local rules for cases pending in Travis County that formally address limited scope representation. Under these rules, a lawyer may file a Notice of Limited Appearance that defines the scope of the representation. A lawyer who has filed the notice has no responsibility for matters outside the scope of the notice. The local rules also provide a procedure for withdrawing from a case. The rules require the lawyer to certify that the limited scope tasks have been completed and obtain written consent to the withdrawal from the client and all other parties. A trial court retains discretion to deny withdrawal, but it is limited to a determination of whether the lawyer has completed the responsibilities set forth in the notice of limited appearance.¹⁰

While Texas' statewide procedural rules do not contemplate task-based legal services in civil court proceedings, approximately 20 of the other states with ethics rules similar to Texas Rule 1.02(b) have adopted procedural rules relating to limited scope representation in civil court proceedings. One state—California—addresses limited scope representation in procedural rules alone.

States that have adopted procedural rules relating to limited scope representation employ different approaches to various aspects of the representation. Here are significant differences in key areas that could be addressed in Texas' procedural rules:

- *Disclosure:* In court proceedings, one question that arises is whether a lawyer who prepares legal papers to be filed with the court must disclose in those papers that the lawyer prepared (or “ghostwrote”) them for the client. Some states, like California, do not require disclosure of legal assistance in preparation of documents when the lawyer has not appeared in the case. Other states, like Alabama, require a statement that a lawyer prepared a document filed with the court, but the lawyer need not sign the document or make a formal appearance representing the client. Still other states, like Colorado, provide that a lawyer must disclose the lawyer's name and contact information in connection with assistance with a filing, but the rules make clear that this disclosure does not constitute an appearance on behalf of the client in the case.
- *Notice to Third Parties:* Several states allow a lawyer to make a limited appearance in court and receive copies of all court filings by opposing parties. California, for example, requires a lawyer to file a Notice of Limited Scope

¹⁰ See [Travis County Local Rule 20.5](#) (2014).

Representation and serve the notice on opposing counsel. While that notice is on file, opposing parties must serve all court papers on the lawyer until the lawyer is permitted to withdraw. Many state rules specify that opposing counsel must communicate with the lawyer about matters within the scope of the appearance and may communicate directly with the party only about matters outside scope of the appearance.

- *Concluding the Representation:* Most states with limited-scope-representation rules expressly address the lawyer's obligations at the conclusion of the representation, including withdrawal in a pending court case when the lawyer has actively participated in the case. Those states further define the circumstances under which a court may allow for the withdrawal of a lawyer engaged for limited tasks.¹¹

5. Recommendations

Based on the collective experiences of its members and the information provided to it, the Commission engaged in robust discussions about the risks and benefits of broader availability of limited scope representation. Although many states have adopted rules in recent years, there is little empirical data to test whether these rules help to address unmet legal needs or to validate perceived problems with limited scope representation. As part of any rule-making process in Texas, it will be critical to solicit input from Texas judges, lawyers, and clients about their experiences with limited scope representation. The committee does not take a position as to which rules better address the risks associated with limited scope representation while fostering its use in appropriate cases. Because more flexible representation arrangements could help to meet what are currently unmet needs, however, the committee recommends the following:

- *Pilot Projects:* To determine the efficiency, effectiveness, and workability of more widespread availability of limited scope representation, the committee recommends that interested counties pilot local rules, approved by the Supreme Court of Texas, to facilitate limited scope legal services in their jurisdictions. This allows for tailored approaches to develop in counties where the local judiciary has determined that limited scope representation could be a valuable tool in addressing the needs of local residents for civil legal services. It would

¹¹ A chart summarizing the various approaches to limited scope representation among the states is attached hereto as **Exhibit 1**. The committee extends gratitude to Josiah Clarke, a third-year law student at the University of Texas School of Law, for his assistance with creating this chart.

also serve as a stopgap measure and an incubator of these kinds of services during the interim period of development of statewide rules.

- *Disclosure and Notice Rules:* The committee recommends that the Supreme Court of Texas examine the current rules of civil procedure to determine whether guidance is lacking for practitioners engaged in limited scope work in pending civil cases, including rules regarding disclosure of attorney assistance with legal pleadings and filings with the court, rules governing notice to the court and to third parties, and rules governing appropriate service of court papers by opposing parties and the court. That examination should encompass rules for cases in which the scope of the representation expands beyond the initial limited scope engagement.
- *Withdrawal Rules:* The committee recommends that the Supreme Court of Texas examine the current procedural rules that govern the appearance and withdrawal of counsel to determine whether the current rules adequately account for appearances for limited purposes, particularly upon conclusion of a limited scope representation. Because of the frequency with which limited scope representation appears to occur in family law matters, the committee also recommends consideration of whether there should be guidance tailored to family law judges, particularly those sitting in multi-county districts in Texas.

The Texas Access to Justice Commission’s Rules and Legislation Committee and the Texas State Bar’s Court Rules Committee are two entities that could assist the Supreme Court of Texas with any rule-related efforts. The Supreme Court Advisory Committee’s input will also be critical in deciding whether—and, if so, how—to amend procedural rules to address issues relating to limited scope representation in Texas cases.

6. Additional Resources

The following are additional resources on limited scope representation. These items are hyperlinked for ease of reference to the extent possible.

- [ABA Unbundling Resources Center](#) – This Center provides an extensive, free set of materials relating to limited scope representation, including toolkits for limited scope representation (from the Institute for the Advancement of the American Legal System and Chicago Bar Foundation), a national database for professionals assisting self-represented litigants, and various reports, cases, ethics opinions, rules, and webinars relating to limited scope representation.

- [ABA Model Rules of Professional Conduct](#) – The ABA provides links to each Model Rule and all of the comments associated with each Model Rule.
- [Texas Access to Justice Commission Materials](#)
 - [Limited Scope Representation Webpage](#) – This webpage includes some basic information about limited scope representation, information about a webcast and other Continuing Legal Education presentations relating to limited scope representation, and information toolkits the Texas Access to Justice Commission prepared regarding limited scope representation.
 - [Family Law Toolkit](#) – available upon request (see webpage).
 - [General Civil Law Toolkit](#) – available upon request (see webpage).
- [California State Court Resources](#) – The Judicial Branch of California’s webpage contains detailed information relating to limited scope representation, including definitions, tips for assessing the propriety of limited scope representation in various cases, guidance for working with a limited-scope lawyer, court forms and contracts for cases involving limited scope representation, and guidance to potential clients on finding a lawyer who provides limited scope representation.
- [Colorado Bar Association Limited Scope Representation Toolkit](#) – This toolkit is now in its second edition and is available upon request submitted to the committee or the Colorado Bar Association. Entitled *Unbundling and Limited Scope Representation: Practical and Ethical Considerations to Integrating Unbundled Legal Services*, this toolkit contains presentations, handouts, forms, client tools, additional information, and resources relating to limited scope representation.
- [Practising Law Institute \(PLI\) Seminar on Limited Scope Representation](#) – PLI provides links to M. Sue Talia’s lectures and presentation materials for a program about the rapidly changing practice of limited scope representation in the family law context. The program was released on February 13, 2015.
- [Article Regarding Randomized Experiment in Massachusetts Housing Court](#) – This article describes the results of a randomized trial in which tenant clients received either limited scope representation or full-service representation in handling eviction disputes. The authors analyzed the effect of the two different types of representation and found no statistically significant evidence that the providers’ offer of full (as opposed to limited) representation had a large (or any)

effect on the likelihood that the occupant would retain possession, on the financial consequences of the case, on judicial involvement in or attention to cases, or on any other litigation-related outcome of substantive import.

7. Conclusion

The Limited Scope Representation Committee submits this report to the Texas Commission to Expand Civil Legal Services for its consideration. Based on further direction from the Commission, the committee stands ready to consider additional issues, refine its recommendations, and prepare further reports as needed. The committee members appreciate the opportunity to be of service to the Commission and the Court.¹²

¹² The Limited Scope Representation Subcommittee members are Kennon L. Wooten, Chair; Hon. Jane Bland; Hon. Ann Crawford McClure; F. Scott McCown; Chris Nickelson; and Hon. Lee H. Rosenthal.

Report of the Legal Incubators Subcommittee of the Texas Commission to Expand Legal Services

**Members: Charles W. Schwartz (Chair), Frank E. Stevenson, II (Co-Chair),
Faye M. Bracey, Eden Harrington, Luz Herrera**

October 23, 2016

Overview

The national movement to create legal incubators arose to meet two important goals:

- To provide practical, real-world training and authentic opportunity for new lawyers; and
- To address the need for affordable legal assistance for low- and moderate-income Americans.

The Needs: Both Justice and Opportunity

We know that only one in five low-income Americans with civil legal needs finds help; for middle-income Americans, it's not much better—only two in five. Additionally, seventy-one percent of low-income households claim that they have not accessed the civil justice system to address their legal needs because of cost or a belief that the system would not help. These numbers are disappointing and unacceptable.

We also know that 10 months after graduation, even after passing the bar exam, a good number of new Texas lawyers each year find themselves still seeking legal employment.¹ Furthermore, most law schools do not fully prepare law students for the challenges that lawyers must face working at solo and small firms, even though the greatest number of lawyers practice in that size of firm. As a legal community, we must do a better job of realistically preparing new lawyers for the legal market as it now exists.

¹ See <http://www.nalp.org/uploads/NatlSummaryClassof2015.pdf>;
<http://employmentsummary.abaquestionnaire.org/>.

How Incubators Help

An incubator provides a work environment where beginning attorneys can be mentored by veteran lawyers and taught the practical and logistical concepts of how to run a law practice. Participating attorneys also receive real-world experience assisting actual clients in need who otherwise might not be able to afford or otherwise access legal services.

Attorney incubator models follow the business community's practice of providing support—that is, incubation—for new businesses to increase their chances of success. Incubators can also be places to experiment with technology and to test new concepts, like alternative billing structures. Confronted by an ever-changing technology landscape, beginning lawyers need to be trained and made competent in the use of technology for client service, including the ethical use of cloud computing, as well as effective responses to the increased electronic threat to confidential client information and other cyber security concerns that are the professional responsibility of lawyers.

Legal incubators provide a variety of resources to participants. These generally include mentoring, training and programming. A majority of legal incubators also provide pro bono work opportunities and other case referrals (including through partnerships with lawyer referral services), networking opportunities, legal research services, office supplies, continuing legal education, case management software, free or subsidized office space, and an office mailing address. A few legal incubators also pay bar dues, malpractice insurance premiums, a financial stipend or salary, the cost of website development, and online client intake expenses.

Typically, independent lawyer volunteers contribute the training and mentoring for these programs, though the expected time commitment for these volunteers varies widely from program to program and even volunteer to volunteer. In at least one legal incubator program, the Solo and Small Firm Practice Section of the local bar association provides a mentor to each participant in the program. On average, programs have approximately seven regular volunteers and 13 one-time or occasional volunteers.

The goal of incubators is to equip new attorneys for success, but also to encourage those lawyers' continued assistance to underserved populations. This orientation to serve low- and moderate-income populations has caused incubators to increase the presence of pro bono legal service in their communities, all the while conferring on their participants' valuable experience and necessary practice skills. In this way, incubators help set the tone for new lawyers, emphasizing that pro bono legal service is an essential component of the ethical practice of law. In addition to low- and moderate-income clients, legal incubator programs also tend to focus on serving immigrants, the elderly, the disabled, and veterans, albeit to a lesser extent than low- and moderate-income clients generally.

Many Forms of Incubators

There has been significant growth in the number of legal incubator programs recently—with about three-fourths of the programs having been created since 2014. There is no “standard” form or structure for their operations. Consistent with the foregoing, the services offered by incubators to their participating lawyers, the services offered by participating lawyers to their clients, and the sources of funding to the incubator vary from program to program.

Predictably, legal incubator programs tend to reflect the particular needs of their respective communities and their participating lawyers.² Some programs specify only a limited number of the areas of law in which services are provided: employment, immigration, landlord/tenant, small business, non-profit, special education, family, trusts, wills, estates, worker’s rights, domestic violence, divorce, custody, consumer issues, debt problems, worker’s comp, adult guardianship, small-estate planning, simple bankruptcy, and/or criminal.

Regardless of the distinguishing characteristics between legal incubator programs, the entrepreneurial spirit guiding each encourages creativity and fosters innovation in the legal market, which leads to positive outcomes beneficial to the legal community as a whole. Supporting this end, the American Bar Association and the Consortium for Access to Justice provide resources to help legal incubator programs share information with each other, including a Lawyer Incubator Directory maintained by the American Bar Association that lists, by state, each program and its administrative personnel.

Currently, at least 33 states (and four countries) have legal incubator programs. The first such program was created at the City University of New York Law School in 2007. Although the number of legal incubator programs is quickly increasing, the legal incubator model is still relatively new. Since the creation of the first program in 2007, only approximately 530 lawyers have graduated from legal incubators, raising questions about the efficiency and speed with which such programs are producing graduates and effecting change.

² In furtherance of their aim of advancing social justice, however, some legal incubator programs specifically bar their participants from practicing in certain areas of law while participating in their programs, including personal injury law, patent law, criminal law, class action litigation, and securities law.

Applicant Requirements

Applicants for legal incubator programs should display qualities evidencing an ability to thrive in an incubator environment. According to program directors and administrators for legal incubators, these candidates should show perseverance and determination, a commitment to provide access to justice, an entrepreneurial spirit, a commitment to solo or small-firm practice and, though less important, a commitment to innovation in the delivery of services.

Sources of Support

In practice, legal incubator programs are operated and supported by many different stakeholders, including law schools, bar associations, bar foundations, private firms, legal aid organizations, and other non-profit organizations, that often work collaboratively with one another to support an incubator. The greatest concern to program directors and administrators of legal incubator programs is the sustainability of these programs, which in large part depends upon the identification of stable and ongoing sources of support. As a result, in about half of legal incubator programs, the participants pay fees, including rent. Members in the legal community are also concerned about how to monitor and evaluate the ultimate development of solo and small-firm practitioners, for which—due to the recent development of the incubator model—little information is currently available. Future efforts to develop legal incubator programs must address these concerns.

Texas Incubator Examples

In addition to the State Bar's Texas Opportunity & Justice Incubator, there are several other Texas legal incubators in operation or under development:

Texas A&M University School of Law created its Texas Apprenticeship Network, which will recruit experienced private attorneys to supervise recent graduates and teach them the nuts and bolts of solo and small-firm practice by handling matters on a pro bono or reduced-cost basis.

Baylor University has its Legal Mapmaker – a project undertaken in cooperation with other law schools to provide a development template for young lawyers who want to open their own firms.

The **San Antonio Bar Foundation** is working to develop a Legal Resource Center & Small Practice Incubator.

The **Austin, Houston and Dallas Bar Associations** have implemented “modest means” programs as a way to assist low- and moderate-income clients.

The **Jefferson County Bar Association** operates a full-time pro bono program that covers a five-county region along with a local Veteran’s Initiative.

Texas Opportunity & Justice Incubator

The Texas Opportunity & Justice Incubator (TOJI) is a State Bar of Texas presidential initiative for fiscal year 2016-2017.

Its goals are to match beginning lawyers who want to build their own practices with Texans’ unmet legal needs—hence the choice of “Opportunity” and “Justice” in its name. It also is intended to serve as a model that other bar associations and organizations can use to create incubators throughout the state.

To accomplish these goals, the State Bar of Texas has developed this program with input from law schools, legal-aid groups, local bars and other organizations across the state. Moreover, the State Bar of Texas has made a substantial organizational and financial commitment for 2016-2017 to make TOJI a success.

TOJI will provide 18 months of office space and training for a select group of attorneys who want to start their own practices. Training will focus on technology, fundamental practice skills, and mentoring as the attorneys represent low- and moderate-income clients. Furthermore, the training will be aimed to help newer lawyers learn how to start their own firms and serve clients efficiently and effectively using the latest law-office technology. New lawyers will also learn to develop marketing and business plans.

The State Bar has hired a TOJI director, Anne-Marie Rabago, who has experience managing a law school incubator program—The Access to Law Initiative (ALI) at California Western School of Law. She will begin work October 31, 2016.

In November 2016, TOJI will begin taking applications from attorneys interested in participating. A webpage to begin accepting applications from potential TOJI participants also will be accessible in November.

Report of the Technology Subcommittee of the Texas Commission to Expand Civil Legal Services

**Members: Chris Nickelson (Chair), Darby Dickerson, Angela Maria Hernandez,
Joseph C. Matta, Hon. Ann Crawford McClure**

September 30, 2016

The Supreme Court of Texas created the Texas Commission to Expand Civil Legal Services in November 2015 to examine ways to reduce the “justice gap.” The “justice gap” involves the growing divide between attorneys who need work and individuals who need legal services but are unable to find the legal help they need at a price they can afford. The so-called “Uber for Lawyers” concept would connect the indigent or limited-means client with an attorney who is willing to do the work for a set or reduced fee, or on a limited-scope basis. This general concept raises a number of issues that need to be vetted to guide the Texas Supreme Court about the viability of using technology to try to address the “justice gap.” The remainder of this report sets forth those basic issues.

I. How to Help the Target Audience?

The first issue that must be addressed in trying to help indigent and limited-means clients find attorneys who can serve their needs at a price they can afford, is one that is raised by simple human behavior. The ABA data provided by William Hornsby on August 20, 2016, shows that approximately 80% of people who have a legal problem turn first to friends, family, a colleague, or contact an attorney they know or have used before. Only 7% of people looked online for an attorney, 8% looked in the yellow pages or similar directory, and only 3% relied upon advertisements in newspapers, on billboards, or on television.¹

Thus, using technology to try to solve the “justice gap” will involve changing human behavior to some degree. While it is not impossible to change human behavior, one key is to define the benefits of using technology. If the benefits of shifting to a different method are not clear, people will merely stick with their former practices. Some individuals are already knowledgeable about online services; for example, Avvo.com’s website indicates that the site receives more than eight million visits each month and helps facilitate more than 650,000 contacts per month between attorneys and potential clients. Avvo.com, <https://www.avvo.com/for-lawyers>.

For any technology to help address the “justice gap,” it must do at least one of the following: (1) decrease the time it takes to find an acceptable attorney; (2) reduce the out-of-pocket expenditures in finding an attorney (such as paying for multiple phone

¹ These numbers come from slide 54 of Will Hornsby’s Power Point presentation, which was presented to the Texas Commission at its August 20 meeting and is on file with the Court.

conferences or repetitive referral fees before settling on the right attorney); and (3) match the client with an affordable, competent attorney.

II. The Platform?

The second issue to be addressed is the platform to be used to match clients and attorneys. The concept's name: "Uber for Lawyers" is meant to conjure up the image/idea of the popular software application called "Uber," which is downloaded to a person's smartphone and then used to connect passengers with drivers for inner-city travel at rates that are usually well below the standard fare charged by taxi cabs.

Using a downloadable "App" has obvious benefits: portability, instant access, convenience, etc. But this does not mean that using an "App" as opposed to a website, or using both forms of technology, should not be considered. The one clear benefit of using an App is that the general trend in computer usage has moved away from using static desktop PCs, to using portable smartphones or tablet-type devices. Each device requires a different physical layout, given the screen display limits imposed by smart phones versus tablets or PCs. Additionally, each device requires a different process of navigating through the program to reach desired data or to communicate necessary information.

A number of Apps already exist. If you have a smartphone you can go to the App store and explore some of the legal Apps that are available. Several websites already exist as well: Lawyers.com, Avvo.com, LegalMatch.com, etc. Avvo maintains both a website and an App. LegalMatch has a website for use on a PC; however, when the website is accessed on a smartphone it actually displays better and is more user friendly, as far as navigating to desired content, than when accessed on a PC.

If the Texas Supreme Court chooses to pursue this idea, a decision will have to be made whether to offer a website for PCs and some other format for smartphones and tablets.

III. How Should the Platform Operate?

The third issue is how the platform should operate. The simplest platform includes an initial page with a dropdown menu listing areas of law that the user might select from. The user could then "drill down" further into the software program, using additional pages of content and questions that guide the user to more specific legal issues. For example, in the area of family law, the user could "drill down" to divorce, divorce with children, divorce without children, or child custody issues, visitation issues, child support, or premarital agreements.

A simple platform might stop after the user identifies the area of law at issue and then refer the user to a list of attorneys, maintained by the program, that the client could contact for a nominal consultation fee. Ideally, the rates and fee structures of the attorneys should be advertised before the client contacts the attorney. This simple platform puts the burden on the client to contact the attorney or research that attorney before contacting him or her. This simple platform is not that different from lawyer-referral programs operated by local bar associations and the State Bar of Texas, except that it would be more automated and involve less time and human contact in identifying attorneys for a client to contact.

A more robust platform could solicit even more information from the user, the type of basic information an attorney or paralegal would solicit from a client during an initial consultation or intake interview, and provide that information to a pool of attorneys who practice in the area of law for which the client is seeking representation. In addition, the platform could provide the client with much more information on the attorneys including fee structures, experience level, and ratings by previous users and other attorneys who know about the attorney's competence in that area of practice. This sort of information is most likely what clients want to know before making a decision in hiring an attorney. But the storage and transfer of such information brings with it a number of important concerns, including but not limited to: (1) client confidentiality; (2) protecting sensitive information from data breaches; (3) potential conflicts of interest created when an attorney or a member of his or her firm receives confidential information then is not contacted or hired by the user/client, but is later hired by the opposing party; and (4) attorney advertising rules.

To stimulate dialogue on how the platform should operate, the authors recommend that the readers explore the LegalMatch website. LegalMatch employs a very interesting concept: it essentially uses some features employed by dating websites to match attorneys and clients.

Specifically, the site offers clients the ability to confidentiality "present their case" to a group of attorneys who practice law in the area for which the client seeks representation. The client begins by identifying the area of practice for which he or she needs help and the appropriate zip code. The client then is asked to identify the specific practice areas within the field for which they need help. For example, within family law the client might need a divorce.

A subsequent page has optional issue-specific questions for the client to check that would assist attorneys in understanding what the case involves, i.e., date of marriage, date of separation, the status of their relationship, the client's age, occupation, income level, spouse's income level, number of children, ages of the children if applicable, assets, liabilities, etc. This sort of information would normally be gathered slowly in an initial client interview but can be filled out by the client for quicker absorption by an attorney or his or her staff.

The website then asks the client to write a one-line summary of the case and gives the client the opportunity to describe the matter in 300 words or less. The client is then asked to register with the website, provide contact information, and agree to the terms and conditions for using the website.

Clients should study the terms and conditions carefully, as they explain that LegalMatch is simply a venue for users and attorneys to find one another. Once the client agrees to the terms and conditions, then his or her information is broadcasted to a pool of attorneys that match the client's area of interest. The attorneys can screen the information and decide if they are interested in communicating with the potential client. If the attorney is interested, then the website communicates the attorney's interest to the client and provides the client with the attorney's contact information.

The Subcommittee is not recommending LegalMatch; but that site does offer food for thought in stimulating conversation about how the platform should operate. Additionally, the LegalMatch platform, as well as many other platforms, assume the client is looking for an initial consultation about their case. If the Texas Supreme Court takes action to promote and educate the bar about limited-scope representation, then some thought should be given to clients who might be looking for representation on specific tasks inside an existing piece of litigation or transaction.

IV. Who Should Operate the Platform?

The fourth issue to be addressed is who is going to operate the platform. Significant liability issues may arise depending upon how robust a platform is employed. In addition, the general oversight of the platform, the storage and communication of confidential information, and the need for clients/users and attorneys to be able to contact a human when problems or questions arise, means that the entity operating the platform must be set up to handle these sorts of issues. The question posed is whether the State Bar of Texas, the Texas Access to Justice Commission, a third-party, non-profit organization, or an existing for-profit provider be selected to operate the platform.

V. Legal Barriers to Success?

The fifth issue is what legal barriers exist that would impede the use of technology to help close the "justice gap." The barriers include:

- 1. Inception of the attorney-client relationship.** If the platform allows clients/users to confidentially post a general summary of their case to a group of attorneys and that posting is reviewed by one or more attorneys, when does the attorney-client relationship begin? Does it begin when an attorney or staff member views the confidential post, or does it occur later if the attorney and client actually communicate?

A number of ethics opinions, rules, and cases addressing the formation of the attorney-client relationship will need to be reviewed to answer this question. In addition, changes to the Texas Disciplinary Rules of Professional Conduct (“TDRPC”) may be needed to facilitate the use of technology.

2. **Conflicts of interest.** If the attorney reviews the post but does not communicate with the client/user, does a conflict of interest arise if the attorney is later hired by the opposing party? What if the attorney who viewed the post is not hired by the opposing party but another member of his or her firm is hired? Change the facts slightly—what if the attorney who views the post does communicate with the client/user but is never actually hired—then answer the foregoing questions. TDRPC 1.05, 1.06, and 1.09 will have to be studied and an assessment will have to be made about whether these rules should be amended to avoid conflicts of interest that will unnecessarily restrict finding attorneys to serve indigent and modest means clients.
3. **Attorney Advertising.** Any platform chosen will involve some form of solicitation or advertising of an attorney’s services. TDRPC 7.01 through 7.07 will have to be reviewed to determine whether any of these rules need to be amended to promote the chosen platform and attorneys’ ability to communicate information about their services that clients would be interested in knowing when trying to select one attorney out of a number of attorneys to consult with regarding their legal matter.
4. **Barratry.** Several rules and statutes should be reviewed to determine whether the chosen platform and its content contravenes the existing law on barratry. *See, e.g.*, TDRPC 8.04; Tex. Penal Code Ann. § 38.01 (West 2016); Tex. Penal Code Ann. § 38.12 (West 2016); Tex. Gov’t Code Ann. § 82.062 (West 2016); Tex. Gov’t Code Ann. § 82.065 (West 2016); Tex. Gov’t Code Ann. § 82.0651 (West 2016); Tex. Occ. Code Ann. § 1701.503 (West 2016); Tex. Loc. Gov’t Code Ann. § 215.034 (West 2016).

VI. Summary.

One problem fueling the “justice gap” is the fact that indigent and modest-means clients are having trouble locating attorneys who are willing to provide low cost legal services. Existing technology has a real potential for helping to reduce the “justice gap” by placing indigent and modest means clients with the low cost legal help that they need.

**Report of the State Bar of Texas & Other Referral Services Subcommittee
of the Texas Commission to Expand Civil Legal Services**

**Members: Frank E. Stevenson, II (Chair), Faye M. Bracey,
Angelica Maria Hernandez, William O. Whitehurst, Jr.**

October 2, 2016

In support of the Commission's goal of increasing access to legal services by persons with modest means, the State Bar will evaluate adding a feature to the TexasBar.com Find a Lawyer directory that allows attorneys to indicate whether they accept payment for legal services on a sliding scale or flat fee basis.

This option might be added to the "Services Provided" portion of the attorney profiles, where attorneys currently list whether they provide translation services or ADA-accessible client services. Other options can be considered.

To encourage participation, the State Bar would notify all Texas attorneys when they are asked to review their profiles that they have the option of indicating their acceptance of sliding scale or flat fee basis engagements.

The directory would be searchable based on fee options specified, in combination with practice areas and other profile information. So, a member of the public could, for example, search for family lawyers in Austin who accept flat fees.

Issues for discussion would be how the State Bar would define sliding scale fees and flat fees; whether suggested fee schedules could or would be published, and if so, whether attorneys should agree to accept certain fees; and how the State Bar would present and market the feature in a way that encourages attorneys and the public to use alternative fee approaches to serve people of modest means.

If this idea is endorsed or adopted by the Commission, the SBOT Board will be promptly notified and any approvals sought. Once approved, the details of its implementation would be directed by the State Bar with direct input from and regular updates to the Commission.

**Chart Summarizing Limited Scope Representation (LSR) Provisions on a State-by-State Basis
(Prepared with Information Collected in July 2016)**

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
AL ¹	RUC + IC + WR ² (with exceptions)	Yes	Ala. R. Civ. P. 87.	May rely on client unless reason to believe otherwise.	Must receive written notice of LSR.	Must indicate lawyer assistance but not name of lawyer.
AK	RUC + CAC	Yes	Ark. R. Civ. P. 64(b).		Must receive written notice of LSR.	
AZ	RUC + IC	Yes	Ariz. R. Civ. P. 5.1, 5.2, Ariz. R. Fam. Law P. 9.	Reasonable inquiry required.	Must have knowledge of LSR and identity of lawyer providing LSR.	No
AR	RUC + IC	Yes				
CA	N/A	Yes*	Cal. Rules of Court, 3.35–3.37.			No
CO	RUC + IC	Yes	Colo. R. Civ. P. 121, Colo. App. R. 5.	Reasonable inquiry of the client required, plus independent reasonable inquiry if reason to believe false or materially insufficient.	Must have knowledge of LSR.	Yes
CT	RUC + IC	Yes	Conn. Rule of Professional Conduct 1.16.		No requirement; treat as unrepresented re anything other than the subject matter of LSR.	
DC	IC	Yes	Administrative Order 14-10, Sup. Ct. of D.C. (June 16, 2014).			
DE	RUC + IC	Yes				
FL	RUC + IC + WR	No	Fla. Fam. L.R.P. Rule 12.040.		Must have knowledge or notice of LSR with time	

¹ The state abbreviations in this chart follow the USPS official mailing abbreviations for the states.

² For ease of reference, the following abbreviations are used in this chart: (a) “RUC” = LSR allowed when reasonable under the circumstances; (b) “IC” = LSR allowed with the client’s informed consent; (c) “CAC” = LSR allowed with the client’s consent after consultation; and (d) “WR” = a written agreement regarding LSR is required.

*This state has adopted a version of the ABA Model Rule 6.5 but adapted it to fit the state’s numbering system or specific ethical-rule scheme.

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
					period and subject matter, limited to subject matter of LSR.	
GA	RUC + IC	No				
HI	CAC	Yes				
ID	RUC + IC	Yes	Idaho R. Civ. P. 11(b)(5).			
IL	RUC + IC	Yes	Ill. Sup. Ct. R. 11, 13.	May rely on client's representation of facts without further investigation unless knowledge that representations are false.		No
IN	RUC + IC	Yes	Ind. Trial Rule 3.1(I).			
IA	RUC + IC + WR (with exceptions)	Yes	I.C.A. Rule 1.404, 1.423(3), 1.442(2).	May rely on client's representation of facts unless reason to believe representation is false or materially insufficient, in which case reasonable inquiry required.	Must have knowledge or be provided with notice of time period and subject matter within LSR.	Yes
KS	RUC + IC + WR	No	Kan. Sup. Ct. R. 115A.			Must indicate lawyer assistance but not name of lawyer.
KY	RUC + IC	Yes				
LA	RUC + IC	Yes	La. Dist. Ct. R. 9.12, 9.13.			
ME	RUC + IC + CAC	Yes	Me. R. Civ. P. 11(b), 89(a).	May reasonably rely on information provided by the client.	Must receive written notice of a time period within which only the LSR attorney should be contacted.	
MD	RUC + IC	Yes				
MA	CAC (Ethical rules), RUC + IC (Supreme	Yes*	In flux. But see: Massachusetts Standing			Must indicate lawyer assistance but not name of

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
	Judicial Court Order)		Orders of the Supreme Judicial Court, <i>In Re: Limited Assistance Representation</i> (2016).			lawyer.
MI	CAC	Yes				
MN	RUC + IC	Yes				
MS	RUC + IC	Yes				
MO	IC + WR (with exceptions)	Yes	V.A.M.R. 55.03(c), (e).		Must receive written notice of time period of LSR.	No
MT	RUC + IC + WR (with exceptions)	Yes	Mont. R. Civ. P. 4.2.	May rely on client's representations unless reason to believe representations are false or materially insufficient, in which case independent reasonable inquiry required.	Must receive written notice of time period and subject matter of LSR.	No
NE	RUC + IC	Yes	Neb. Ct. R. of Prof. Cond. § 3-501.2(e).		No requirement; treat as unrepresented re anything other than the subject matter of LSR.	Yes
NV	RUC + IC	Yes	Nev. St. 8 Dist. Ct. R. 5.28 (Local rule for 8 th Judicial District).			
NH	RUC + IC	Yes	N.H. Sup. Ct. Civ. R. 3, 17.		Must receive written notice of the time period in which opposing counsel shall communicate only with LSR lawyer.	No
NJ	RUC + IC	Yes				
NM	RUC + IC	Yes*	N.M. Dist. Ct. R. Civ. P. 1-089, N.M. Mag. Ct. R. Civ. P. 2-107, 2-108.			
NY	RUC + IC + Notice	Yes*				

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
	to tribunal and/or opposing counsel where necessary					
NC	RUC	Yes				
ND	CAC	Yes	N.D.R. Civ. P. 11(e), N.D.R. Ct. 11.2(d).			
OH	RUC + communicated to client, "preferably" in writing	Yes				
OK	RUC + IC	Yes				
OR	RUC + IC	Yes				
PA	RUC + IC	Yes				
RI	RUC + IC	Yes				
SC	RUC + IC	Yes				
SD	RUC + IC	Yes				
TN	RUC + IC, "preferably" in writing	Yes	Tenn. R. Civ. P. 5.02, 11.01.			
TX	CAC	No				
UT	RUC + IC	Yes	Utah R. Civ. P. 74, 75.		Must receive written notice of the time and subject limitations of representation.	
VT	RUC + IC	Yes	Vt. R. Civ. P. 79.1(h), Vt. R. Fam. P. 15(h).			
VA	CAC	Yes				
WA	RUC + IC	Yes	Wa. Super. Ct. Civ. R. 4.2, 11, 70.1.	Attorney may rely on self-represented person's facts (after reasonable inquiry) unless reason to believe representations are false or materially	Must have knowledge or written notice of time and subject matter limitation of LSR.	

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
				insufficient, in which case attorney must make independent reasonable inquiry.		
WV	CAC	No				
WI	RUC + IC + WR (with exceptions)	Yes*	Wis. Stat. § 802.045.	May rely on client's representations unless reason to believe representations are false or materially insufficient, in which case attorney must make independent reasonable inquiry.	Must receive notification from LSR lawyer.	Must indicate lawyer assistance but not name of lawyer.
WY	RUC + IC (or Rule 6.5) + WR (unless phone consultation only)	Yes	Wyo. Unif. R. Dist. Cts. 102.			