

# Future of the Provision of Legal Services Committee Report & Recommendations

*Editor's Note: The following article represents the report and recommendations of the Future of the Provision of Legal Services Committee to be presented at the ISBA House of Delegates in Indianapolis on Sept. 30. Delegates and members alike are encouraged to register for the Annual Meeting by the "early bird" deadline of Sept. 7.*

On the recommendation of Carol Adinamis, president of the Indiana State Bar Association, the ISBA established its Future of the Provision of Legal Services Committee (the "Committee") to examine issues and challenges presented by the rise of Internet providers of legal forms and advice. The Committee focused on concerns about how lawyers will practice in the future to meet the challenges of legal document and service providers and advances in technology.

The Committee heard its charge and began extensively reviewing materials on the subject, including the 2015 ABA book, *The Relevant Lawyer*. It conducted monthly meetings, heard presentations by guest speakers and spoke with Indiana lawyers to collect views and concerns for the Committee to consider.

## Today's reality

The current "disruption" of the legal profession is not unique. Every profession and business is faced with the special challenges presented by the expanded availability of information and services through the Internet. Think WebMD, E\*TRADE, TurboTax, Uber, Airbnb, StubHub, Realtor.com, Quicken Loans, Cars.com, trivago, Match.com and KAYAK. The list goes on. New alternative legal service providers, like Avvo and LegalZoom to name just two, are well financed by investor capital, represented by top legal talent to guide them through regulatory requirements, and motivated

to pursue aggressive business strategies to capture and service clients. And they are succeeding because clients are voting with their dollars by turning to them for legal documents and legal advice from lawyers available through them. Their services are available 24/7 and at a modest cost. They are responding to demand from the marketplace. Avvo and LegalZoom threw down the gauntlet at an ABA meeting, prompting many bar organizations, including the ISBA, to take action.

These providers raise concerns about the "core values" of the legal profession – competence, independence of professional judgment, attorney-client privileged communications, protection of confidential client information, loyalty to clients through the avoidance of conflicts of interest, and *pro bono publico* commitments – that are established by the Rules of Professional Conduct and the Rules for Admission to the Bar & the Discipline of Attorneys to ensure that clients' interests are protected.

Concerns and questions about these alternative legal service providers are legitimate. For LegalZoom, the focus is whether it constitutes the unauthorized practice of law if nonlawyers are doing what only lawyers are allowed to do. For Avvo, the focus is lawyer-advertising regulations, particularly the ethical prohibition on using unapproved, for-profit lawyer referral services. In addition to these ethical considerations are concerns that their services are not appropriate to the needs of those who use them. After six months of investigation and analysis, the Committee has concluded that the questions presented by this changing landscape are far less significant than the more profound transformation in how legal services are delivered in a globally integrated and Internet-connected world of which LegalZoom and Avvo are only a part. Three options for dealing with

these new legal service providers are to fight, regulate or adapt. Only the latter is realistic, given the financial strength of these enterprises and their motivation to fight to protect the turf they have already conquered and new turf they covet. And the fact that they are already succeeding in the marketplace makes new regulatory efforts destined to fail. Ultimately, it is up to lawyers to demonstrate to clients the value of lawyers' services to win the competition with these newcomers.

The leading observer and commentator on this transformation is Prof. William Henderson of the I.U. Maurer School of Law, widely acclaimed as one of the most influential people in American legal education. His conclusion is that the legal profession is undergoing a major transformation as technology and innovation are having an impact.

Based on Prof. Henderson's critique and the Committee's own investigation and research, the Committee believes that to thrive in the legal services marketplace of the future, Indiana lawyers must respond to the following:

- The market for legal services is enormous. The legal needs of both entities and individuals are growing, many of whom invoke court assistance to vindicate their rights and seek protection for their interests.
- Technology – the Internet, but also computerization and automation generally – will speed up or replace much work traditionally performed by lawyers.
- Investment capital will increasingly seek opportunities in the market for legal services, including underwriting technology innovations.
- The market for legal services has already crossed and will continue to cross state and national borders, mirroring the mobility of individuals and businesses

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and the increasingly cross-border nature of commerce generally and of law itself, *e.g.*, treaties, federal statutes and regulations, and uniform state laws.

- Migration of lawyers across borders will be an inevitable consequence of the increasingly cross-border market for legal services. Lawyers will be increasingly moving to and from our state; Indiana lawyers will be increasingly doing work

for clients and on projects outside Indiana, just as lawyers outside Indiana will be increasingly doing work for clients and on projects here in Indiana. Technology will facilitate and accelerate this development of the cross-border market for legal services and the migration of lawyers across borders.

Consideration of these factors raises questions for Indiana lawyers.

Do the current professional conduct rules, especially concerning lawyer advertising, and the rules governing admission and discipline of lawyers prevent lawyers from effectively competing with these newcomers, engaging with them to better serve clients, or obtaining referrals of clients from them? Have times and the profession changed such that a comprehensive review of these rules is in order? Many Indiana lawyers struggle today to find jobs in the legal profession, and many who are practicing law struggle to find clients to represent. Meanwhile, there are huge numbers of Hoosiers with legal problems who view hiring a lawyer as impossible. This mismatch between lawyers who have the capacity to represent more clients and the unrepresented clients who need lawyers to help them hurts both lawyers and unrepresented clients. Some of these clients simply cannot afford to pay a lawyer. Others opt not to hire one. It is therefore essential to make the case for the value of having a lawyer and finding ways to deliver legal services that clients can afford and are willing to pay for. The obvious conclusion is that lawyers must adapt by continuing to use developing technologies to serve their clients by working better, faster and cheaper.

The Committee therefore makes four recommendations for immediate action and notes a number of issues that should be addressed on a longer-term basis.

### Recommendations

#### 1. Coordination of a public education campaign

The general public is bombarded with alternative legal solutions through various media sources. Some of these providers expressly advertise their services as an alternative to working with a licensed attorney. Until recently, attorneys have not had to deal with such advertising.

ISBA members would benefit if those in need of legal services understood when and why a licensed Indiana attorney is necessary and the genuine value of working with a licensed Indiana attorney.

Lawyers have the perfect opportunity to inform clients of the important benefits of working with counsel to handle legal problems when they first meet with clients. But more effort should be made to inform the general public of the benefit of working with a lawyer. In recognition of that fact, the ABA is developing campaign materials that it will provide to bar associations to use to inform the public of the important core values of the legal profession and the advantages of hiring a lawyer to handle legal problems rather than going it alone or working with unlicensed and unqualified nonlawyers.

The Committee recommends that the ISBA adopt and promote that campaign to educate the public about the benefits and protections of having an attorney handle appropriate legal problems and issues. Local bar associations and individual lawyers can use this material to educate clients, too. Special consideration in this effort should be given to using social media that is proving to be incredibly effective as a means of promoting ideas.

## 2. ISBA law practice management staff position

The Committee concludes that it is critical to provide Indiana lawyers with the tools to efficiently and effectively deliver legal services through a variety of means and practices, including, but not limited to, administrative systems, client relations, human resources, continuing legal education, financial management, substantive systems, marketing, office facilities, risk management, strategic planning, technology and trust accounting. The Committee therefore recommends that the State Bar create a Law Practice Management Consultant staff position to assist Indiana lawyers to use technology and other tools more effectively to provide client services in a more efficient, competent and ethical matter at a reasonable cost. This position can also be a source of revenue for the ISBA by providing seminar opportunities and billing for specific services provided to law firms.

With the assistance and support of the Technology and Law Practice Management committees, the Law Practice Management Consultant would:

- Identify the competing providers, what they offer, how to compete with them (*e.g.*, limited scope representation and advertising) and how to take advantage of them whenever possible.
- Educate Association members on the benefits of improved office procedures;
- Monitor and evaluate developments in the field of law office economics and management;
- Compile and disseminate information regarding law practice management, and promote the availability of law practice management educational programs throughout the state;
- Promote the use of paralegal personnel and legal assistants where appropriate;
- Coordinate with substantive law sections and committees of the Association to prepare materials and programs that will permit the systematic and efficient delivery of legal services;
- Promote risk management practices within law firms throughout Indiana; and
- Provide direct guidance to ISBA members with respect to unique law practice management issues where existing literature or educational materials are inadequate.

## 3. Nonlawyer equity interests in law firms

Indiana law prohibits nonlawyers from having an equity interest in a firm if “any of the activities of the [firm] consist of the practice of law.” Rule of Professional Conduct 5.4(b). Law firms that engage in activities in addition to the practice of law with individuals who are not lawyers can now do so by forming affiliated firms that do not practice law. *See*, Rule of Professional Conduct 5.7. But the current rule prevents law firms from raising equity capital that might well be useful or even needed to add technology and to sustain or grow law firms. A small law firm or solo practitioner cannot even

obtain equity funding from a family member.

The rationale for the current rule is grounded in the absolute obligation of loyalty to clients; indeed, the title of the rule containing the prohibition is “Professional Independence of a Lawyer.” The Committee submits that permitting a nonlawyer to own a minority equity interest in a law firm is not inconsistent with this obligation. Other permitted financial relationships are not held to undermine the professional independence of lawyers, *e.g.*, a lawyer may under specified circumstances accept compensation for representing a client from someone other than the client. An equity investment in a law firm need not impinge on a lawyer’s independence any more than a law firm’s indebtedness, which is permitted. Traditionally, lawyers have filled the need for capital by borrowing, but debt may be more costly or less available than equity.

The Committee recommends that the Rules of Professional Conduct be amended to permit nonlawyers to own not more than 49 percent of the equity of a law firm. In addition, minority, nonlawyer ownership should be non-voting to ensure that the lawyer’s independence is not compromised. Lawyers in such firms would continue to be subject to all of the rules requiring absolute loyalty to clients.

## 4. *Pro se* coordinators in courthouses

The volume of individuals who come to court without a lawyer is large and growing. To say it is a crisis is no exaggeration. These *pro se* litigants present many challenges for courts and for the legal system. Their unfamiliarity with the practices and procedures of the courts can impede the orderly and timely operation of the courts, adversely affecting the processing of other cases. Unfamiliarity with the law itself can impede the ability to seek justice. Both their unfamiliarity with practices and procedures and with the law often places court staff and judges in an untenable conflict between their need to

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remain independent and unrepresented litigants' forfeiture of legal remedies. It is in the interest of all lawyers to have the courts operate efficiently. Furthermore, unrepresented parties are inevitably difficult for opposing counsel to deal with.

The Southern District of Indiana has for years assisted *pro se* litigants through staff lawyers who acted as coordinators and served as gatekeepers to guide *pro se* litigants on proper procedures and practices. It has recently established voluntary and obligatory panels of lawyers to serve indigent litigants whose numbers are increasing. The Indiana Supreme Court has just initiated a Coalition on Access to the Courts to replace three existing commissions/committees to determine how best to improve the delivery of civil legal services to unrepresented individuals.

The Committee recommends that the State provide and pay for a coordinator for unrepresented civil litigants in each

Indiana county. The coordinator would be a lawyer or certified legal intern. The position would be full- or part-time, depending on the volume of *pro se* litigation in a particular county. When a civil case is filed in a court by a *pro se* plaintiff or a *pro se* defendant makes an appearance, the coordinator will contact the *pro se* party and encourage the party to have a consultation. During the consultation, the coordinator will familiarize the party with the practices, procedures and applicable rules of the court. The coordinator will not provide legal advice to the *pro se* party but will inform the party of the risks of proceeding without an attorney. The coordinator will maintain a list of lawyers or referral programs available to assist or coordinate assistance to these parties on either a pro bono or full or reduced fee-for-service basis, should a party request counsel or obviously need counsel's assistance. This would not be an effort to encourage *pro se* litigants but rather to manage the crisis confronting

our courts that is already hurting Indiana lawyers and their clients.

### Issues for a later day

These problems identified by the Committee and the recommendations to address them are certainly not the only issues confronting the legal profession and Indiana lawyers. Other critical issues include:

- Law school education and curriculum;
- Student loan debt;
- Lawyer advertising rules generally;
- Health and well-being of lawyers;
- Multidisciplinary practice;
- Paralegal/LLLT provision of limited legal services without attorney supervision;
- Statewide lawyer referral service by the ISBA; and
- Multijurisdictional practice/reciprocity of bar admission

An ongoing effort by the ISBA to identify and address these and other issues challenging the profession is critical for its service to Indiana lawyers and their clients.

Respectfully submitted by James W. Riley Jr., chair; Candace D. Armstrong; Monica Dabio; TyJuan Garrett; Holly Harvey; Donald Lundberg; Trent McCain; Hon. Leslie C. Shively; Frank Sullivan Jr.; Shelice Tolbert; and Derrick Wilson. 