SUPREME COURT TASK FORCE TO EXAMINE LIMITED LEGAL LICENSING MEETING

Minutes
Thursday, July 9, 2015
Judicial Council Room
Matheson Courthouse
Salt Lake City, Utah

JUSTICE DENO HIMONAS, Presiding

ATTENDEES:
Justice Deno Himonas, Chair
Dean Robert W. Adler
Nathan D. Alder
Elena Bensor-Slyter
Hon. James Brady (by phone)
Mary Jane Ciccarello
Carol Sue Crismon
Dixie A. Jackson
John Lund
Lori W. Nelson
Comm. Joanna B. Sagers
Angelina Tsu
Senator Stephen H. Urquhart

STAFF PRESENT:
Tim Shea
Jody Gonzales
Rick Schwermer

GUESTS:
Katie Nichols, Supreme Court
Lenora Babb Plimpton
Tom Clarke, NCSC

EXCUSED:
Rep. Brian King
Jacey Skinner

1. WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)

Justice Deno Himonas welcomed everyone to the meeting.

Motion: Mr. Nate Alder moved to approve the minutes from the June 18, 2015 meeting. Ms. Lori Nelson seconded the motion, and it passed unanimously.

2. WORK GROUP REPORT – LIMITED LEGAL LICENSE TECHNICIAN: (Dean Robert Adler)

Dean Adler noted that a draft of the report outline prepared by Work Group 1 of the Task Force was sent in a separate email to all task force members.

The two focus areas include: 1) what are the principle potential benefits of establishing a limited legal licensing program, and 2) what are the main problems with or challenges in establishing a program.

Dean Adler highlighted the following relative to discussion that took place by workgroup members: 1) the viability of such a program, 2) is it our role to protect the consumer(s), address the problem, and let the market take hold; 3) what are the appropriate lines to draw to what a limited licensed professional means, 4) how to train the limited licensed professional to know the difference in what they can manage and when to know to send the client to a lawyer.

Discussion took place.

Ms. Ciccarello referenced a survey of pro se litigants by the Self-Help Center where 33% consistently are referred to legal resources because they need legal advice and representation.

3. WORK GROUP REPORT – OTHER EMERGING STRATEGIES: (Mary Jane Ciccarello)

Ms. Ciccarello reported that the Work Group 2 of the Task Force met on June 25.

She highlighted the following issues related to the study of other emerging strategies:

1) need for an overview of strategies currently available; 2) need to develop strategies that address workable market solutions; 3) need to keep in mind the effect of existing unregulated services provided by notaries and other community entities for free or for fees; 4) need to address concerns of unrepresented individuals, including LEP issues; 5) need to understand and include all stakeholders—courts, lawyers, other professionals, non-lawyer advocates, and consumers; and 6) need to understand and embrace technological tools that enhance emerging strategies.

Additional strategies identified include the following: 1) develop and maintain Court Navigators/Justice Corps in Utah; 2) develop and maintain a viable Utah State bar lawyer directory/legal resources clearinghouse; 3) promote and support discrete legal services; 4) develop and maintain court-based case management and early resolution programs, especially in family law and consumer law matters; and 5) develop and support ways for the public to access legal information and complete court-approved forms.

Discussion took place.

Ms. Ciccarello mentioned that it may be helpful, at a future meeting, to get paralegal input.

4. PERSPECTIVES FROM THE NATIONAL CENTER FOR STATE COURTS: (Tom Clarke)

Justice Himonas introduced Mr. Tom Clarke, Director of Research and Technology for the National Center for State Courts.

Mr. Clarke provided background information on the National Center for State Courts and the work he does on their behalf.

Mr. Clarke is currently involved in a formal evaluation of New York City's Navigator Program, and Washington State's Limited Legal Licensing Technician Program.

A preliminary report of New York's Navigator Program is anticipated in October 2015. A preliminary formal report of Washington State's Limited Legal Licensing Technician Program is anticipated in April/May of 2016.

Mr. Clarke highlighted the following relative to the Navigator Program: 1) a letter was drafted and sent to Navigator Program staff with suggested tweaks to the program; 2) three to four different versions of the program are operating in two types of court; 3) concerns were expressed with the program regarding a lack of adequate supervision of the court- supervised volunteers; 4) the program run by legal services was well supervised; 5) the program does not allow for the navigator to offer advice and aid in negotiations; 6) it may be difficult to recruit, track and train adequate staff in a larger scale program, statewide; 7) preliminary survey results of litigants being helped by the Navigator Program showed that 8-10% of the people surveyed thought they needed help and did not have a good experience; 8) preliminary survey results of

litigants being helped by the Navigator Program showed that 90% of the people surveyed felt that the process was okay; and 9) the Navigator Program is a pro bono service, completely subsidized and voluntary.

Questions were asked and discussion took place relative to the Navigator Program. Mr. Clarke provided responses to questions asked of him.

Mr. Clarke highlighted the following relative to the Limited Legal Licensing Technician Program: 1) the program has gone too far in what the training and experience requirements should include; 2) a unique curriculum was developed for the program; 3) for each new practice area, an additional year of law school participation is required; 4) the core curriculum is essentially the paralegal curriculum; 5) the licensed technician is unable to give advice or represent the litigant in court; and 6) Washington State is interested in expanding the practice of the licensed technician to allow for them to give advice and represent the litigant in court.

In summary, a bundle of strategies need to be developed to manage the unmet civil needs, and access to justice matters faced by self-represented litigants in current court matters. Consideration of the following should take place when addressing these matters further: 1) process simplification, 2) an offering of online services, and 3) unbundling of legal services.

Questions were asked and discussion took place relative to the Limited Licensing Technician Program. Mr. Clarke provided responses to questions asked of him.

Other areas to consider when evaluating ways non-lawyers can provide services in areas in which only lawyers traditionally have been able to practice include: 1) evaluate the policies in place in European countries, and the manner by which court and litigation matters are being addressed; 2) internal ways by which lawyers can aid in addressing access to justice needs—unbundling, caseload management, and new forms of management; 3) mediation completed at the beginning of the legal process; 4) a project is underway to look at development of a litigant portal, taking the litigant's point of view; and 5) included in the evaluation of New York City's Navigator Program, and Washington State's Limited Legal Licensing Technician Program, an evaluation of non-lawyer legal services and design of such program(s) is taking place.

Questions were asked and discussion took place.

Justice Himonas thanked Mr. Clarke for his input.

5. WASHINGTON AND UTAH RULES: (Tim Shea)

This item was deferred to the August 6 meeting.

6. ASSIGNMENTS: (Justice Deno Himonas)

No new assignments were made.

7. ADJOURN

The meeting was adjourned.