SUPREME COURT TASK FORCE TO EXAMINE LIMITED LEGAL LICENSING MEETING

Minutes
Thursday, October 1, 2015
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 (by phone)
Hon. James Brady (by phone)
Mary Jane Ciccarello
Carol Sue Crismon
Dixie Jackson
Lori Nelson
Angelina Tsu (by phone)
Senator Stephen H. Urquhart

STAFF PRESENT:
Tim Shea
Jody Gonzales
Daniel J. Becker
Rick Schwermer

GUESTS:
Christina Champenois
Tom Clarke, NCSC
Jacqueline Morrison

EXCUSED:
Rep. Brian King
Comm. Joanna B. Sagers
John Lund
Jacey Skinner

1. **WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)**
Justice Deno Himonas welcomed everyone to the meeting.

Motion: Mr. Alder moved to approve the September 10, 2015 minutes. Ms. Nelson seconded the motion, and it passed unanimously.

2. **NON-LAWYER LEGAL ASSISTANCE ROLES: EFFICACY, DESIGN AND IMPLEMENTATION: (Tom Clarke)**
Justice Himonas welcomed Mr. Clarke to the meeting.

Mr. Clarke noted the two areas where gaps exist relative to legal assistance: 1) unmet civil legal needs, and 2) gap between what it actually costs, typically, for a court case and the time to disposition and the complexity of the case vs. what the public thinks it should cost and how long they think it should take.

Mr. Clarke expressed more concern with the second gap, as the public doesn't see the court as delivering value.

A recent poll conducted by the National Center for State Courts (NCSC), surveyed respondents on how well they believed the courts were doing. The majority of the responses received showed respondents did not believe the courts were doing well. The respondents mentioned that they would not invest public dollars in the courts. The top two reasons shown from the poll included; 1) the high cost of legal services, and 2) the courts inadequate use of technology—the need for more and better use of technology.

Mr. Clarke reviewed the workgroup minutes as he prepared his recommendations.

The top five recommendations suggested: 1) online dispute resolution; 2) litigant portal which should help with the lack of coordination of the resources, lack of integration; 3) Triple LT like role, if done the right way; 4) offer unbundled legal services; and 5) opening up the ownership of legal assistance organizations.

Online Dispute Resolution. Mr. Clarke highlighted the following relative to online dispute resolution: 1) Utah is not planning to provide automated dispute resolution, only human in-the-loop solutions are being planned, 2) if the plan is to place the current business practice of the courts online, but not change the underlying business process that feeds the online site, the system will not be better than what is currently available; 3) Utah's online dispute resolution proposal will offer more litigant choice of the process in the front end.

Litigant Portal. Mr. Clarke noted that a report being prepared by the National Center for State Courts (NCSC) should be disseminated within the next month that will describe what a litigant portal should offer.

Ms. Angelina Tsu noted that the Bar's AAA portal project is in the development stage. The scope and implications of the portal project are still being reviewed. Funding by the Bar has been set aside for the portal project. Coordination with the appropriate agencies and the courts on their perspective of what the portal should include has not taken place yet.

Triple LT Role. Mr. Clarke highlighted the following with the Washington State model and what is being considered by the task force: 1) training and oversight onerous with the Washington State model, 2) the Washington State model did not go far enough in allowing the role to participate in court hearings, and 3) paralegal role without the lawyer oversight and supervision, will not deliver low cost services.

Unbundled Legal Services. The reason this type of service hasn't been more successful in the past is due to not standardizing the services and not describing the available services.

Mr. Clarke referenced a system in place in the Alaska courts, where the court provides limited service attorneys for all self-represented parties for the mandatory early hearings in divorce cases.

Navigator Program Use. Mr. Clarke noted that the evaluation of the New York City navigator programs will be completed within the next month. The legal outcomes of the program are still being analyzed.

The following preliminary concerns were expressed with regard to the New York City navigator programs: 1) they are not well trained or well supervised, and 2) they are not allowed to provide real legal assistance. Their main function is to provide moral support.

Triple LT Role. Mr. Clarke mentioned that there is potential for such a role. The nurse practitioner and physician assistant models in the healthcare system were referenced relative to being created as new roles with separate training requirements and regulatory oversight.

Creating a similar new role in the legal system with similar impacts was suggested.

It was clarified that the workgroups have considered the following as they examined the possible need for a limited legal licensing role: 1) what is the service to be provided, 2) what are the service needs, 3) how do we characterize those needs, 4) determine what training, licensing, and certification needs should be required to facilitate this type of role, 5) is there a demand for a market-based professional, and 6) should we create a role for such a professional category to capture that demand by those consumers.

Discussion took place throughout and questions were asked. Mr. Clarke responded to questions asked of him.

Mr. Alder suggested a possible additional category of the traditional court process for online dispute resolution to include: 1) internal procedure reform.

Mr. Shea reported that the Council approved, at their September 22 meeting, to move forward with the following: 1) a grant application for a part-time project manager, and 2) development of an online dispute resolution program. The Council requested frequent updates on how the program development is proceeding. Justice Himonas noted that the concept for an online dispute resolution program was modeled after the E-Bay model.

Justice Himonas summarized the best approach in considering a Triple LT role is to understand the gap first and build something that addresses the gap.

Mr. Clarke was thanked for his update and recommendations from his white paper entitled *Non-Lawyer Legal Assistance Roles Efficacy, Design and Implementation.*

3. RECOMMENDATIONS FROM WORK GROUP ONE – LIMITED LEGAL LICENSE TECHNICIAN: (Robert Adler)

Dean Adler highlighted the following in his update of the work completed by Work Group One – Limited Legal License Technician: 1) nothing has changed from the report provided at the last meeting relative to Sections 1-3; 2) a more incremental approach was considered at the last meeting; 3) building on the existing paralegal system; 4) Section 4 of the report dealing with implementation was divided as follows: a) legal authority, b) education, and c) licensing; 5) financing to be addressed once the model has been determined; 6) licensing of the role discussed; and 7) education requirements were considered.

Legal Authority. Mr. Shea highlighted the following related to legal authority: 1) it was determined that the Supreme Court has sufficient authority to regulate the practice of law by non-lawyers, 2) the use of a non-lawyer practicing law is what is being considered by the task force, 3) the Supreme Court's function to govern the practice of law would cover the use of non-

lawyers practicing law, and 4) admission to practice law—the regulation of this area would need to be distinct in this non-lawyer role.

4. RECOMMENDATIONS FROM WORK GROUP TWO – OTHER EMERGING STRATEGIES: (Mary Jane Ciccarello)

Ms. Ciccarello distributed copies of the following handouts to members of the task force: 1) Lawyer Referral, and 2) Work Group 2 – Other Emerging Strategies – Draft Recommendations.

The draft recommendations included the following: 1) navigators, 2) paid legal navigators, 3) court case management and resolution programs, 4) court forms, 5) court website, 6) expansion of Self-Help Center, 7) support of efforts of Judicial Council Standing Committee on Resources for Self-Represented Parties, and 8) support of recommendations by the Utah State Bar Future Commission and AAA Task Force.

5. SENSE OF THE TASK FORCE ON MAJOR TOPICS: (JUSTICE DENO HIMONAS)

No comments were provided at this time.

6. ASSIGNMENTS: (Justice Deno Himonas)

Justice Himonas requested that a final list of recommendations be prepared, by both work groups, for consideration at the next meeting.

7. ADJOURN

The meeting was adjourned.