



## **Report of the Ohio State Bar Association Law Practice Modernization Task Force**

*September 2021*

### **I. Introduction**

#### **Background and Core Values**

The Ohio State Bar Association (OSBA) Law Practice Modernization Task Force was established in 2020 to provide a forum for the OSBA to investigate and advise its membership as it continues to monitor the changing landscape. The Task Force furthers the OSBA's mission to *both* promote justice and advance the legal profession as it works to identify innovative solutions for connecting more legal consumers with attorneys, and thereby assist in closing the significant access to justice gap in our state.

The OSBA maintains that attorneys are uniquely qualified and best suited to serve legal consumers not only by virtue of our extensive education and training, but also because of our core professional values of independence, integrity, confidentiality and the duty to act in the best interest of our clients. All who have legal problems, regardless of income, deserve the opportunity to work with a skilled and principled attorney. And so, as the profession and expectations regarding the delivery of legal services adapt and evolve, we hold that these core values must not be compromised.

#### **Work and Recommendations**

After more than a year of research and discussion surrounding various proposals and concepts regarding the future delivery of legal services in both the United States and internationally, the Law Practice Modernization Task Force convened for its retreat on July 30, 2021. The Task Force started the retreat with an overview of the four general categories explored by the TF: (1) Rule Modernization, (2) Alternative Business Structures, (3) Limited Scope Representation and (4) Legal Insurance. The Task Force then broke into two subgroups, each agreeing to analyze and report back on 2 of the identified topics.

In order to ensure a comparable analysis, the TF adopted the following evaluation criteria:

1. Does it fulfill the Task Force charge?
2. Does it address a known access to justice gap?
3. Would the OSBA need to hire outside experts to aid development?
4. Who would implement the program, if adopted?
5. What is the development timeframe (short v. long-term goals)?
6. What are the costs associated with each proposal? Is the cost ongoing or one-time? Do we need experts to help assess costs?

After the subgroup discussions, the Task Force reconvened and winnowed its short-term priorities. Those priorities are reflected below. While the Task Force also identified general, long-term priorities, it was agreed that further discussion would be needed to fully develop those.



## II. Short Term Priorities:

1. **Modernize Rules of Professional Conduct.** The Task Force agreed that a modernization of the rules governing (a) advertising and (b) fee splitting would meet the criteria referenced above.
  - a. **Advertising** – currently, Section VII of the Rules of Professional Conduct places limitations on when, why, and how an attorney may solicit clients. In its current form, this encompasses 6 separate rules and 15 pages of rule text and comment. Some progressive jurisdictions have greatly simplified these requirements by reducing to 1 rule that requires only that lawyers must refrain from making or using false, misleading or nonverifiable communication about the lawyer or the lawyer’s services.
    - i. **Proposed Recommendation:** This Task Force recommends that a working group created by the OSBA be charged with reviewing the Ohio Rules of Professional Conduct and making proposed changes to simplify in this vein. Those proposed rules would then be presented to the Board of Governors, the Council of Delegates and, ultimately, the Ohio Supreme Court.
  - b. **Fee Splitting** – currently, lawyers are unable to work collaboratively with other non-lawyer professionals on a single client matter in a manner that involves the sharing of fees. Many areas of practice areas have identified that that prohibition greatly reduces the service – and increases the overall fee – to the client.
    - i. **Proposed Recommendation:** This Task Force recommends that a working group created by the OSBA be charged with reviewing the fee-splitting structure currently in place in Washington DC, as well as other “sandbox” states, and proposing changes that would permit cross-profession collaboration that would allow fee splitting.
  - c. **How Accomplished** – Task Force would create a working group to review both sets of rule revisions that includes, but is not limited to, representatives of the following committees: Ethics, Litigation, Access to Justice
  - d. **Timeframe** – Task Force would adopt proposal and submit at September BOG meeting. Working group would be formed in October, with rule review commencing immediately. Formal adoption by the Board (winter 2022) and Council Of Delegates (spring 2022) before proposals could be made to the Ohio Supreme Court.
2. **Education Campaign.** The Task Force acknowledges that lack of awareness and misinformation will continue to plague change. With that in mind, the Task Force recommends education campaigns in the following areas:
  - a. **Consumer Expectations** – while lawyers often want clients to better understand “our process”, the Task Force believes that attorneys could be well-served by a better understanding of consumer behavior and expectations. This could help pave the way for acceptance of many of the topics (LSR, clarity around billing, etc.) that the Task Force has discussed.
    - i. **Proposed Recommendation** – the Task Force recommends that a comprehensive survey be conducted/shared with attorneys that makes clear the benefits of changing practice to align with consumer expectations.



- ii. **How Accomplished** – the Task Force recommends using both existing studies, as well as the possible investment in additional surveys to gather current, relevant information in a format that is persuasive.
- iii. **Timeframe** - the Task Force would engage a market study group to direct this process. This outside group would also help develop a launch timeframe that would be most advantageous.
- b. **Limited Scope Representation** – In 2016, the Rules of Professional Conduct were amended to allow lawyers to engage in limited scope representation (LSR). At the time, many believed that this would change the practice completely. That has not happened. The Task Force believes that the hesitancy in adoption comes from a lack of awareness and misunderstanding of LSR – by both practitioners and members of the bench. Countless resources currently exist for free that would help guide this type of practice, including but not limited to, explanations and sample forms. To date, however, LSR is still widely unused.
  - i. **Proposed Recommendation:** This Task Force recommends an education campaign consisting of CLE and other outreach to lawyers and judges that explains LSR, the benefits of such and provides practice-specific guidance. OSBA would also partner with the Judicial College for reach into judicial community.
  - ii. **How Accomplished** – This Task Force recommends using knowledgeable practitioners and judges who have successfully utilized LSR to teach CLE classes and help create content.
  - iii. **Timeframe** – This Task Force believes that this recommendation could have nearly immediate impact, with content being created in the winter/spring of 2022.

### III. Long Term Priorities:

The Task Force identified the following topics as long-term priorities and agreed that further discussion would be necessary to fully develop each:

1. **Quick Counsel** – the OSBA secured the tradename “Quick Counsel” when it explored developing an online lawyer referral service. Although that concept has not been fully developed, the OSBA continues to maintain this tradename in the event of future use. The Task Force acknowledges that the consumers expect (and demand) the ease of online attorney access. The Task Force would like to further explore development of Quick Counsel, as well as the possibility of on online initial consultations and other “quick access” features that would make it easy to connect clients with lawyers.
2. **Law Student Participation/Access to Justice** – the TF acknowledges that a large access to justice gap exists. Currently, law students are utilized through law school clinics, using limited “intern licenses” to provide counsel on a very limited, controlled basis. The Task Force would like to explore the possibility of reviewing this licensure process, in conjunction with LSR, to help fill some of the existing access to justice gap.
3. **Ongoing Monitoring of Deregulation Efforts** – the changes called for in ABA 115, combined with the deregulation seen in several states are impacting the practice. While Ohio is not currently considering these changes, the Task Force recommends that the OSBA continue to closely monitor these developments. The OSBA membership should be alerted to these efforts and should be educated on the actual and anticipated impact that each will have for the practice.