

# OHIO STATE BAR ASSOCIATION

FUTURES COMMISSION  
REPORT 2017

# FUTURES COMMISSION REPORT 2017

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## EXECUTIVE SUMMARY

The Futures Commission of the Ohio State Bar Association (OSBA) was charged with looking ahead at a number of challenges surrounding the delivery of legal services in Ohio amid a time of great social, economic, and cultural change, and to offer recommendations for how best to meet those challenges. The Commission considered the unprecedented burdens faced by new lawyers; the need for acquisition of knowledge and the skills necessary to develop and carry on a successful practice; the lack of regulation for new legal service delivery options; and the widening access to justice gap.

The following proposals for long-term solutions and first action steps were researched and developed by the 29-member Commission, and greatly informed by the input of OSBA members from around Ohio who participated in town hall style meetings held in each of the 18 OSBA districts over the course of six months, as well as with the OSBA's 2017 Leadership Academy class of new lawyers:

### PROVIDING SUPPORT FOR NEW LAWYERS

#### Long-Term Solutions:

- To address the rising costs of legal education, OSBA should collaborate with law schools, judges, the practicing bar, as well as the American Bar Association (ABA), to change ABA law school accreditation rules and advocate for more public funding to support higher education.
- OSBA should support and advocate for public policy and law changes to implement a student loan/debt forgiveness program for new lawyers willing to serve in underserved, nonurban areas.
- Admissions testing should be revamped to better and more fully test Ohio legal knowledge and practice-readiness, starting in the law school education process. This includes studying whether the uniform bar exam should be adopted, as well as whether the bar exam should be offered to students earlier in their legal education so they are employable earlier in their practicing careers.

#### First Steps:

- Establish a council of law school deans and lawyers to collaboratively develop proposals to reduce the costs of legal education, streamline bar admissions in Ohio and enhance practice proficiencies currently being offered as part of law school curriculum, including making practice proficiencies mandatory in law school and through the first five years of practice through offerings by bar associations.
- Work with the Supreme Court of Ohio to expand student licenses to include second-year students so they can gain real, hands-on experience working in legal clinics or with legal service organizations while under proper supervision and in appropriate circumstances.

- Develop more low-cost practice management resources and skills-based training for new lawyers, including the fundamentals of operating a law office, and make all of these resources available in a one-stop shop via the OSBA website.
- Collaborate with local bar associations to offer more informal mentoring opportunities to new lawyers, building upon the formal mentoring program offered by the Supreme Court of Ohio.
- Continue to offer and expand upon the OSBA "Rural Practice Initiative" to encourage new lawyers to practice in nonurban areas of Ohio, where there is a growing access to justice need due to the diminishing number of attorneys practicing in these areas.
- Continue support for the federal Public Service Loan Forgiveness Program, and identify a sponsor and begin to build support for a loan forgiveness program that would help reduce the access to justice gap in Ohio by incentivizing new lawyers who choose to work in underserved areas.

### DEVELOPING A NEW MODEL FOR CLE & PROFESSIONAL DEVELOPMENT:

#### Long-Term Solutions:

- OSBA should focus on providing fewer live continuing legal education (CLE) program titles to place more emphasis on producing higher-level institutes that appeal to veteran lawyers, while offering more accessible online courses in shorter increments for the convenience of attorneys in all stages of their careers.
- OSBA should engage with the Ohio Supreme Court Commission on CLE regarding potential CLE rule changes, including:
  - Participating with the already-established committee that is reviewing additional technology competencies needed for contemporary lawyers, and to advocate for such a requirement.
  - Advocating for innovative methodology to review how credit is awarded for online programming options, including for shorter segments, i.e. 15-minute intervals via online viewing and podcasts, so that time efficiency is maximized.
  - Advocating for the reversal of the rule change to Gov. Bar. R. X Sec. 3(B), to once again make CLEs on substance abuse, addiction, and mental health mandatory.
- As more attorneys rely upon self-study options, OSBA should continue to enhance the experience of online CLE, translating the physical engagement and interactivity of the live classroom into the online classroom.

- OSBA should develop a “Train the Trainer” CLE that would allow past presenters and prospective speakers to hone their presentation skills, thereby promoting continued high quality programs and relevant content.

#### First Steps:

- Review all current OSBA CLE programming to align with the vision and recommendations as outlined in the Futures Commission report.
- Develop and offer an intensive CLE series that acclimates the new lawyer through a fundamental skills-based curriculum, using both live and online platform functionality.
- Develop an intensive CLE series using both live and self-study, online courses that focus on the basics of law firm practice management, including business and client development strategies and techniques.
- OSBA CLE staff should continue dialogue with the Ohio Supreme Court Commission on CLE regarding potential rule changes and what is on the horizon.

### **EXPLORING NEW SERVICE DELIVERY OPTIONS & MODERNIZING REGULATIONS**

#### Long-Term Solutions:

- Acknowledging the serious concerns and issues with limited multidisciplinary practice (MDP) and alternative business structures (ABS), the OSBA should work with the Supreme Court to establish a commission to study whether or not any form of limited MDP or limited ABS could be authorized under the Rules of Professional Conduct without unduly compromising the core values of the profession.
- As it relates to internet legal service providers (LSPs), which are already doing business in Ohio, the OSBA should work with the Supreme Court of Ohio to establish a commission to conduct a comprehensive review of existing regulations, with the goal of proposing new regulations or laws to be enacted by the Ohio General Assembly that will provide adequate protection of the public. Regulations should be narrowly-tailored to serve that purpose, and should encourage competition, innovation, and increased access to justice, while protecting the core values of the profession.
- OSBA should remain open to the continued evaluation and development of programs which employ trained courthouse navigator/facilitators who provide information and guidance to pro se litigants.
- The OSBA should examine resources and consider deploying them to consult and assist lawyers with innovative law firm models and alternative billing structures that would serve both the attorney and the client.

#### First Steps:

- Continue the work of the OSBA Ethics Committee in examining the use of limited scope representation (LSR) for civil matters (not criminal). Acknowledging the many concerns surrounding these arrangements, the Committee should collaborate with the Supreme Court of Ohio to consider whether this serves the best interests of the client, whether or not the Court should have to approve LSR relationships, how such agreements would be enforced, and at what point in time the attorney-client relationship would be terminated, among many other issues. Additionally, as all LSR agreements and the scope of representation should be in writing, the Committee should work with the Court to explore the creation of standardized forms to promote efficiency, functionality and transparency in LSR cases.
- Believing firmly that any provision of legal services should be done under the direction of a licensed attorney, oppose any effort to establish new categories of non-lawyer legal service providers (NLP) in Ohio and instead, support the development of programs or actions that would connect the unrepresented with available attorneys.
- Embark on a sustained public relations campaign to help educate the public about the importance of connecting with an attorney, especially for common legal matters many Ohioans face. This will help to dispel the common misconception that the average person cannot afford to hire a lawyer.
- Continue to be a full partner with the Ohio Public Defender Commission on securing increased funding and an increase in hourly rates to support indigent defense and join with the Ohio Legal Assistance Foundation to fight proposed cuts to the Legal Services Corporation, which provides millions in annual funding to legal aid providers throughout Ohio.

### **BUILDING A COMPREHENSIVE ONLINE LEGAL PORTAL FOR OHIO**

#### Long-Term Solutions:

- Throughout the three-year development period outlined by the Ohio Legal Assistance Foundation (OLAF) for Ohio’s legal portal, OSBA should advocate for the following supports to ensure the site will be as functional, useful and successful as intended, and that the site will have staying power as technology continues to advance:
  - A complete marketing and communications plan for publicizing the portal in legal, mainstream and social media.
  - Recruitment of OSBA subject matter committees to create toolkits and compose subject-specific articles for posting in the library of legal information.

- Search engine optimization.
- Portal content may be viewed in either English or Spanish and translation available for other languages.
- Portal content must be adapted for access by persons with physical disabilities.
- A specific, long-term plan for staffing, maintenance and updates.
- A portal evaluation tool for users, informing constant evaluation, refinement and improvement.
- A long-term, fully adequate funding stream.
- OSBA should examine the feasibility of developing a robust online lawyer referral service, closely aligned with Ohio's public portal, to better connect available attorneys with the clients who need them, particularly in rural communities where online referral services do not currently exist.
- A library of legal information by subject, with priority being given to legal information concerning landlord/tenant, consumer law, and family law. The library of legal information would be Law-You-Can-Use-type articles which should include author names and links to author bios.
- Legal information library and toolkits should include proactive resources, for example, an article or step-by-step guide on how to get a security deposit returned.
- Consideration of a live chat function enabling site visitors to interact in real time with an attorney for legal information or advice.

The OSBA looks forward to working with its partners – fellow attorneys, judges, representatives of Ohio law schools and non-profit organizations, as well as policy makers at the local, state, and federal levels – to see these recommendations implemented in an effort to support and improve the overall practice of law and to best serve the legal needs of all Ohioans.

#### First Steps:

- Assume the role of close collaborator with OLAF as OLAF leads the design, construction and deployment of Ohio's legal portal. In this role OSBA should advocate for the following essential features, utilizing state of the art technology:
  - An automated triage process employing branching logic which will enable a site visitor to enter information about their legal problem and be referred to the appropriate legal resource, including bar association search engines and lawyer referral services.
  - Linking to external resources, including bar association lawyer referral services, must be seamless and efficient.
  - Navigator or live-chat help available for visitors to secure immediate assistance with triage or other portal resources.
  - An embedded YouTube player for educational videos, including a video on how to determine if a problem is a legal problem.
  - An introduction to the portal itself and how to use it efficiently and effectively.
  - A robust compilation of links to state and local courts and other legal informational resources.
  - An extensive directory of forms, both generic and court-specific.
  - A compilation of self-help toolkits.



## INTRODUCTION

As lawyers, we are trained to look back. We start in law school with “stare decisis” and precedent, learn how to “Shepardize,” and then go through our professional lives always looking back for guidance. Looking back is important. It is how we learn, and how we form the advice we give to clients on potential outcomes to a dispute. It’s our nature. However, now is a critical time to be thinking about the future of our profession and how we prepare for and address the many challenges we face.

Under the leadership of then-President John D. Holschuh, the Ohio State Bar Association (OSBA) established the Futures Commission, convening a diverse group of lawyers from around Ohio to study the impact of significant global, economic, and societal changes on the delivery of legal services, and to devise a strategy to ensure Ohio lawyers will remain relevant and will be the principal providers of those services in the future.

With that charge, President Ronald S. Kopp took the baton and asked members of the OSBA to weigh in on a number of difficult issues we face. Through 18 town hall style meetings across the state over the course of six months, as well as through focused discussions in Futures Commission subcommittees, he facilitated a robust discussion surrounding the following issues:

- How to ensure new lawyers enter the profession practice-ready and without the crushing burden of student debt.
- How busy lawyers at all stages of their careers can get the most out of their required continuing legal education credits.
- The appropriate role of online legal service providers, limited multidisciplinary practice, fee-splitting and other emerging new business models in the delivery of legal services and if they can they help lawyers better serve clients and stay true to the values of the profession.

- And with the real and perceived expense of legal services, how to ensure access to justice for all, regardless of income.

Not surprisingly from a diverse membership, there was no shortage of opinion and varying thoughts on how best to respond. The consensus was in the belief that there are fundamental values that must be guaranteed and preserved, essential to our status as a sacred and noble profession, including undivided loyalty to the client, competence, confidentiality, transparency, and independence of professional judgment.

With these principles in mind (and as any good lawyer would), the Futures Commission, now chaired by President - elect Randall Comer, chose to look at the challenges we face as opportunities to advance the interests of our clients, the general public, and at the same time, our own careers. This is reflected in the recommendations on the following pages and consistent with the mission of the OSBA to promote justice and to advance the legal profession.



Now, we challenge all who contribute to the delivery of legal services in Ohio to think about where they fit into the future of our profession and to join us in taking the next steps forward. Please read the report in its entirety and then join the discussion by sharing your thoughts and ideas at [OSBAexecutivedirector@ohiobar.org](mailto:OSBAexecutivedirector@ohiobar.org).

## SECTION 1 PROVIDING SUPPORT FOR NEW LAWYERS

**“** *The future depends on what you do today.*  
-Mahatma Gandhi

### 1.1 THE CURRENT LAY OF THE LAND:

The average 2015 Ohio law school graduate has approx. \$98,475 in law school debt.<sup>1</sup> Yet, only approximately 58% of Ohio law school graduates are employed in jobs requiring bar passage,<sup>2</sup> and a national study shows median law firm starting salaries have dropped more than 40% from 2009 to 2013.<sup>3</sup> In addition, without effective mentoring, many of these graduates may lack crucial “practice-ready” skills they need to competently serve clients.

Very few veteran lawyers would claim to have had the knowledge and tools they needed to effectively serve clients on the day they were admitted to the bar. Many learned as they practiced through the mentorship of experienced work colleagues. Unfortunately, the economic downturn has made traditional pathways to training less available to many of today’s graduates.<sup>4</sup>

In response, Ohio law schools have made substantial progress in offering more clinical practice options and designing a variety of new approaches to helping students develop more practice skills as part their legal education. They are to be commended for these efforts. In addition, bar associations have also been offering more mentoring and other resources to help new lawyers succeed. But there’s more that can and should be done.

### 1.2 OUR VISION:

To ensure that a career in the law continues to be an attractive and viable option for future generations, bar associations and law schools will work collaboratively to make law school more affordable, to streamline bar admissions and to improve practice proficiency and management.

## 2015 LAW SCHOOL DEBT

All Ohio Law Schools	Grads	Average Grad Loan Disbursement
<i>Capital University</i>	175	116,283
<i>University of Dayton</i>	171	115,740
<i>Case Western Reserve University</i>	201	105,854
<i>Ohio Northern University</i>	97	102,414
Ohio State University	231	96,253
University of Toledo	115	94,295
Cleveland-Marshall College of Law	185	93,865
University of Cincinnati	120	82,988
University of Akron	116	78,575
<b>Average</b>		<b>98,474</b>

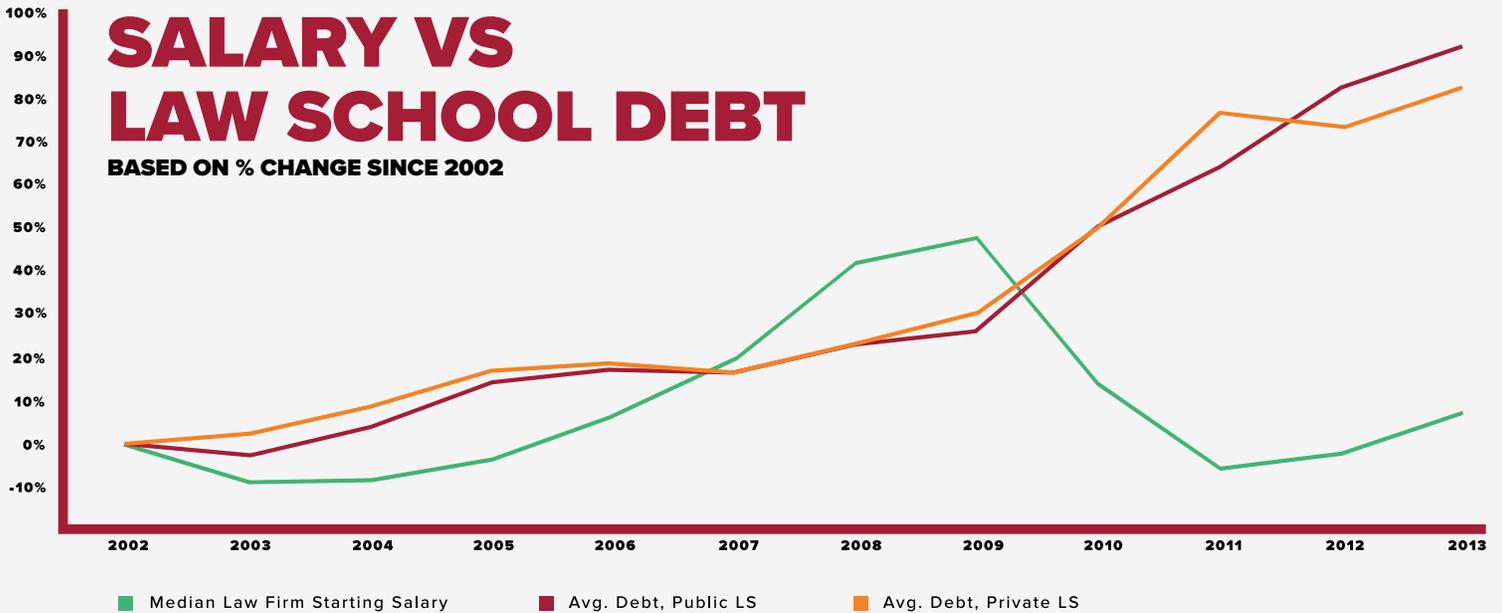
Source: LawSchoolTransparency.com (Private schools in italics).

<sup>1</sup> Average debt distributions in Ohio law schools found at <http://www.lawschooltransparency.com/reform/projects/Law-School-Financing/>.

<sup>2</sup> ABA Section of Legal Education and Admissions to the Bar Employment Summaries for 2015 Graduates – summaries for each of Ohio’s schools were reviewed.

<sup>3</sup> Bill Henderson, What is More Important for Lawyers: Where You Go to Law School or What You Learned? (Part II) (Legal Whiteboard Blog, July 22, 2015).

<sup>4</sup> Our colleagues at the Michigan State Bar Association feel the same as the opinions expressed in this paragraph were also noted in their report from MSBA’s 21st Century Task Force. We couldn’t have said it better!



Based upon data compiled by Bill Henderson for Legal Whiteboard Blog - "What Is More Important for Lawyers: Where You Go to Law School or What You Learned? (Part II)" July 22, 2015

### 1.3 LONG-TERM SOLUTIONS:

- The cost of legal education and consequently, the amount of student debt incurred by law students impairs employment options available to new lawyers. Merely training new lawyers in ways to reduce or manage debt is the equivalent of only mitigating symptoms, rather than treating a disease. We must find a way to lower the cost of legal education to get to the root of the problem by collaborating with law schools, judges, the practicing bar, as well as the ABA, to change ABA law school accreditation rules. To support affordability, OSBA should also advocate for more public funding to support higher education, including legal education.
- OSBA should support and advocate for public policy and law changes to implement a student loan/debt forgiveness program for new lawyers willing to serve in underserved, nonurban areas.
- Admissions testing should be revamped to better and more fully test Ohio legal knowledge and practice-readiness, starting in the law school education process. This includes studying whether the uniform bar exam should be adopted, as well as whether the bar exam should be offered to students earlier in their legal education so they are employable earlier in their practicing careers.

### 1.4 FIRST STEPS:

 OSBA should establish a council of law school deans and lawyers to collaboratively develop proposals to reduce the costs of legal education, streamline bar admissions in Ohio and enhance practice proficiencies currently being offered as part of law school curriculum. Recognizing that students and new lawyers don't always take advantage of these opportunities, training on these proficiencies should be mandatory in law school and required through the first five years of practice through offerings by bar associations. For instance, bar practitioners could work with faculty to incorporate 10 or 12 of the most commonly encountered legal scenarios into first and second year curriculum. This would help ensure students understand not only the black-letter law that applies, but how to advise a client to resolution of their problem, e.g. OMVI, small personal bankruptcy, residential real estate transactions, adoptions, divorce/ dissolutions, estate planning, and possibly immigration (a growing practice area including representation of undocumented children). This may also encourage students to participate in pro bono clinics to get hands-on experience.

 OSBA should work with the Supreme Court of Ohio to expand student licenses to include second-year students so they can gain real, hands-on experience working in legal clinics or with legal service organizations while under proper supervision and in appropriate circumstances (not serving as first chair in court). Under Rule II, Section 2 (B) of the Rules for the Government of the Bar, students must have completed two-thirds of their legal educations to become certified legal interns. Affording second-year students this opportunity will allow them to gain additional practice-oriented experience for a longer duration of time.

 OSBA should offer even more low-cost practice management resources and skills-based training to new lawyers.

- Skills training should facilitate specific skills so that new lawyers are able and prepared to help people solve problems, including but not limited to workshops on how to interview a client, how to manage client expectations, and how to work with opposing counsel effectively. Training on general practice advocacy skills and motions should also be offered.
- Resources should be made available to incorporate fundamentals of operating a law office and business management. Officekeeper, the manual currently offered by OSBA, is a good start, but it should be updated so that is offered in shorter segments, through video and other innovative ways to encourage learning.
- The OSBA should also make available all of its resources for new lawyers in a one-stop shop via the OSBA website.

 OSBA should collaborate with local bar associations to offer more informal mentoring opportunities to new lawyers, including connecting them with more experienced practitioners so they may call or email with questions. This should build upon the formal mentoring program offered by the Supreme Court of Ohio. For example, to provide additional avenues for mentorship and communication between mentors and mentees, the OSBA should consider enhancing its online member communities by launching the already available mentor-match tool, which Higher Logic makes available to users of its platform.

 OSBA should continue to offer and expand upon its “Rural Practice Initiative” to encourage new lawyers to practice in nonurban areas of Ohio, where there is a growing access to justice need due to the diminishing number of attorneys practicing in these areas. Many new lawyers aren’t willing or able due to debt to re-locate. We must develop a program to entice them to do so.

- Recognizing that there is oftentimes a reluctance to relocate to an unfamiliar setting, especially one that is not in a metro area, we recommend collaboration with community leaders to integrate new lawyers into the community. Making the new attorney feel welcome and part of the community is a win-win for everyone. Studies show that lawyers play a significant role in our communities, serving on non-profit boards and participating in community initiatives.
- The program should be expanded to place law students looking for summer clerkships.
- We also suggest changing the name of the program so it is clear that participating new lawyers could serve in any nonurban area throughout the State of Ohio.

 OSBA should continue its support for the federal Public Service

Loan Forgiveness Program, which forgives student debt for lawyers and others after 10 years of eligible public service, and at the state level, identify a sponsor and begin to build support for a loan forgiveness program that would help reduce the access to justice gap in Ohio by incentivizing new lawyers who choose to work in underserved areas.

## SECTION 2

# DEVELOPING A NEW MODEL FOR CLE & PROFESSIONAL DEVELOPMENT

**“ Intellectual growth should commence  
at birth and cease only at death.  
- Albert Einstein**

### 2.1 THE CURRENT LAY OF THE LAND:

The legal profession, like many others, is confronting seismic economic, cultural and technological changes. Law schools, law firms, regulatory bodies, and bar associations alike are recognizing that in order to ensure attorneys can adapt successfully, the purpose, content and format of legal education, including post law school training, must be reexamined.

The traditional Socratic method of teaching law students to “think like a lawyer” is more widely scrutinized than ever as law schools and the practicing bar acknowledge that law school graduates are not graduating practice-ready<sup>5</sup>. They enter a field of law which remains highly interdisciplinary and entrepreneurial, but the economics have shifted. Fewer attorneys, for example, are being hired by large firms, which have historically provided invaluable, on-the-job training and mentoring to help new lawyers learn the business. As more attorneys go directly from law school to hanging their own shingle, there is growing need for more fundamental practice and small business skills to ensure attorneys can effectively deliver services and represent clients.

Rapid changes in technology are also having a significant impact on the practice of law, not only in how law firms and attorneys must use technology to serve and communicate with their clients, but also as part of the legal process itself (not to mention as its own area of law). Technology offers all demographics of the legal profession many opportunities for efficiency and growth, but even the most tech savvy attorneys find it hard to keep up with the latest trends. In addition, younger attorneys more familiar with technology may require more exposure to professional etiquette using technology in a business legal setting.<sup>6</sup>

While more skills and training are in order, lawyers' plates are as full as ever, working long hours to serve their clients, and at the same time, feeling the constant pressure to attract new and maintain existing business. There aren't enough hours in the day to keep up with the law, secure new clients, run the business and get the continuing education needed to do all of it well. CLE educators

must be responsive to this reality, offering robust training in the time, increments and format that contemporary lawyers require.

Finally, with Ohio facing an opiate epidemic and knowing that so many Ohio lawyers, like the rest of the population, continue to struggle with substance abuse, chemical dependencies and mental health issues, there is still a need to educate attorneys on how to recognize the symptoms and seek help when necessary. According to the Ohio Lawyer Assistance Program, an OSBA affiliate, substance abuse and chemical dependency affects 20 percent of the bar. In addition, 80 percent of OLAP's clients have some diagnosis of mental illness when they first start working with OLAP, with half of those facing a dual diagnosis of chemical dependency and mental health.<sup>7</sup> In the 1980s, Ohio was at the forefront of making substance abuse a CLE a requirement, though this is no longer mandatory following a rule change in 2014. Ohio should consider bringing this requirement back.

### 2.2 OUR VISION:

To ensure busy lawyers can make the most of their required continuing legal education credits and gain the knowledge, skills, values, habits and traits that will make them successful, the OSBA will continue to offer relevant, content-driven curricula, speakers of unmatched quality and credentials, increased interactivity for live and self-study platforms, as well as opportunities to connect and network peer to peer and through mentorship. Development of this curricula will take into account the diversity of background, practice area and the varying stages in the careers of the legal professionals seeking CLE, including linking course offerings with all Advisory Council on Diversity and Initiatives efforts.

### 2.3 LONG-TERM SOLUTIONS:

- OSBA should focus on providing fewer live CLE program titles in order to place more emphasis on producing higher-level institutes that appeal to veteran lawyers, while offering more accessible online courses in shorter increments for the convenience of attorneys in all stages of their careers.
- OSBA should engage with the Ohio Supreme Court Commission on CLE regarding potential CLE rule changes, including:
  - Participating with the already-established committee that is reviewing additional technology competencies needed for contemporary lawyers, and to advocate for such a requirement.



***There aren't enough hours in the day  
to keep up with the law, secure new  
clients, run the business and get the  
continuing education needed to do all  
of it well.***

<sup>5</sup>Oriana Carravetta, The Reality of the Socratic Method in Law School Classrooms: A Call to Preserve our Longstanding Tradition, <https://aglr.wordpress.com/2011/03/14/the-reality-of-the-socratic-method-in-law-school-classrooms-a-call-to-preserve-our-longstanding-tradition/> (accessed April 17, 2017). Abrams, Jamie, Reframing the Socratic Method, *Journal of Legal Education*, Volume 64, Number 4 (May 2015).

<sup>6</sup>Blair Janis, How Technology Is Changing the Practice of Law, [http://www.americanbar.org/publications/gp\\_solo/2014/may\\_june/how\\_technology\\_changing\\_practice\\_law.html](http://www.americanbar.org/publications/gp_solo/2014/may_june/how_technology_changing_practice_law.html) (accessed April 17, 2017)

<sup>7</sup>Letter to the Ohio Supreme Court from the Board of Directors of the Ohio Lawyers Assistance Program, July 9, 2012

## OHIO SUPREME COURT COMMISSION ON CLE REQUIREMENTS



**2YRS**



**24HRS**

**New Lawyer Training (NLT) of 12 hours is mandatory following Ohio Bar Admissions**

The Ohio Supreme Court has mandated that all attorneys admitted by exam to the practice of law in Ohio must complete three hours of instructions that includes:

- 1 hour** of professionalism
- 1 hour** hour of law practice management
- 1 hour** hour of client funds management

The remaining **9 hours** can be taken through substantive CLE accredited for New Lawyer Training credit or through Mentorship Program



**2.5**

**CREDITS OF PROFESSIONAL CONDUCT MANDATORY**



**12HRS**

**OPTIONAL SELF STUDY**

*\*Additional hours are required for judges and magistrates \*\* Gov. Bar. R. X Sec. 3(B)*

- Advocating for innovative methodology to review how credit is awarded for online programming options, including for shorter segments, i.e. 15-minute intervals via online viewing and podcasts so that time efficiency is maximized.
- Advocating for the reversal of the rule change to Gov. Bar. R. X Sec. 3(B), to once again make CLEs on substance abuse, addiction, and mental health mandatory.
- As more attorneys rely upon self-study options, OSBA must continue to enhance the experience of online CLE, translating the physical engagement and interactivity of the live classroom into the online classroom.
- OSBA should develop a “Train the Trainer” CLE that would allow past presenters and prospective speakers to hone their presentation skills, thereby promoting continued high quality programs and relevant content. OSBA has offered a similar program in the past, receiving financial assistance from the Ohio State Bar Foundation.
- For lawyers who have started or who are interested in starting their own practices, OSBA should develop an intensive CLE series using both live and self-study, online courses. The series would focus on the basics of law firm practice management, including business and client development strategies and techniques, and could employ OSBA Certified Specialists, thus providing qualified speakers in substantive practice areas and increasing awareness of the OSBA specialty program.
- OSBA CLE staff should continue dialogue with the Ohio Supreme Court Commission on CLE regarding potential rule changes and what is on the horizon.

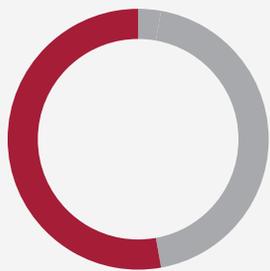
### 2.4 FIRST STEPS:

 OSBA should review all current CLE programming to align with the vision and recommendations as outlined in this report.

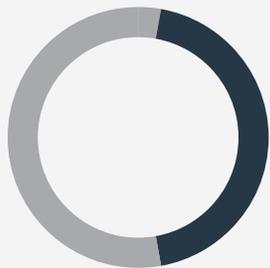
 Building on the progress Ohio law schools have already made to prepare more practice-ready new lawyers by expanding experiential learning, clinics and externships, and consistent with the recommendations outlined in Support for New Lawyers, OSBA should develop and offer an intensive CLE series that acclimates the new lawyer through a fundamental skills-based curriculum, using both live and online platform functionality.

# SELF SERVICE SOCIETY

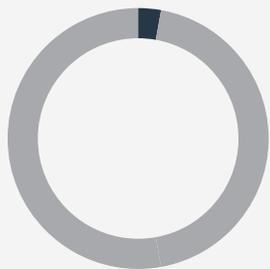
"If at all possible, I would prefer to handle a problem myself rather than have a lawyer represent me."



**56%**  
**AGREE**



**41%**  
**DISAGREE**



**3%**  
**DON'T  
KNOW**

Source: National Center for State Courts  
"The State of State Courts" 2015 Poll

## SECTION 3 EXPLORING NEW LEGAL SERVICE DELIVERY OPTIONS & MODERNIZING REGULATIONS

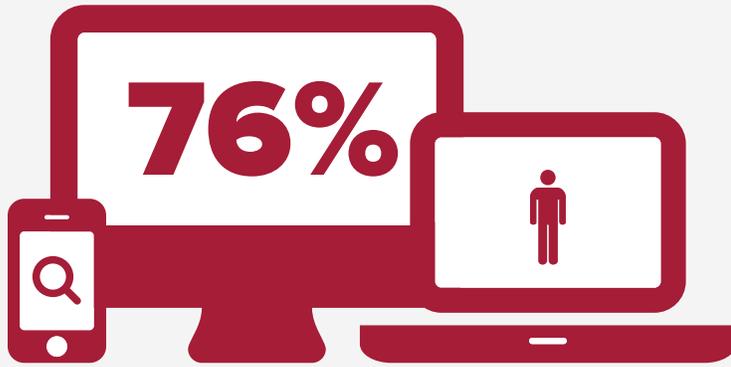
**“** *Innovation distinguishes between a leader and a follower.* - Steve Jobs

### 3.1 THE CURRENT LAY OF THE LAND:

At the February, 1999 meeting of the National Conference of Bar Presidents, the keynote speaker, former Arizona Chief Justice Thomas Zlackett, speaking on the relevance of the American Lawyer in the 21st century, began with the question: "Could you afford to hire yourself?" One major challenge facing the profession is both the perceived and actual cost to the public of securing quality, affordable legal services. Research tells us that 56% of the public confronted with a legal problem prefers to resolve it themselves.<sup>8</sup> This has contributed to a proliferation of potential new models and alternative delivery options for legal services, some of which may have merit, others, which would require much more discussion and potential regulatory changes, and still others that are in direct conflict with the core values of the legal profession. Some of these new models are outlined briefly below.

**Limited Scope Representation (LSR)** LSR or "unbundled" legal services refer to an arrangement by which an attorney might provide representation for one or more components of a legal matter rather than via the traditional full-service model. It is currently authorized by Model Rule of Professional Conduct 1.2(c) that states that "A lawyer may limit the scope of a new or existing representation if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing." It appears to be utilized mostly in domestic relations cases and to mixed reviews, though many in the profession see it as a viable way to reduce costs to clients who cannot afford full service, while providing business and client development opportunities for attorneys in some circumstances.

**Internet Legal Services Providers (LSPs)** The proliferation of internet LSPs in the last decade has been well-documented. LSPs generally offer one or more of the following types of services: The provision and/or preparation of legal forms; the advertising of legal services; lawyer referral or "matching" services; and/or the ranking or rating of lawyers. These innovative legal service models have developed relatively rapidly, and are not currently subject to oversight by the Ohio Supreme Court. While there are real opportunities to provide legal consumers more access to affordable legal services, and for lawyers to develop their business and connect them to the public, the lack of regulation



*of adults who have looked to hire an attorney in the past year used online resources*

\*Based on a survey of 4,000 adult Internet users (Internet users comprise 78% of the U.S. adult population\*\*and the U.S. adult population comprises 235 million according to the U.S. Census 2010) conducted by The Research Intelligence Group (TRiG), March 2012. \*\*According to The Pew Research Center's Internet & American Life Project's Spring Tracking Survey conducted April 26-May 22, 2011.

presents the possibility that these online LSPs may violate the "core values" of the profession, such as loyalty to the client, confidentiality, transparency, and independence of professional judgment, and they provide little protection for the consumer. Moreover, as it stands today, the provision of services by LSPs can lead to violations of current regulations governing the bar. The preparation of legal documents by non-lawyers may constitute the unauthorized practice of law, and participation in referral services may subject the participant attorneys to discipline for violating the Rules of Professional Conduct.

**Non-lawyer Legal Service Providers (NLPs)** Currently, the Ohio Supreme Court provides for the limited practice of law by legal interns in certain circumstances. Additionally, a small class of NLPs are permitted to operate in Ohio in certain limited circumstances, such as third-party administrators who can, with some restrictions, represent employers in workers' compensation and unemployment compensation hearings. The existing NLP services are performed either under the direction of a licensed attorney or are limited to a very narrow set of circumstances in a venue with limited jurisdiction. These precautions greatly reduce the risk to the public. However, in several jurisdictions, additional classifications of NLPs have been created to provide services that range from document preparation assistance to limited scope legal representation. These providers vary in education and experience and may or may not require lawyer supervision. For example, there are federally-authorized NLPs, which provide limited-scope representation in various federal courts and agencies. Washington State provides for Limited Practice Officers to complete real estate closing documents and for Limited License Legal Technicians who can, in limited circumstances, provide legal advice through they must be certified and carry malpractice insurance. California, Nevada and Arizona allow for Document Preparers who provide "self-help" clients with assistance in preparing documents for uncontested divorces, bankruptcies and wills. And New York City has established and is looking to expand its popular Court Navigators program, which uses trained and supervised non-lawyer professionals to assist pro se litigants in housing and civil courts.

**Innovative Models/Virtual Law Firms** In response to consumer concerns about the cost of legal services, and in some cases, due to the lack of jobs available in existing firms, some attorneys are dispensing of traditional bricks and mortar (and the significant overhead costs associated with it) and opting to practice from home or a satellite offices. Some are sole practitioners. Others work with fellow attorneys. Most rely on cloud computing technology to communicate with one another and their clients.

**Limited Multidisciplinary Practice (MDP) and Alternative Business Structures** Additionally, the idea of Limited Multidisciplinary Practice (MDP) and Alternative Business Structures (ABS), whereby lawyers and accountants, financial planners and others work in a partnership or collaborative setting and engage in fee-splitting, has been debated for many years. And while it has been soundly rejected in the United States (except for the District of Columbia, which has limited MDP), it is in place in Great Britain, Australia and other European countries. With significant concerns to overcome, more discussion and study are needed to determine whether such arrangements could result in cost-savings for clients, and whether they could be reconciled with the core values of the profession, not the least of which is attorney-client privilege.

Though adoption or expansion of any of these models would undoubtedly have a significant impact on attorney practices, at the heart of this discussion is ensuring clients have access to reliable legal counsel, regardless of their income levels. It's important to note that even as these new models are being explored and implemented, many attorneys, particularly recent law school graduates, are unemployed or underemployed. More efforts can and must be undertaken to connect available attorneys with clients seeking their services. Additionally, when it comes to Ohioans most in need, limited public funding means many Ohioans are being left behind. Cuts to legal aid funding have been proposed at the federal level, and statewide funding for indigent defense is inadequate and the hourly rate for both in-court and out-of-court representation by appointed counsel in many cases, does not cover overhead.

### 3.2 OUR VISION:

With more in depth examination of the wide range of new service options and alternative business structures, Ohio's Rules of Professional Conduct will be amended to provide more guidance to attorneys, allowing them to better connect with the public, serve their clients and advance their careers, not only through potential cost savings, but through enhanced practice and business tools, increased transparency, and complete alignment with the sacred and traditional core values of the profession. Additionally, sufficient funding will be available to support indigent defense and legal aid to ensure access to justice and serve those Ohioans most in need.

### 3.3 LONG-TERM SOLUTIONS:

- Acknowledging the serious concerns and issues with MDP and ABS, the OSBA should work with the Supreme Court to establish a commission to study whether or not any form of limited MDP or limited ABS could be authorized under the Rules of Professional Conduct without unduly compromising the core values of the profession. The commission should consider the issue from all angles, including: If there is a potential benefit for the public and for attorneys; whether malpractice insurance should be required for the protection of the public, among other safeguards; whether any form of fee-splitting should be permitted; what the ripple effect of ABS and fee-splitting would have on new lawyers entering the profession with considerable debt and an ever-shrinking number of opportunities; and the issue and implications of non-lawyer interest and ownership in a law firm that could arise should any of these models be embraced.
- As it relates to internet LSPs, which are already doing business in Ohio, the OSBA should work with the Supreme Court of Ohio to establish a commission to conduct a comprehensive review of existing regulations, with the goal of proposing new regulations or laws to be enacted by the Ohio General Assembly that will provide adequate protection of the public. Regulations should be narrowly-tailored to serve that purpose, and should encourage competition, innovation, and increased access to justice, while protecting the core values of the profession. Modernized

regulations regarding LSPs will provide clear guidance to members of the bar, LSPs, and consumers.

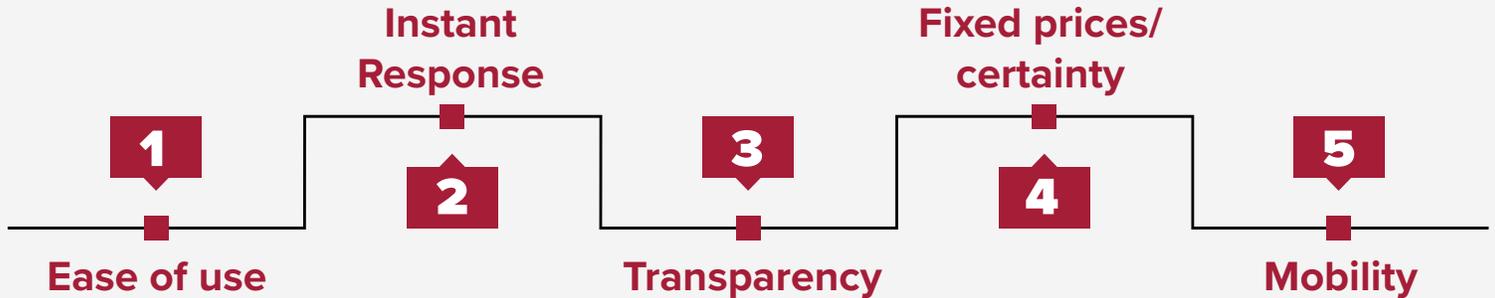
- OSBA should remain open to the continued evaluation and development of programs which employ trained courthouse navigator/facilitators who provide information and guidance to pro se litigants.
- The OSBA should examine resources and consider deploying them to consult and assist lawyers with innovative law firm models and alternative billing structures that would serve both the attorney and the client. Recognizing that lawyers are not typically trained in practice or business management, a study should be commissioned to look at the effective and cost-efficient use of local staff attorneys as references and resources for lawyers in all stages of their careers.

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## PROLIFERATION OF INTERNET LEGAL SERVICE PROVIDERS



# WHAT LEGAL CONSUMERS WANT:



### 3.4 FIRST STEPS:

**OSBA**, via its Ethics Committee, should continue its work to examine the use of Limited Scope Representation (LSR) for civil matters (not criminal). Acknowledging the many concerns surrounding these arrangements, the Committee should collaborate with the Supreme Court of Ohio to consider whether this serves the best interests of the client, whether or not the Court should have to approve LSR relationships, how such agreements would be enforced, and at what point in time the attorney-client relationship would be terminated, among many other issues. Additionally, as all LSR agreements and the scope of representation should be in writing, the Committee should work with the Court to explore the creation of standardized forms to promote efficiency, functionality and transparency in LSR cases.

Believing firmly that any provision of legal services should be done under the direction of a licensed attorney, the OSBA should oppose any effort to establish new categories of NLP in Ohio and should instead support the development of programs or actions that would connect the unrepresented with available attorneys.

OSBA should embark on a sustained public relations campaign to help educate the public about the importance of connecting with an attorney, especially for common legal matters many Ohioans face, such as purchasing a home, adopting, establishing a will, making medical decisions, and settling an estate, among many other matters. The campaign should also address how to go about hiring an attorney and how to be good consumers of legal services in general. This will help to dispel the common misconception that the average person cannot afford to hire a lawyer.

To ensure that Ohioans most in need are not left behind, the OSBA should continue to be a full partner with the Ohio Public Defender Commission on securing increased funding and an increase in hourly rates to support indigent defense, and should join with the Ohio Legal Assistance Foundation to fight proposed cuts Legal Services Corporation, which in 2015, provided \$12.4 million in annual funding to legal aid providers throughout Ohio.



## SECTION 4 BUILDING A COMPREHENSIVE, ONLINE LEGAL PORTAL FOR OHIO

**“** *I think the first duty of society is justice.* – Alexander Hamilton



**Legal aid**



**Lawyer  
Referrals**



**Legal Resources/  
Importance of  
Connecting with a  
Lawyer**

### 4.1 THE LAY OF THE LAND:

The "access to justice gap" is widely recognized to refer to estimates that 80 percent of the civil legal needs of low-income Americans go unaddressed.<sup>9</sup> At the same time, recent law school graduates struggle to find legal employment and experienced practitioners search for practice models and tools that will enable those attorneys to offer competitive prices to those who can afford to pay and still earn adequate income for themselves. For every stakeholder, greater use of innovation and technology must be part of the solution. To meet its dual mission of service to members and to the public, the OSBA must embrace innovation and continue the commitment to planning for the future that is evidenced by the creation of the Futures Commission.

In a 2013 report, "Report of the Summit on the Use of Technology to Expand Access to Justice,"<sup>10</sup> the Legal Services Corporation, the single largest funder of civil legal aid for low-income Americans, discussed the concept of a "unified legal portal," "which, by automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire process..."

The Ohio Legal Assistance Foundation (OLAF), Ohio's statutorily-created foundation charged with collection and remittance of IOLTA and filing fee revenues to legal aids serving all 88 counties, has undertaken development of such a platform for Ohio as part of its strategic plan.

The Foundation states it will:

"Lead, facilitate and support the development of an integrated, web-based portal by

- i. Engaging and convening key stakeholders to collaborate on the design and implementation of the portal;
- ii. Identifying and developing strategic partnerships to assist with developing and funding the portal; and, client development opportunities for attorneys in some circumstances.
- iii. Incorporating consumer centric design and process analysis."<sup>11</sup>

There is an overwhelming amount of legal information and resources

<sup>9</sup> [http://www.lsc.gov/sites/default/files/LSC\\_Tech%20Summit%20Report\\_2013.pdf](http://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf).

<sup>10</sup> [http://www.lsc.gov/sites/default/files/LSC\\_Tech%20Summit%20Report\\_2013.pdf](http://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf).

<sup>11</sup> Ohio Legal Assistance Foundation, Inc. 2016-2019 Strategic Plan, adopted by the Board September 15, 2016.

already available to consumers, including from the OSBA, its members and affiliates, and a great need to compile and organize those resources to ensure their efficient deployment. This affords the OSBA an opportunity to work in close collaboration with OLAF on this project. Given OLAF's mission to ensure that resources address the unmet civil legal needs of low-income and underserved Ohioans,<sup>12</sup> and the OSBA's mission "to promote justice and advance the legal profession" the OSBA could concentrate its participation in the construction process on representing the needs of attorneys, full-fee clients and persons of moderate means.

#### 4.2 OUR VISION:

OSBA will be a strategic partner with OLAF and other important stakeholders, in designing, constructing and deploying an Ohio-centric, statewide, fully functional, public facing online resource and referral platform. The platform will provide user friendly, reliable and ethical legal information for consumers and include a one-stop triage system to identify a legal problem and direct consumers, be they legal aid-eligible or in a position to afford representation/full fee, to the appropriate resource to address that legal problem.

#### 4.3 LONG-TERM SOLUTIONS:

- Throughout the three-year development of the platform, OSBA should advocate for the following supports in order to ensure the site will be as functional, useful and successful as intended, and that the site will have staying power as technology continues to advance:
  - A complete marketing and communications plan for publicizing the portal in legal, mainstream and social media.
  - Recruitment of OSBA subject matter committees to create toolkits and compose subject-specific articles for posting in the library of legal information.
  - Search engine optimization.
  - Portal content may be viewed in either English or Spanish and translation available for other languages.
  - Portal content must be adapted for access by persons with physical disabilities.
  - A specific, long-term plan for staffing, maintenance and updates.
  - A portal evaluation tool for users, informing constant evaluation, refinement and improvement.
  - A long-term, fully adequate funding stream.

# ACCESS TO JUSTICE GAP.



*Report of the Summit on the Use of Technology to Expand Access to Justice, Legal Services Corporation, 2013*

- OSBA should examine the feasibility of developing a robust online lawyer referral service, closely aligned with Ohio's public portal, to better connect available attorneys with the clients who need them, particularly in rural communities where online referral services do not currently exist.

#### 4.4 FIRST STEPS:

OSBA should assume the role of close collaborator with OLAF as OLAF leads the design, construction and deployment of Ohio's legal portal. In this role OSBA should advocate for the following essential features, utilizing state of the art technology:

- An automated triage process employing branching logic which will enable a site visitor to enter information about their legal problem and be referred to the appropriate legal resource, including bar association search engines and lawyer referral services.
- Linking to external resources, including bar association lawyer referral services, must be seamless and efficient.
- Navigator or live-chat help available for visitors to secure immediate assistance with triage or other portal resources.
- An embedded YouTube player for educational videos, including a video on how to determine if a problem is a legal problem.
- An introduction to the portal itself and how to use it efficiently and effectively.
- A robust compilation of links to state and local courts and other legal informational resources.
- An extensive directory of forms, both generic and court-specific. A compilation of self-help toolkits.
- A library of legal information by subject, with priority be given to legal information concerning landlord/tenant, consumer law, and family law. The library of legal information would be Law-You-Can-Use-type articles which should include author names and links to author bios.
- Legal information library and toolkits should include proactive resources, for example, an article or step-by-step guide on how to get a security deposit returned.
- Consideration of a live chat function enabling site visitors to interact in real time with an attorney for legal information or advice.



## STRATEGIC PLAN

Lead, facilitate and support the development of an integrated, web-based portal by

- i. Engaging and convening key stakeholders to collaborate on the design and implementation of the portal;
- ii. Identifying and developing strategic partnerships to assist with developing and funding the portal; and,
- iii. Incorporating consumer centric design and process analysis.”

*Source: Excerpt from the Ohio Legal Assistance Foundation, Inc. 2016-2019 Strategic Plan, September 15, 2016*

# ACKNOWLEDGEMENTS

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## **Thank You**

A very special thanks to all members of the OSBA who participated in the district town hall meetings or otherwise provided valuable feedback leading to the recommendations contained in this report.

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# ADDITIONAL SOURCES

Regarding average distribution of law school debt in Ohio, the Subcommittee on New Lawyer Support relied upon data collected from [www.lawschooltransparency.com](https://www.lawschooltransparency.com) (<https://www.lawschooltransparency.com/reform/projects/Law-School-Financing/>), and for employment data, [the ABA Section of Legal Education and Admissions to the Bar Employment Summaries for 2015 Graduates](#). The Subcommittee also conducted an overview of program/services currently offered by the OSBA as well as those of other state bar associations; reviewed information about student loan repayment assistance programs; reviewed market research the OSBA has done about the needs of new lawyers; as well as information about the lawyers in Ohio and where they practice.

Regarding internet legal services providers (LSPs), members of the Subcommittee on Modernized Regulations received a presentation from an LSP describing its service model, reviewed summaries of existing LSPs and descriptions of the services they provide, as well as existing ethical rules and rules concerning the governance of the bar, including Supreme Court of Ohio Board of Professional Conduct [Opinion 2016-3](#).

Regarding Non-Lawyer Legal Services, the Subcommittee on Modernized Regulations reviewed existing rules and regulations, including [Rule II of the Ohio Rules for Government of the Bar](#), as well as programs in other jurisdictions, including:

- Federally-authorized NLP: U.S. Bankruptcy Court, Equal Employment Opportunity Commission, Internal Revenue Service, and Social Security Administration;
- Limited Practice Officers in the Washington State Supreme Court;
- Limited License Legal Technicians in the Washington State Supreme Court; and
- Document Preparers in the states of California, Nevada, and Arizona.

Regarding statistics on substance abuse and Ohio attorneys, the Subcommittee on A New Model for Continuing Legal Education and Professional Development relied upon a letter to the Ohio Supreme Court from the Board of Directors of the Ohio Lawyers Assistance Program, July 9, 2012.