

Oregon State Bar
Special Open Session of the Board of Governors
January 8, 2016
Minutes

President Ray Heysell called the meeting to order at 8:45 a.m. on January 8, 2016. The meeting adjourned at 9:45 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Rob Gratchner, Guy Greco, Michael Levelle, John Mansfield, Per Ramfjord, Kathleen Rastetter, Julia Rice, Josh Ross, Kerry Sharp, Rich Spier, Kate von Ter Stegge, Tim Williams and Elisabeth Zinser. Not present were Ramón A. Pagán, Vanessa Nordyke and Charles Wilhoite. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Mark Johnson Roberts, Charles Schulz and Camille Greene. Also present was David White, OSB Board of Bar Examiners.

1. Call to Order

Mr. Heysell swore in new board members John Bachofner, Chris Costantino, Rob Gratchner, Julia Rice and Kate von Ter Stegge.

Mr. Heysell asked the board to consider the ABA Commission on the Future of Legal Services Resolution to Adopt Model Regulatory Objectives. Mr. Levelle presented a handout with additional material. **[Exhibit A]**

Motion: Mr. Bachofner moved, Ms. Rice seconded, and the board voted (8-6) in favor of asking the Policy and Governance Committee to consider whether the Oregon State Bar should adopt regulatory objectives for Oregon similar to those proposed by the ABA Futures Commission. (In favor: Levelle, Ramfjord, Bachofner, Chaney, Williams, Rice, Rastetter and Costantino. Opposed: Ross, von Ter Stegge, Mansfield, Greco, Gratchner and Sharp. Ms. Zinser called into the meeting after discussion and voting.)

Mr. Spier asked the board to consider the Board of Bar Examiner's (BBX) recommendation to the Oregon Supreme Court to adopt the Uniform Bar Exam (UBE) with either testing or CLE requirements on Oregon law and ethics. Mr. White informed the board on the pros and cons of the UBE and noted that the BBX will have input as the National Conference of Bar Examiners (NCBE) committee develops future UBE questions.

Motion: Mr. Greco moved, and Mr. Mansfield seconded, and the board voted unanimously to support the BBX's recommendation to the court.

Ms. Hirschbiel updated the board on the process for member comments on the Discipline System Review Committee (DSRC) report. On January 19, 20 and 21, 2016 the membership will have an opportunity to comment during one of the regional conference calls hosted by board members in their regions. A public meeting notice will be sent the week of January 11, 2016 as well as notices in each regional BOG update. Mr. Heysell will invite public comment during the February 12, 2016 board meeting in Salem, OR. The Board plans to consider the report and comments received at a special meeting on March 11.

**AMERICAN BAR ASSOCIATION
COMMISSION ON THE FUTURE OF LEGAL SERVICES**

INFORMATIONAL REPORT TO THE HOUSE OF DELEGATES

December 2015

The Commission on the Future of Legal Services submits this informational report to the House of Delegates in order to provide an update on its activities since its August 2015 report and identify the work that remains.

I. INTRODUCTION

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex. Many who need legal advice cannot afford to hire a lawyer and are forced to represent themselves. Even those who can afford legal services often do not use them or turn to less expensive alternatives. For those whose legal problems require use of the courts, various challenges arise due to serious underfunding of the court system.

At the same time, technology, globalization, and economic and other forces continue to transform how, why, and by whom legal services are accessed and delivered. Familiar and traditional practice structures are giving way in a marketplace that continues to evolve. New providers are emerging, online and offline, to offer a range of services in dramatically different ways.

The American Bar Association is well-positioned to lead the effort to improve the delivery of, and the public's access to, legal services in the United States. The ABA can inspire innovation, leverage technology, encourage new models for regulating legal services and educating tomorrow's legal professionals, and foster the development of financially viable approaches to delivering legal services that more effectively meet the public's needs.

To advance these essential goals, American Bar Association President William Hubbard established the Commission on the Future of Legal Services in August 2014. The Commission consists of prominent lawyers from a wide range of practice settings as well as judges, academics, and other professionals who have important perspectives on the delivery of legal services in the United States. Judy Perry Martinez serves as chair, and Andrew Perlman serves as vice chair. (A full Commission roster is available [here](#)).

The Commission is charged with the following tasks:

- conduct a series of community-based grassroots meetings and a national summit designed to encourage bar leaders, judges, court personnel, practitioners,

businesses, clients, technologists, and innovators to share their vision for more efficient and effective ways to deliver legal services;

- seek information at the Commission’s public meetings and solicit comments from the legal profession and public;
- analyze and synthesize the insights and ideas gleaned from this process;
- establish internal working groups to assess developments, and recommend innovations, in accessing and delivering legal services; and
- propose new approaches that are not constrained by traditional models for delivering legal services and are rooted in the essential values of protecting the public, enhancing diversity and inclusion, and pursuing justice for all.

II. THE COMMISSION’S EFFORTS

A. Working Groups and Project Teams

During its first year, the Commission organized its efforts around a number of different subject areas, engaged in extensive study and fact-finding, and began the process of developing preliminary recommendations. Shortly after its creation, the Commission arranged itself into six working groups:

- **Data on Legal Services Delivery.** This working group has assessed the availability of current, reliable data on the delivery of legal services, such as data on the public’s legal needs, the extent to which those needs are being addressed, and the ways in which legal and law-related services are being delivered; identified areas where additional data would be useful; and considered ways to make existing data more readily accessible to practitioners, regulators, and the public.
- **Dispute Resolution.** This working group has assessed innovations in dispute resolution. Examples include innovations in: (a) court processes, such as streamlined procedures for more efficient dispute resolution, the creation of family, drug and other specialized courts, the availability of online filing and video appearances, and the effective and efficient use of interpreters; (b) delivery mechanisms, such as kiosks and court information centers; (c) criminal justice, such as veterans’ courts and cross-innovations in dispute resolution between civil and criminal courts; (d) alternative dispute resolution, including online dispute resolution services; and (e) administrative and related tribunals.
- **Preventive Law, Transactions, and Other Law-Related Counseling.** This working group has assessed innovations in the delivery of legal and law-related

services that do not involve courts or other forms of dispute resolution, such as contract drafting, wills, trademarks, and incorporation of businesses.

- Access Solutions for the Underserved. This working group has assessed innovations that facilitate access to legal services for underserved communities.
- Blue Sky. This working group has assessed innovations that do not necessarily fit within the other working groups, but could improve how legal services are delivered and accessed, such as innovations developed in other professions to improve effectiveness and efficiency, collaborations with other professions, and leveraging technology to improve the public's access to law-related information.
- Regulatory Opportunities. This working group is studying existing regulatory innovations, assessing developments in this area, and recommending regulatory innovations most likely to improve the delivery of, and the public's access to, competent and affordable legal services. To date, this work includes:
 - (1) [Resolution and Report on Regulatory Objectives](#), submitted for consideration by the House of Delegates at the 2016 Midyear Meeting. This Resolution recommends that each state's highest court, and those of each territory and tribe, use clearly identified regulatory objectives to help (1) assess the court's existing regulatory framework and (2) identify and implement regulatory innovations related to legal services beyond the traditional regulation of the legal profession. The ABA Model Regulatory Objectives are intended to advance these important goals. The Commission solicited comments from all ABA entities (including the Standing Committee on Ethics and Professional Responsibility and the Standing Committee on Professional Discipline), state and local bar associations, and the public. (Comments can be viewed on the Commission [website](#).)
 - (2) [Legal Services Providers \(LSP\) Issues Paper](#), posted for public comment. This issues paper seeks feedback on whether United States jurisdictions should be encouraged to create new categories of judicially-authorized-and-regulated LSPs to perform discreet and limited legal tasks with the goal of improving access to legal services. The deadline for submitting comments is December 31, 2015.
 - (3) Ongoing discussion and study of additional regulatory opportunities, including but not limited to alternative business structures and entity regulation.

These working groups have met regularly, either in-person or via teleconference. Each working group gathered and assessed relevant literature on challenges and opportunities; engaged with members of the bar, ABA entities, and the public; read comments submitted to the Commission in response to an Issues Paper released in November 2014 (see the more than 60 comments on [Commission's website](#)); listened to and analyzed

testimony at public hearings from the bar and beyond; participated in and learned from the National Summit on Innovation in Legal Services as well as thought-leader webinars and state-based grassroots meetings and futures presentations (see below); and developed preliminary recommendations for consideration by the full Commission.

At the start of its second year, the Commission reviewed numerous potential innovations projects and programs that its working groups had identified and collected within each group's area of responsibility. The working groups then made recommendations to the full Commission as to those projects that the members believed would be most impactful and bring meaningful progress toward closing the justice gap. The Commission synthesized the preliminary recommendations from the working groups and identified five priority project teams to craft concrete proposals and final recommendations. The projects include:

- **ABA Center for Innovation.** The purpose of the Center will be to identify and advance ideas that improve legal services and legal education. The Center for Innovation would be similar to other centers within the ABA in that it would include staff with substantive expertise and skills. As currently envisioned, after the infrastructure is built out in year one, the Center would host post-JD and mid-career lawyers as visiting fellows and serve as an incubator for law students, all in the context of a competitive selection process. The Center will be a hub for the design and creation of innovative thoughts and tools that will equip lawyers as they serve consumers of justice in the twenty-first century. In concept, the Center would have a 12-member Governing Council. Operationally, the Center would undertake a variety of endeavors designed to foster, identify and advance innovation. The ABA, through its unparalleled convening power, can offer innovators a way to share their thoughts through physical and virtual interaction, an international annual innovation summit, and an ongoing web-based presence that influences national dialogue. The Center itself would be the leading national resource for the development of ideas that improve legal services and also those that demonstrate the value of lawyer-driven solutions. In the long-term, the Center might be able to generate revenue by incubating, and taking an equity stake in, legal technology startups. The work of the Center for Innovation would reshape the image of the ABA and help to redefine it as an even more forward-looking professional organization. Young lawyers would see the ABA in a new light: as an entity on the cutting edge of the future. By doing so, the Center would help to attract the next generation of ABA members.
- **ABA Annual Legal Checkup Program.** The annual legal checkup program in concept is similar to an annual medical checkup. One format for the annual legal checkup would be an online triage website that could, through a series of questions, examine legal risks and the need to consult a lawyer. A nationwide public information campaign would accompany this effort. Other related possible recommendations may include that the ABA cultivate partnerships beyond the

legal profession, such as those with medical associations, community colleges, credit counseling entities, public libraries, etc. to support this effort.

- **ABA Online Dispute Resolution System.** The ODR project focuses on promotion and expansion of government agency or court annexed online dispute resolution. One potential consideration is a proposal to partner with a court system that is already developing a state-of-the art online dispute resolution system. The partnership would be an opportunity for the ABA to develop and apply best practices in the context of a live ODR system. The ABA could document the ODR process, report on the impacts and outcomes and promote outreach to government and courts on how to copy and scale the project to other dispute forums. This project would advance the courts' interests in maintaining their essential role in dispute resolution in an efficient manner that reduces docket backups. It also will conserve government resources and reduce administrative delays. It is envisioned that the Center for Innovation would be a partner in the advancement of the ODR project.
- **ABA Platform.** The ABA Platform would be an ABA-branded, national online platform designed to direct users to resources, including state and local portals providing access to legal information or assistance. The platform also would serve as the online home for the (1) ABA Innovation Center, (2) ABA Online Dispute Resolution System, and (3) ABA Annual Legal Checkup Program. The ABA Platform would be housed in the Center for Innovation. The ABA Platform Team will work in coordination with SJI, NCSC and LSC's current collaborative effort on platform/portal development.
- **Challenges to the Delivery of Criminal Legal Services.** The Commission's current Challenges to the Delivery of Criminal Legal Services Project Team is exploring and making recommendations about innovations in the delivery of criminal legal services, including (1) decriminalization of minor offenses to alleviate racial discrepancies and over-incarceration; (2) holistic approaches to legal services that encompass both criminal and civil matters when they are inter-related; and (3) expansion of programs that provide training and mentorship for those who are incarcerated.

B. Communication

The Commission maintains a website that serves to enhance communication with ABA membership and the public about the Commission's work and that provides a source of information about the future of legal services. This information includes a toolkit for bar associations, documents related to the Commission's work, comments received by the Commission, and links to view recordings of Commission hearings, the [National Summit on Innovation in Legal Services](#), and webinars. The Commission has engaged in media communication; for example, the Commission's reporter authored an article published in

the Jan./Feb. 2015 issue of Law Practice Management magazine, *ABA Launches Commission on the Future of Legal Services*. In addition, numerous media outlets have covered the Commission's work, including over two dozen news articles and blogs.

C. National Summit on Innovation in Legal Services, Webinars, Grassroots Meetings, and Futures Presentations

The Commission's outreach and study have included the National Summit on Innovation in Legal Services, monthly webinars, grassroots meetings, and futures presentations. The Commission convened the Summit in partnership with Stanford Law School on May 2-4, 2015. The Summit was designed to challenge thought-leaders from within and outside the legal profession to develop action plans for ensuring access to justice for all. The two hundred invited attendees included more than a dozen chief justices of state supreme courts, members of the state and federal bench, as well as bar leaders, lawyers from diverse practice settings, innovators, academics, non-governmental organization leaders, new entrants in legal services, and law students. Additional information about the Summit, including the full agenda and list of speakers, can be found on the [Commission's website](#).

The Commission has sponsored monthly webinars on topics relevant to the Commission's mission for both members of the Commission and the ABA Board of Governors. The webinar topics have included *The Emerging Legal Ecosystem* (Professor William Henderson, Indiana Law); *Multi-pathing the Delivery of Legal Services for the 79%* (Will Hornsby, ABA); *21st Century Technology and 19th Century Law Practice: The Coming Clash* (Michael Mills, Neota Logic); *A Conversation on the Task Force to Expand Access to Civil Service in New York* (Helaine Barnett, Chair of the Task Force, and Chief Judge Jonathan Lippman); *It's the Client, Stupid* (Susan Hackett, Executive Leadership, LLC); *Innovation in Legal Education* (Dean Dan Rodriguez, Northwestern Law); *A2J Author and the Future of the Delivery of Legal Services* (John Mayer, CALI); *Regulating the Future Delivery of Legal Services* (Professor Gillian Hadfield, USC Law, and Larry Fox, Drinker Biddle & Reath). Recordings of webinars are publicly available on the [Commission's website](#).

Grassroots meetings and futures presentations are an integral component of the Commission's information gathering process. The grassroots meetings involve bar leadership, the judiciary and court personnel, local practitioners, local businesses and clients, local government, and innovation experts. Participants are charged with identifying more effective and affordable ways to deliver legal services. To help facilitate the grassroots meetings, the Commission produced a grassroots toolkit that includes sample agendas, possible invitation lists and letters, briefing papers on issues for discussion, moderator and facilitator guides, background and resource materials for posting to local bar websites, and data collection forms and formats. The futures presentations have been presented by the chair, vice chair, reporter, and commissioners such as Fred Ury, Honorable Lora Livingston, Paula Littlewood, Dean Daniel Rodriguez,

Chief Justice Barbara Madsen, Chief Justice Mark Martin, and others who have provided valuable insight to state and local bar associations and ABA entities about the Commission's work.

During the first year, the Commission held grassroots meetings and futures presentations in nearly 20 locations. During the second year, additional events have been held (or are scheduled) in the following locations:

- ABA Board of Governors (June 5, 2015)
- Louisiana State Bar Association (June 8, 2015)
- Florida Supreme Court and Florida State Bar (June 23, 2015)
- Collaborative Bar Leadership Academy Futures Presentation (June 25-27, 2015)
- Australian Bar Conference (July 8, 2015)
- Conference of Chief Justices Professionalism and Competence of the Bar Committee (July 21, 2015)
- National Organization of Bar Counsel (July 30, 2015)
- National Conference of Bar Presidents (August 1, 2015)
- Client-centric Legal Services Conference (August 14-15, 2015)
- Ohio State Judicial Conference (September 3, 2015)
- USDC Northern District of Oregon Federal Judges (October 2, 2015)
- New England Bar Association (October 2-3, 2015)
- Missouri Bar/Missouri Judicial Conference (October 7-9, 2015)
- College of Law Practice Management (October 8-9, 2015)
- Section of International Law Fall Meeting, Montreal Canada (October 21, 2015)
- Center for Professional Responsibility Fall Leadership Conference (October 23, 2015)
- State Bar of Michigan Annual Justice Initiatives Summit (October 28, 2015)
- Illinois Supreme Court Commission on Professionalism (November 2015)
- NLADA Annual Meeting (November 4-7, 2015)
- National Asian Pacific American Bar Association Board of Governors (November 4, 2015)

- New Jersey State Bar Association Board of Trustees (November 5, 2015)
- Making Justice Accessible Symposium, American Academy of Arts and Sciences (November 11-12, 2015)
- ABA Standing Committee on Bar Activities and Services (November 14, 2015)
- North Carolina Commission on the Administration of Law and Justice (December 1, 2015)
- AALS Annual Meeting (January 6-10, 2015)
- ABA Judicial Division Lawyers Conference and National Conference of Administrative Law Judges Joint Dinner (February 5, 2016)
- Western States Bar Conference (March 31, 2016)
- ABA Tech Show (April 17, 2016)
- Maryland State Bar Association's Planning Conference (April 8, 2016)
- Section of International Law Spring Meeting (April 12, 2016)
- National Conference of Bar Examiners Bar Admissions Conference (April 15-16, 2016)
- National Conference of Bar Examiners Annual Conference- Washington, D.C. (April 15, 2016)
- Inter-Court Federal and State Judicial Conference (September 29-30, 2016)

To be scheduled:

- Idaho State Bar Evolution of the Legal Profession
- Florida Grassroots Meeting
- Illinois Grassroots Meeting
- Arkansas Grassroots Meeting
- New Mexico Grassroots Meeting
- Iowa Grassroots Meeting
- Rhode Island Bar Association

More details about these events, as well as the grassroots toolkit, can be found on the [Commission website](#).

D. Hearings

The Commission heard public testimony at the American Bar Association Midyear Meeting in Houston, Texas, on February 7, 2015, from nearly 20 individuals and again at the ABA Annual Meeting in Chicago on August 1, 2015, from over a dozen individuals who represented a range of interests, including practicing lawyers, legal services providers, the judiciary, ABA entities, state bar associations, members of the public, the American Association of Law Librarians, and the Department of Justice. This testimony is available for public review on the [Commission website](#). The Commission plans to hold an additional hearing in conjunction with the ABA Midyear Meeting in February 2016.

E. Focus Groups Study and Public Opinion Survey

To better understand public attitudes and concerns about access to legal services, and to receive input from outside the legal profession, the Commission in collaboration with the National Center for State Courts conducted two focus groups in April 2015. The results from the focus groups were used to inform additional quantitative research—a national public opinion survey on access to legal services by the NCSC in the fall of 2015. The responses to the public opinion survey have been collected and are being analyzed.

F. White Papers

The Commission has sought to compile helpful data on the delivery of legal services and to make this information more readily accessible to practitioners, regulators, and the public. To this end, the Commission is overseeing the creation of fifteen white papers that will be published as a single issue in the South Carolina Law Review (anticipated publication date January 2016). The white paper authors and topics include:

- Raymond Brescia (Albany Law)
What We Know and Need to Know about Disruptive Technology
- Tonya Brito (Wisconsin Law)
What We Know and Need to Know about Civil Gideon
- Deborah Eisenberg (Maryland Law)
What We Know and Need to Know about Alternative Dispute Resolution
- Jim Greiner (Harvard Law)
What We Know and Need to Know about Intake by Legal Services Providers
- Elly Jordan (Michigan State Law)
What We Know and Need to Know about Immigration and Access to Justice
- Stephanie Kimbro (Stanford Law/Center for Law Practice Technology)
What We Know and Need to Know about Online Engagement with Lawyers

- Ellen Lawton (National Center for Medical-Legal Partnership)
What We Know and Need to Know about Medical-Legal Partnerships
- Dan Linna (Michigan State Law)
What We Know and Need to Know About Legal Start-Ups
- Paul Lippe (Legal OnRamp)
What We Know and Need to Know about Watson, Esq.
- Paul Paton (Alberta Law)
What We Know and Need to Know about Regulatory Innovations
- Deborah Rhode (Stanford Law)
What We Know and Need to Know about Service Delivery by Nonlawyers
- Fred Rooney (Touro Law)
What We Know and Need to Know about Law Firm Incubators
- Becky Sandefur (Illinois Sociology/American Bar Foundation)
What We Know and Need to Know about Community Legal Needs
- Steve Scudder (ABA Standing Committee on Pro Bono and Public Service)
What We Know and Need to Know about Pro Bono Service Delivery
- Silvia Hodges Silverstein (Buying Legal Counsel)
What We Know and Need to Know About Legal Procurement

G. Commission Meetings

The Commission held an organizational meeting in Boston in conjunction with the 2014 ABA Annual Meeting, as well as meetings in Chicago (September 2014) and in Houston (February 2015). The Commission met again in Chicago June 30-July 1, 2015, during the Annual Meeting in early August 2015, and in Chicago on September 25-26, 2015. The Commission anticipates meeting at the February 2016 Midyear Meeting in San Diego as well as at the August 2016 Annual Meeting in San Francisco to complete its work.

H. Presentations and Engagements

In addition to participating in the grassroots meetings across the country, the chair, vice chair, and other commissioners appeared before 35 ABA entities at the Houston Midyear Meeting and before 52 ABA entities at the Annual Meeting in 2015. Additionally, commission members have made presentations to the following entities to discuss the Commission's work and solicit input: Conference of Chief Justices; American Bar Association Board of Governors; the Program, Evaluation, and Planning Committee of the Board of Governors; the Section Officers Conference; and the National Conference of Bar Presidents. The quarterly substantive sessions with the Program, Evaluation, and Planning Committee and with the full Board have been an effort to not only update Association leadership at the highest levels regarding the Commission's work but also to integrate the work of the Commission into the long-range planning strategy of the Board, in close coordination with its Board Governance Committee.

III. CONCLUSION

The Commission anticipates that its work will be concluded in August 2016. The Commission's final report may include, among additional items, recommendations concerning the five above-described projects, innovative best-practices and business models, new approaches for the delivery of legal services, and possible additional resolutions in the area of regulation.

Respectfully submitted by the Commission on the Future of Legal Services this 4th day of December, 2015.

Judy Perry Martinez, Chair
Andrew Perlman, Vice Chair
Renee Knake, Co-Reporter
Ben Cooper, Co-Reporter