

The Vermont Joint Commission on the Future of Legal Services

Background

On March 23, 2014, Chief Justice Paul Reiber of the Vermont Supreme Court gave a speech to the Vermont Bar Association calling for the Bar, the Court, the various legal education providers, the business community, and the public to come together to study the question of how to ensure that Vermonters can obtain quality, affordable legal representation and efficient dispute resolution. The Chief Justice further challenged these constituencies to consider that question in light of the stark financial realities faced by the public, new lawyers, and the courts.

In short, the Chief Justice advocated an “all-in” approach and encouraged the primary stakeholders to re-evaluate existing and potential services in this light: What are we doing and what should we be doing to increase the availability of legal services, access to the courts, and ease of use in the legal system?

The challenge for the task force is daunting. The graduates entering the Vermont legal workforce face a market with few entry-level positions while managing enormous debt obligations that effectively limit their options. Established practitioners have found themselves over the past decade and a half struggling with new competitors online and outside the legal profession. More and more, clients of moderate and middle incomes cannot afford to retain the full services of an attorney and will either forgo their claims or attempt to resolve the problem themselves. Vermont’s self-represented litigant population has exploded over the past decade: now, in 72% of all civil litigation, 88% of cases in the family unit, and 85% of cases in the probate unit one or more parties is self-represented. Such high numbers strain the resources of the judiciary. Both the bench and the bar have struggled to integrate technology into the practice of law in a way that ultimately serves the users of the court system and facilitates greater access, understanding, and justice. But the Chief Justice’s challenge makes clear that technology alone will not solve these systemic issues. The solution must come from the joint and diligent efforts of the bench, bar, academy, and public.

Structure of the Commission

The Commission is envisioned as a two-year process.

During the first year, four committees, composed of attorneys, judges, court staff, academics, and other interested parties, will work under the direction of the Vermont Bar Association’s Board of Managers to study and develop responses to the specific questions posed below in the Scope of Charge. Each Committee shall contain a liaison from the Board. The Committees shall meet

on a regular basis. From this work, the VBA will produce a report on the future of the legal profession to be delivered at the VBA Annual Meeting in September 2015.

During the second year, a Commission will form from members of the Committees and the VBA Board of Managers to take the results of the Committees' work and seek to implement the changes recommended by the Committees through legislative process, executive orders, judicial administrative orders, and other avenues that will assist in implementing changes. The members of the Commission will be charged with promoting the report to the general public and to various groups.

Scope of Charge

The Commission is hereby tasked with studying and developing responses to the following questions and any additional questions that emerge during their deliberations:

1. Technology and Law

What kind of technologies does the judiciary currently provide to litigants in the Vermont legal system?

What types of technologies are other state judiciaries offering? What aspects of these and other technologies should the Vermont judiciary consider incorporating?

How much of the Vermont court process is currently conducted electronically?

How much of the court process could or should the judiciary consider conducting online?

What kind of technologies do Vermont attorneys offer their clients as part their representation?

What type of technology should Vermont attorneys consider utilizing on behalf of their clients?

How does electronic, internet, and cloud-based technology differ from the paper and form process that currently dominates the legal process?

What changes and issues should the court and the bar anticipate coming from greater adoption of these computer and online technologies?

What role will electronic legal services play in the future of legal practice in Vermont?

What legal services are best provided by an online legal service, a computer program or download, an app, or the web?

How are such services best integrated into the court process in Vermont?

2. The Court Process

What is the judiciary's approach to the rising number of self-represented litigants?

What options should the judiciary consider offering to self-represented litigants?

What steps could the judiciary take to manage self-represented litigants or particular dockets with large numbers of self-represented parties?

What types of alternative dispute resolution, apart from mediation and arbitration, are available to courts and what role can they play in managing and/or reducing the docket?

What dockets would benefit most from greater access to legal representation?

What programs could improve self-represented litigants' connection and access to skilled attorneys to assist in preparing and presenting cases in the courtroom?

What funds are available to assist self-represented litigants?

3. Legal Services

What kind of legal services can Vermonters obtain online?

What are the limits to such online legal services?

When do such services cross into the unlicensed practice of law and what risks attend their use? What is the definition of unlicensed practice of law?

What can Vermont attorneys do to assist in particular dockets with large numbers of self-represented litigants?

How can other organizations and/or the legislature assist with providing programs for self-represented litigants?

What role should unbundled legal services and limited representations play in the future of Vermont practice?

Is there a benefit to creating tiers or licensing specialization within the profession? If so how would such tiers function and what benefit would they provide to the public?

What role do paralegals play in the present practice of law? How can they be better employed to address the existing and growing need for greater access to legal services? Would the legal system benefit from a “tiered” professional licensing system for paralegals or a program that recognized specific training and ability to provide legal support services, such as litigation assistance, practice management, or probate?

What geographic areas and what types of cases need more attorneys or other legal professionals? What reforms can address those needs?

What additional approaches to dispute resolution should be part of the profession?

4. Legal Education/ Future of the Profession

What reforms in the funding and provision of legal education could improve new lawyers’ ability to represent populations that currently lack representation?

Can the VBA play a role in educating prospective and current law students about the financial realities of Vermont practice?

Could reforms in loan repayment assistance programs result in increased representation of populations that currently lack representation and in the retention of more new attorneys in Vermont?

Are there changes that can be made to Vermont’s unique clerkship program that would attract would-be law students to Vermont and enable new lawyers to provide more economical legal services?

What legal education is currently available for paralegals and other legal support personnel?

Could legal educators provide specific certification for paralegals? What would such certifications entail?

What role would such graduates play in the legal market? How would certified paralegals work with attorneys?

How can Vermont attorneys keep their fees affordable to more Vermonters?

What expenses do Vermont attorneys regularly have in their practice? What expenses can be expected to increase? What new expenses will emerge in the coming years?

Are there aspects to Vermont's aging demographic and rural small practice setting that can be utilized in a positive way to transition young lawyers into the practice of law in Vermont both economically and in recognition of community-focused trends?

Composition of the Committees

Technology Committee

Staff: Kevin Ryan

1. David Fenster, Chair
2. Jennifer Emens-Butler
3. Brock Rutter
4. Matthew Byrne
5. Jim Knapp
6. Hon. Thomas Durkin
7. Hon. Jeffrey Kilgore

Court Process Committee

Staff: Bob Paolini

1. Daniel Richardson, Chair
2. Eileen Blackwood
3. Hon. Sam Hoar
4. Sharon Annis

5. Hon. Amy Davenport

6. Pricilla Dubé

7. Tom Valente

Legal Services Committee

Staff: Mary Ashcroft

1. Amber Barber, Chair

2. Cara Cookson

3. Nell Coogan

4. Hon. Helen Toor

5. Eric Avildsen

6. Sandy Baird

7. Gary Franklin

Legal Education and Practice Committee

Staff: Kevin Ryan

1. Michael Kennedy, Chair

2. Bridget Asay

3. Marc Mihaly

4. Leslie Cadwell

5. Carie Tarte

6. Hannah Smith

7. Marie Peck Fabian