



## **Regulatory Changes on the Horizon**

**September 14, 2020**

**10:00 a.m. – 11:00 a.m.**

**CT Bar Association  
Webinar**

**CT Bar Institute Inc.**

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## Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

*--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994*

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# Regulatory Changes on the Horizon (2020CLC-HT02)

## Agenda

10:00 a.m. – 10:45 a.m.	Regulatory Reform <b>Jayne Reardon</b> , Illinois Supreme Court Commission on Professionalism <b>Frederic S. Ury</b> , Ury & Moskow
10:45 a.m. – 11:00 a.m.	Q&A

# Faculty Biographies

## Jayne Reardon, Illinois Supreme Court Commission on Professionalism

Jayne Reardon, a former trial lawyer and counsel to the ARDC Review Board, serves as Executive Director of the Illinois Supreme Court Commission on Professionalism. Promoting the Commission's mission to improve professionalism, civility, and inclusion in the legal and judicial systems, Jayne oversees the Commission's statewide lawyer mentoring program, professionalism programming in law schools and continuing education for lawyers and judges. Past Chair of the ABA Standing Committee on Professionalism and member of the Executive Committee of the Association of Professional Responsibility Lawyers' Future of Lawyering Committee, Jayne is a prolific speaker and writer about professionalism and future law topics.

## Frederic S. Ury, Ury & Moskow LLC

Frederic S. Ury is a founding partner of the law firm of Ury & Moskow, LLC in Fairfield, Connecticut. Ury & Moskow is a small boutique trial firm handling major civil and criminal cases throughout the State of Connecticut. The firm also has a national pharmaceutical mass tort practice throughout the United States.

Mr. Ury earned his JD degree from Suffolk University Law School in Boston, Massachusetts in 1977 and his B.S. degree with highest distinction from Babson College in Wellesley, Massachusetts in 1974.

He has been a member of the Connecticut Bar since 1977 and the New York Bar since 1989. He is admitted in the Federal District Court in Connecticut and New York, the 2<sup>nd</sup> Circuit Court of Appeals and the United States Supreme Court.

He is a Board-Certified Civil Trial Lawyer who for 42 years has concentrated his practice in criminal and civil trial practice. He also sits as an arbitrator and mediator for the private bar. He is presently a hearing officer for the Connecticut State Board of Education and the Department of Developmental Services.

He is a member of the American Board of Trial Advocates and is an AV rated attorney. He is listed in Martindale Hubbell's Bar Register of Preeminent Lawyers. He has been listed for 14 years in Super Lawyers in Connecticut and New England in general litigation and in Best Lawyers for commercial and personal injury litigation.

Mr. Ury was the Chairman of the Litigation Section of the Connecticut Bar Association from 1993-1996. During the year 2004-2005 he was President of the Connecticut Bar Association.

In 2008-2009 he served on the Chief Justice's Public Trust and Confidence Task Force. He was Co-Chair of the Attorney Trust Account Defalcation Task Force during the years 2005-2010. From 2007-2016 he was on the Board of Directors of the Connecticut Bar Foundation. He has been a member of the James Cooper Fellows since 2005. In 2010 he was appointed to the Connecticut Bar Examining Committee. Since January 2017 he is Co-Chair of the MCLE Commission.

Mr. Ury has been active for the past 16 years in the National Conference of Bar Presidents (NCBP). He served three years on the Executive Council and was President of NCBP from 2011-2012.

Mr. Ury has been a member of the ABA for 42 years. He was a member of the American Bar Association's House of Delegates from 2004-2009 and was appointed by ABA President Carolyn Lamm to the Ethics 20/20 Commission which he served on from 2009-2012. He was chair of the ABA Standing Committee on

Professionalism from 2012-2015. In August of 2014 he was appointed by ABA President William Hubbard to the Commission on the Future of Legal Services which he was on until it finished its work in August 2016. From 2012-2015 he was Chair of the ABA Standing Committee on Professionalism. He was a member of the ABA Standing Committee on Discipline from 2015-2018. He is presently Chair of the Co-Ordinating Council of the Center for Professional Responsibility since 2018.

He is a frequent lecturer to various bar associations and lawyer groups around the country on the Future of the Legal Profession and ethics and professionalism. He has lectured about civil procedure to Connecticut attorneys for over 21 years. Mr. Ury has authored several articles on the Future of the Legal Profession and ethics.

Mr. Ury is an avid bicyclist and marathon runner. He is a founding member of Charity Treks, Inc., a non-profit organization that raises money to find a vaccine for Aids.

# Status of Reregulation of Legal Services



*Jayne R. Reardon*

Executive Director, Illinois Supreme Court Commission on Professionalism

*Frederic S. Ury*

Founding Member, Ury & Moskow LLC

# Why Rethink Regulation of Legal Services?

- Clients/Customers
- Courts
- Lawyers
- Technology



# Why Rethink Regulation? Clients / Customers

***“[W]ell over 100 million Americans [are] living with civil justice problems,” including those involving “housing (evictions and mortgage foreclosure), child custody proceedings, and debt collection.”***

***“U.S. lawyers would have to increase their pro bono efforts . . . To over nine hundred hours each to provide some measure of assistance to all households with civil legal needs.”***

Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States* (American Bar Association 2016).

# How People Handle Civil Justice Situations



Do  
nothing:  
16%



Self-help:  
46%

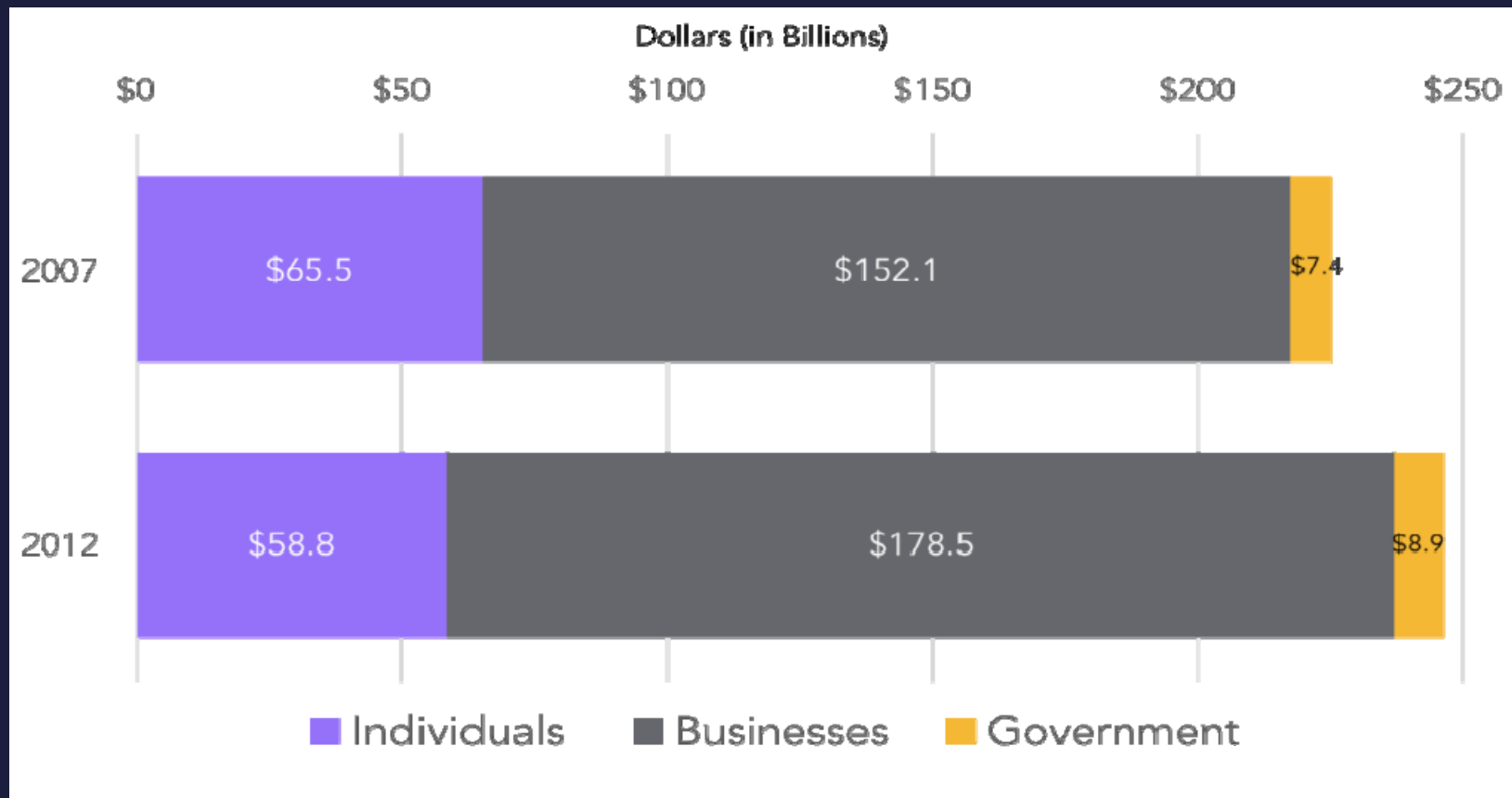


Help from  
family/  
friends:  
16%



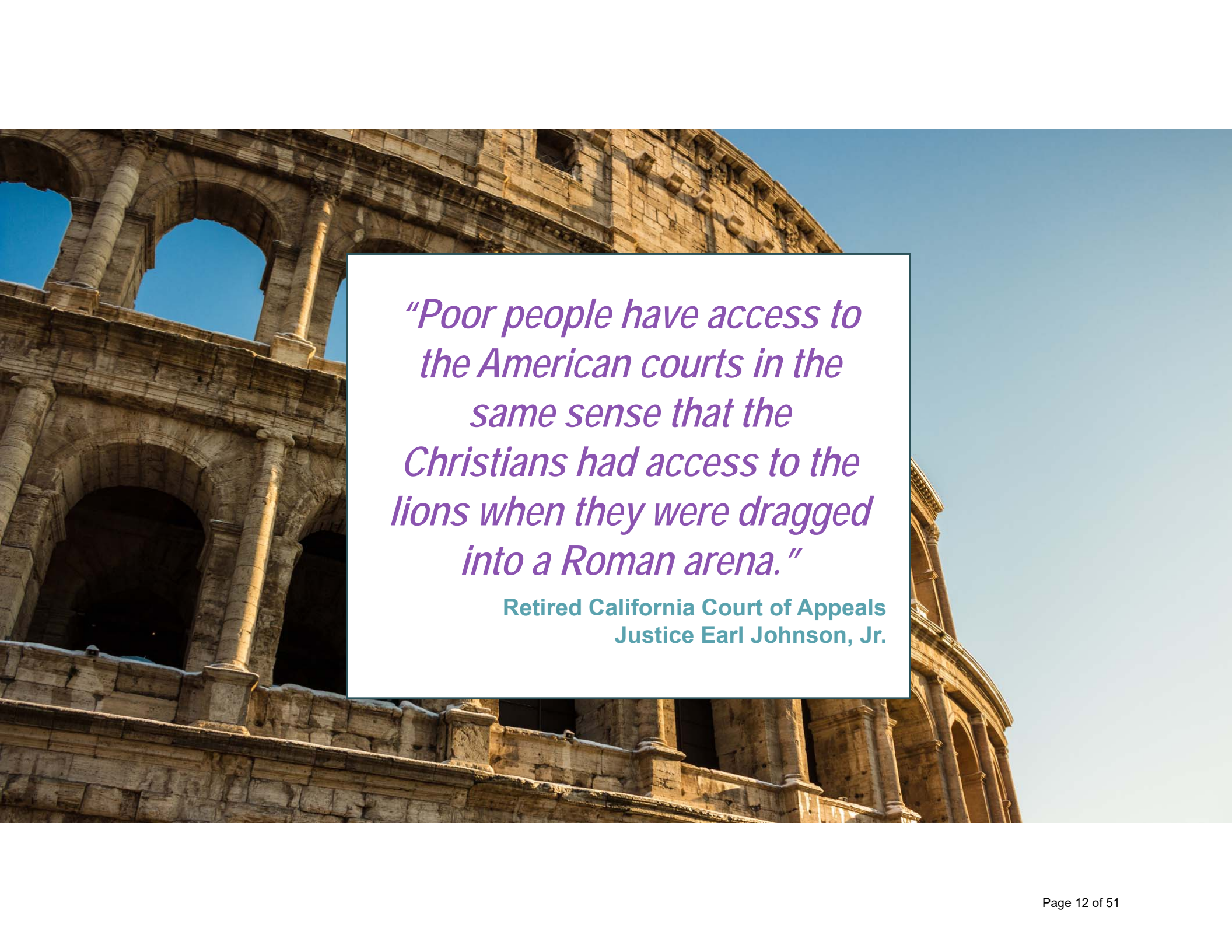
Help from  
lawyer:  
15%

# Dollars Spent on Legal Services



Source: 2007 and 2012 Economic Census, Receipts / Revenues by Class of Customer





*"Poor people have access to the American courts in the same sense that the Christians had access to the lions when they were dragged into a Roman arena."*

Retired California Court of Appeals  
Justice Earl Johnson, Jr.

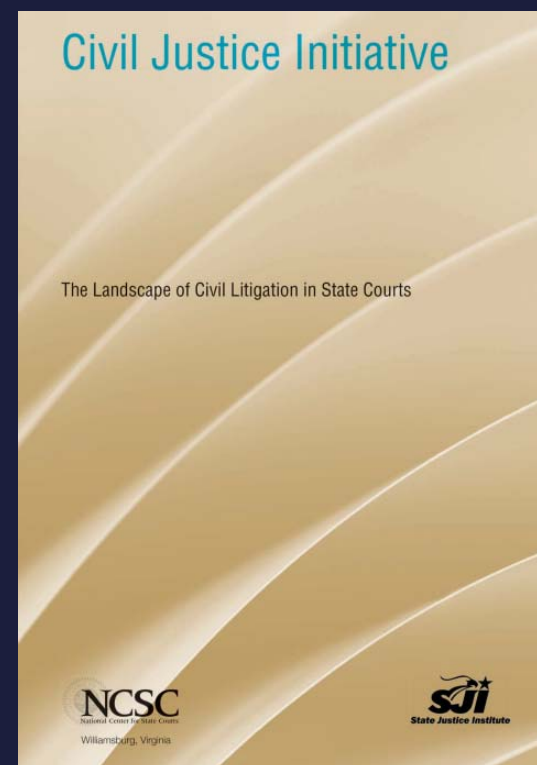
Up to  
**80%**

- Of low / moderate income Americans' civil legal needs are unmet
- Are self-represented in court

# Why Rethink Regulation? Courts

## National Center for State Courts

- *Data from 132 courts from July 1, 2012 – June 30, 2013*
- *900,000 cases (5% of all civil cases in state courts nationwide)*
- *Median judgment: \$2,441*
- *Average judgment: \$5,424*
- *76% of cases involved at least one self-represented party (\*usually the defendant)*



# Federal Judiciary: 2017



## U.S. District Courts – Civil Statistical Tables For Federal Judiciary

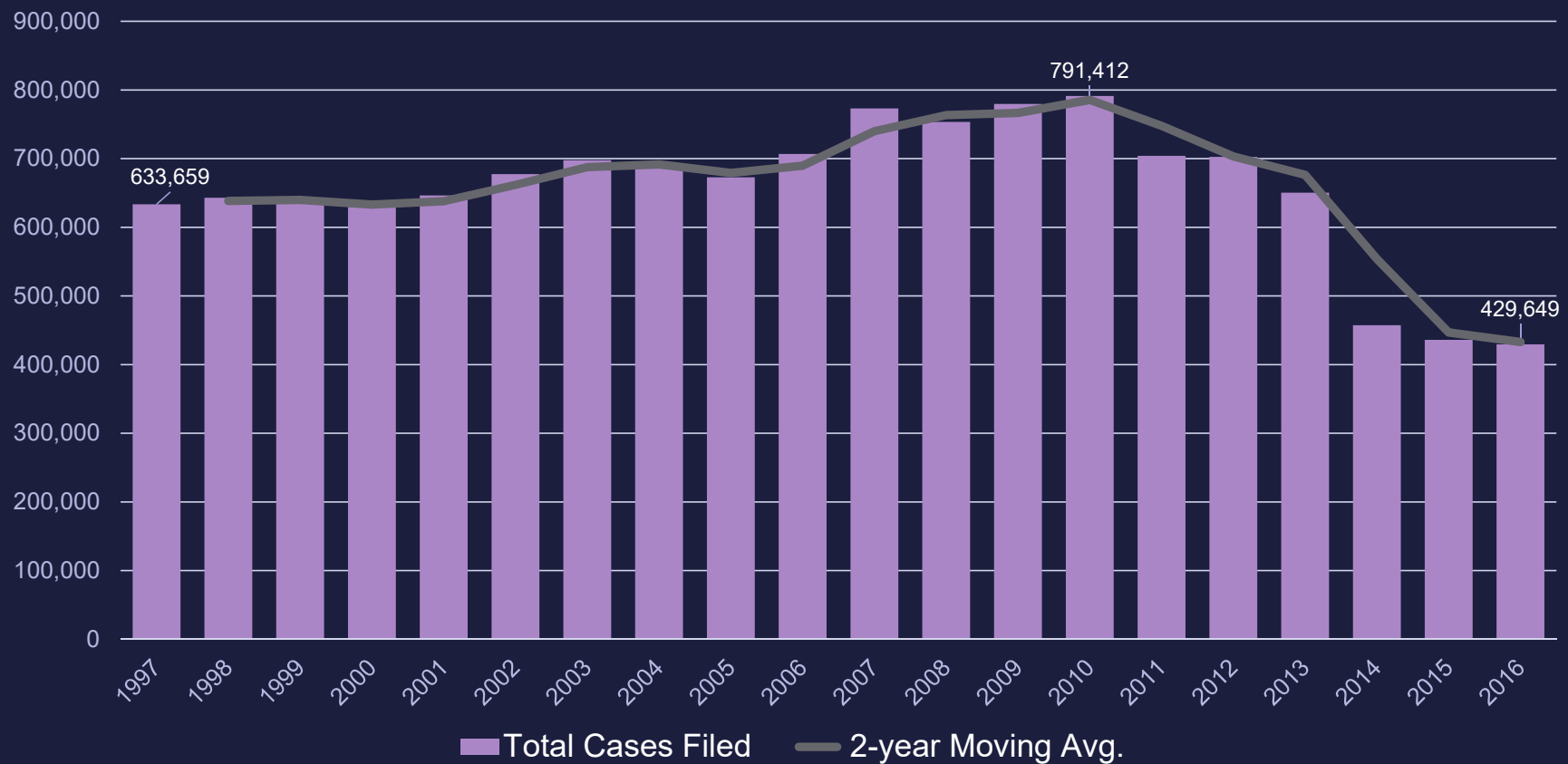
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Total Cases	No Court Action	Total Court Action	Before Trial	During or After Pretrial	During or After Trial
295,574	53,515	242,059	209,353	30,111	2,595

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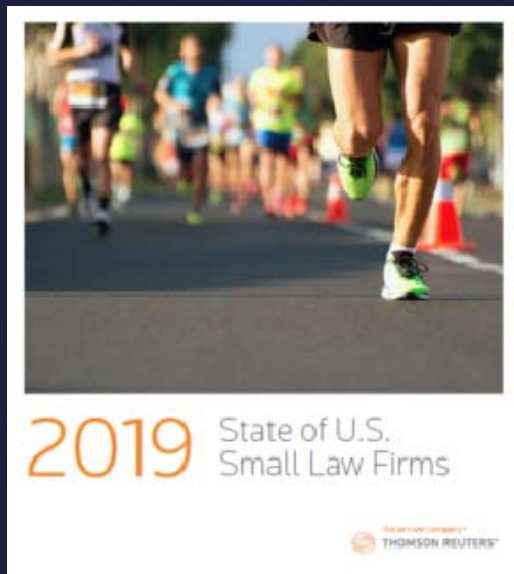
242,059 civil cases required some form of court action with 12.4% lasting to the pretrial stage and *only 0.9% reaching trial.*

# Civil Case Filings in the Illinois Circuit Courts

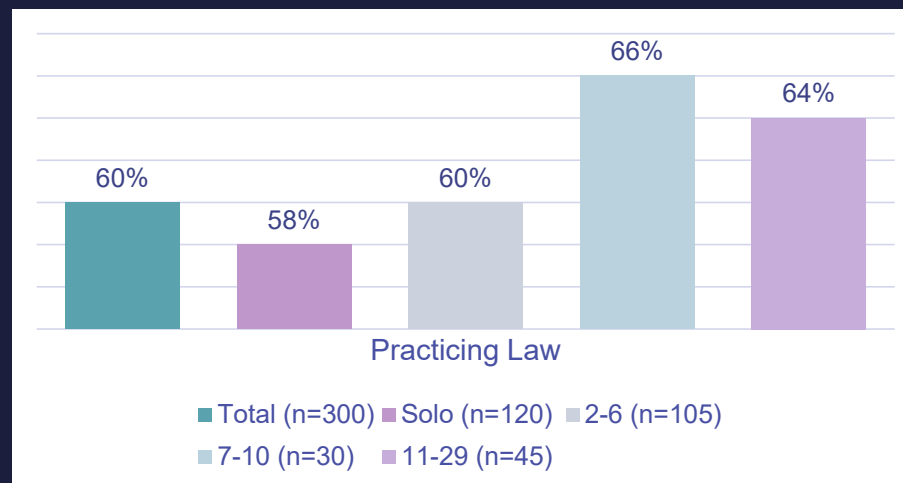




# Why Rethink Regulation? Lawyers



## Self-reported Time Allotment



*“For most lawyers, nearly 40% of their day goes into activities other than the practice of law...”*

# Why Rethink Regulation? Lawyers



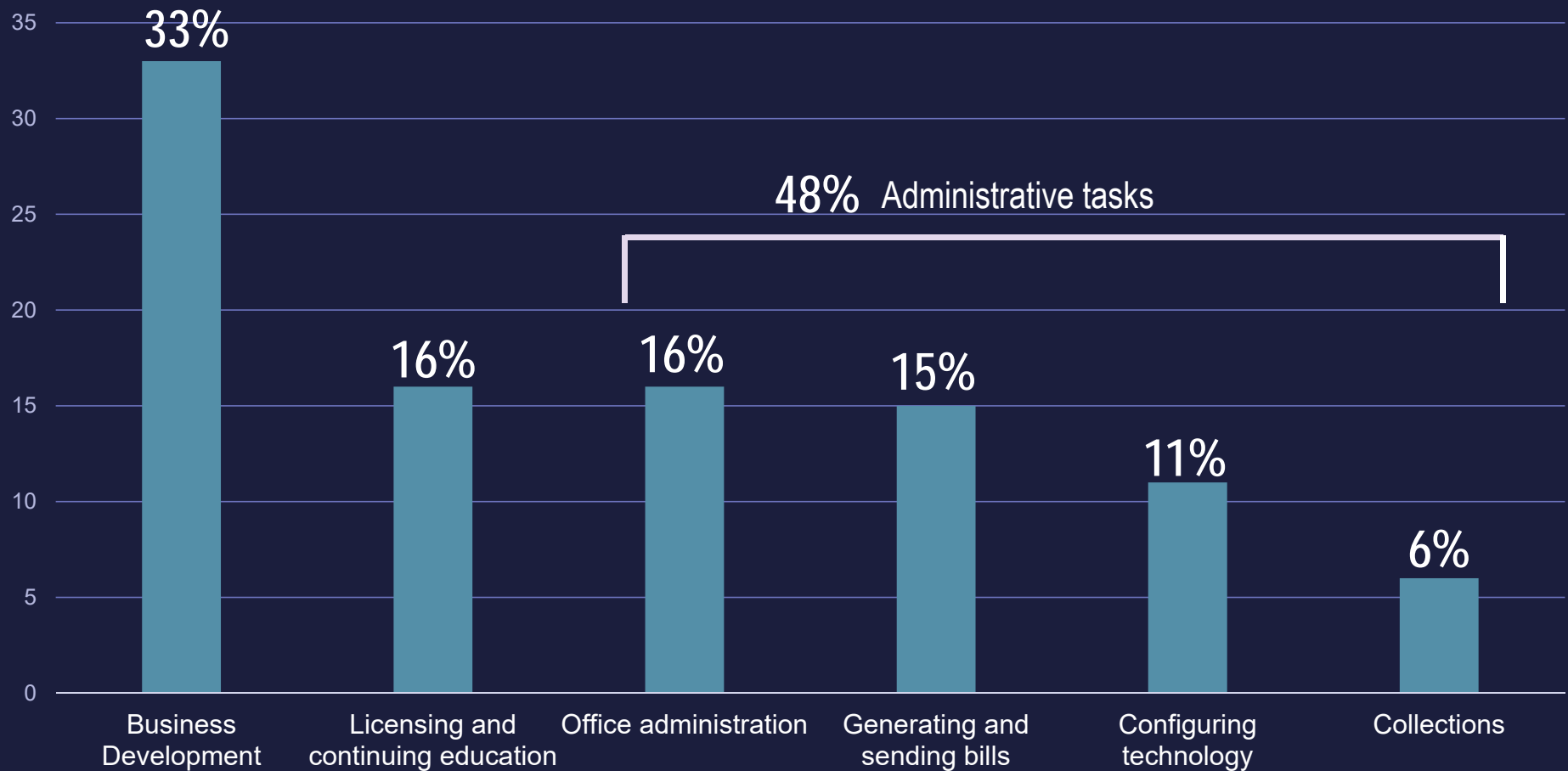
Analyzed:

- 1,026,038 matters
- 10,981,286.13 hours billed
- \$2,562,864,876.43 in billables



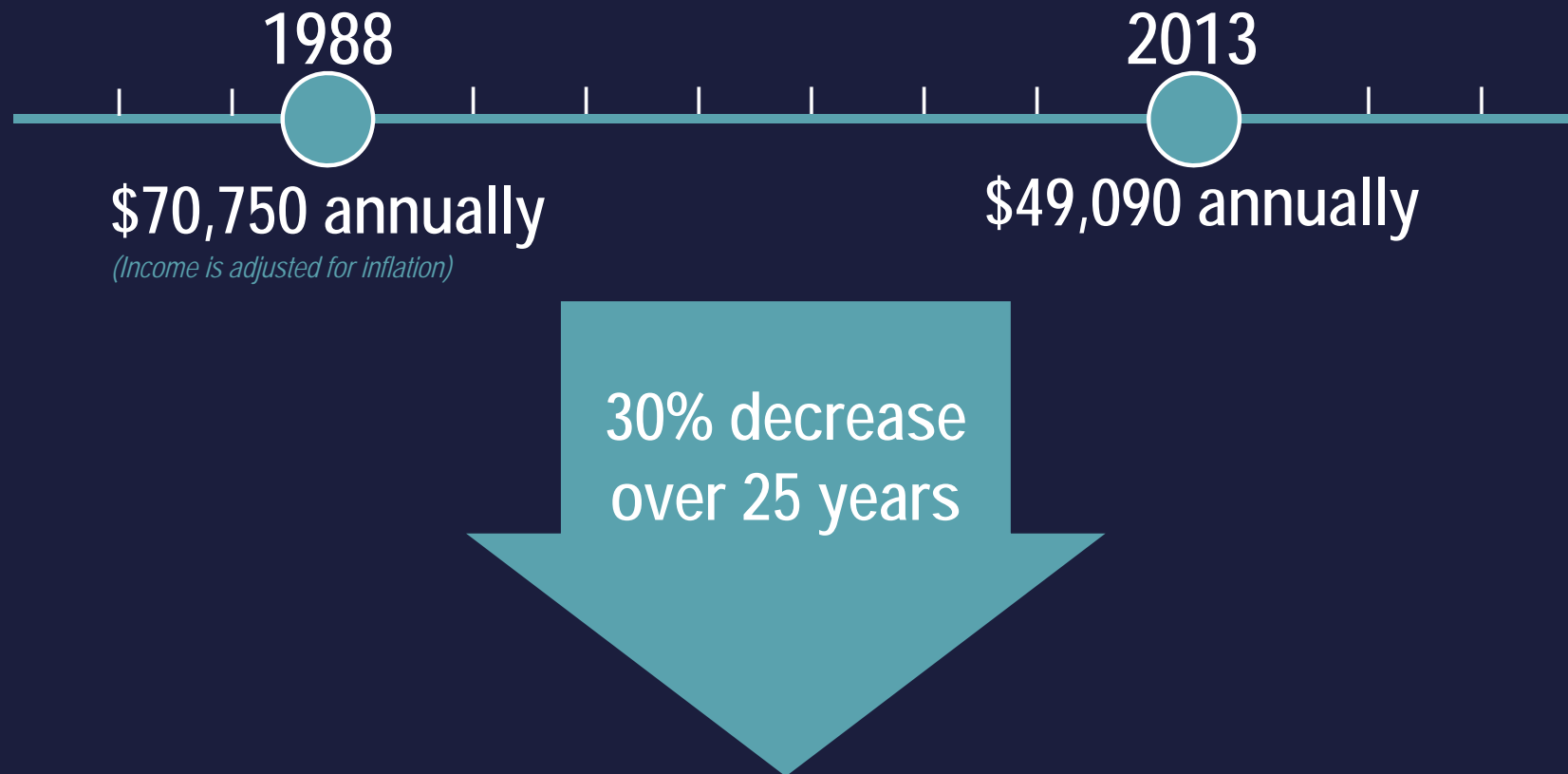
*Small firm lawyers serving people are struggling to earn a living.*

# The Missing Six Hours



Source: Clio Legal Trends 2017 Report

# Solo Practitioner Income



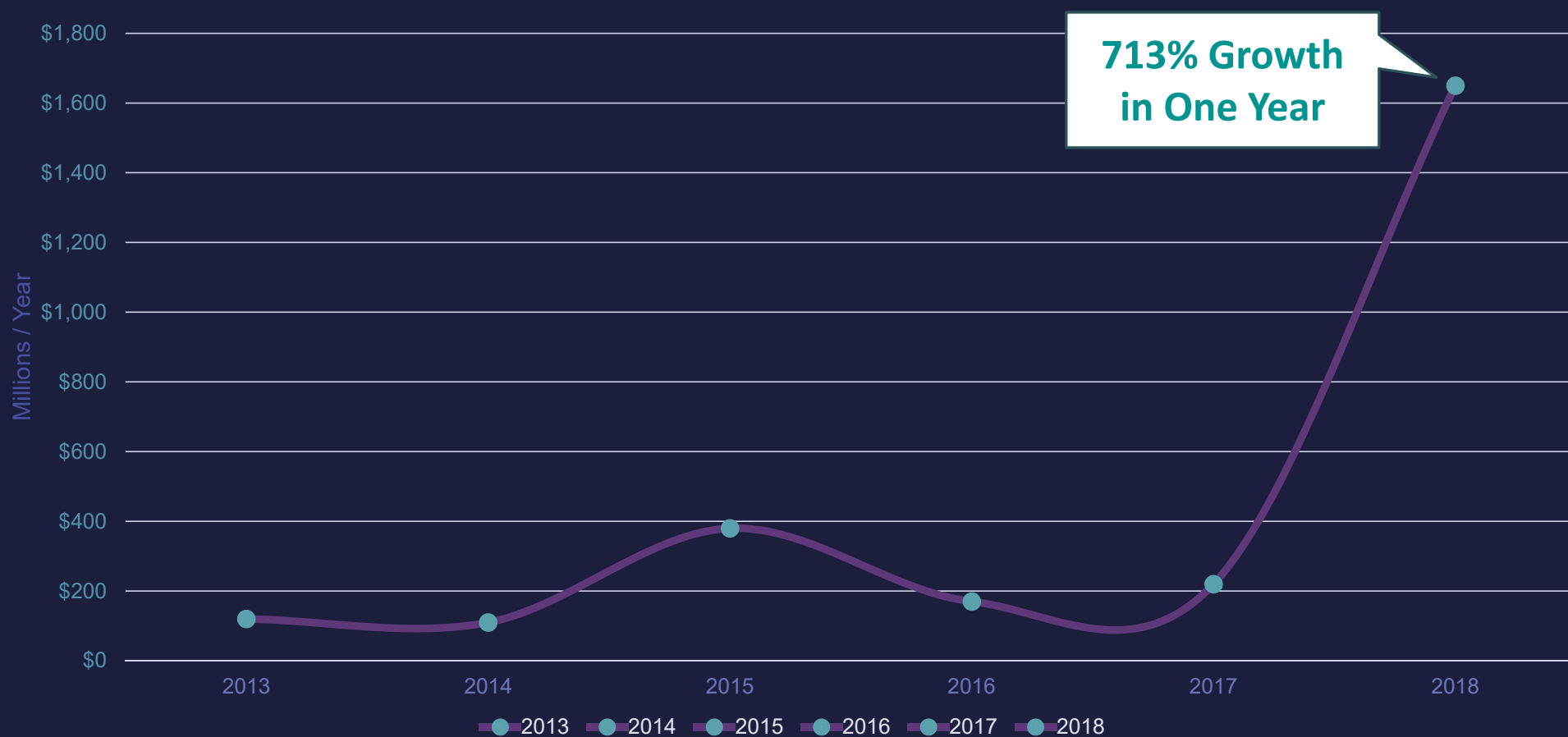
# Connecticut Lawyer Population

## CONNECTICUT

County	Lawyers
Fairfield	6,102
Hartford	7,960
Litchfield	525
Middlesex	532
New Haven	4,458
New London	817
Tolland	273
Windham	210



# Why Rethink Regulation? Technology



Source: Tracxn 2018 Sector Report

# Legal Tech Startup Landscape



## Business Development / Marketplaces



## Litigation Funding



## Legal Education



## E-discovery



## Practice Management



## Legal Research



## Case Mgmt / Analytics



## Document Automation



## Contract Management / Analysis



## Consumer



## Online Dispute Resolution







## Rules Aren't Working for Lawyers or Consumers:

- Inhibit innovation / use of technology / access to justice
- Unreasonably restrict ability to generate leads
- Arbitrarily prohibit giving “anything of value” except to nonprofits / approved referral services
- Restrict lawyers from sharing profits with allied professionals / accessing capital



# Lawyers Cannot:

- Pay "Anything of Value" for referral  
*Model Rule 7.2(b)*
- Share fees with "nonlawyers"
- Form partnerships with "nonlawyers"
- Practice in a PC or association if a "nonlawyer" owns any interest or is an officer / director  
*Model Rule 5.4*



Unless authorized by the state supreme court of that jurisdiction, no one can "practice law" there, with certain exceptions

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*Model Rule 5.5*

# National Resolutions

- CCJ Resolution 2 Urging Consideration of Regulatory Innovations Regarding the Delivery of Legal Services (Feb. 2020)
- ABA Resolution 115 (Feb. 2020) (encouraging U.S. jurisdictions to consider innovative approaches to access to justice)
- ABA Resolution 10A Adopting ABA Best Practice Guidelines for Online Legal Document Providers (Aug. 2019)
- ABA Resolution on AI (August 2019)

# Current Regulatory Reform Efforts



# REFERRALS

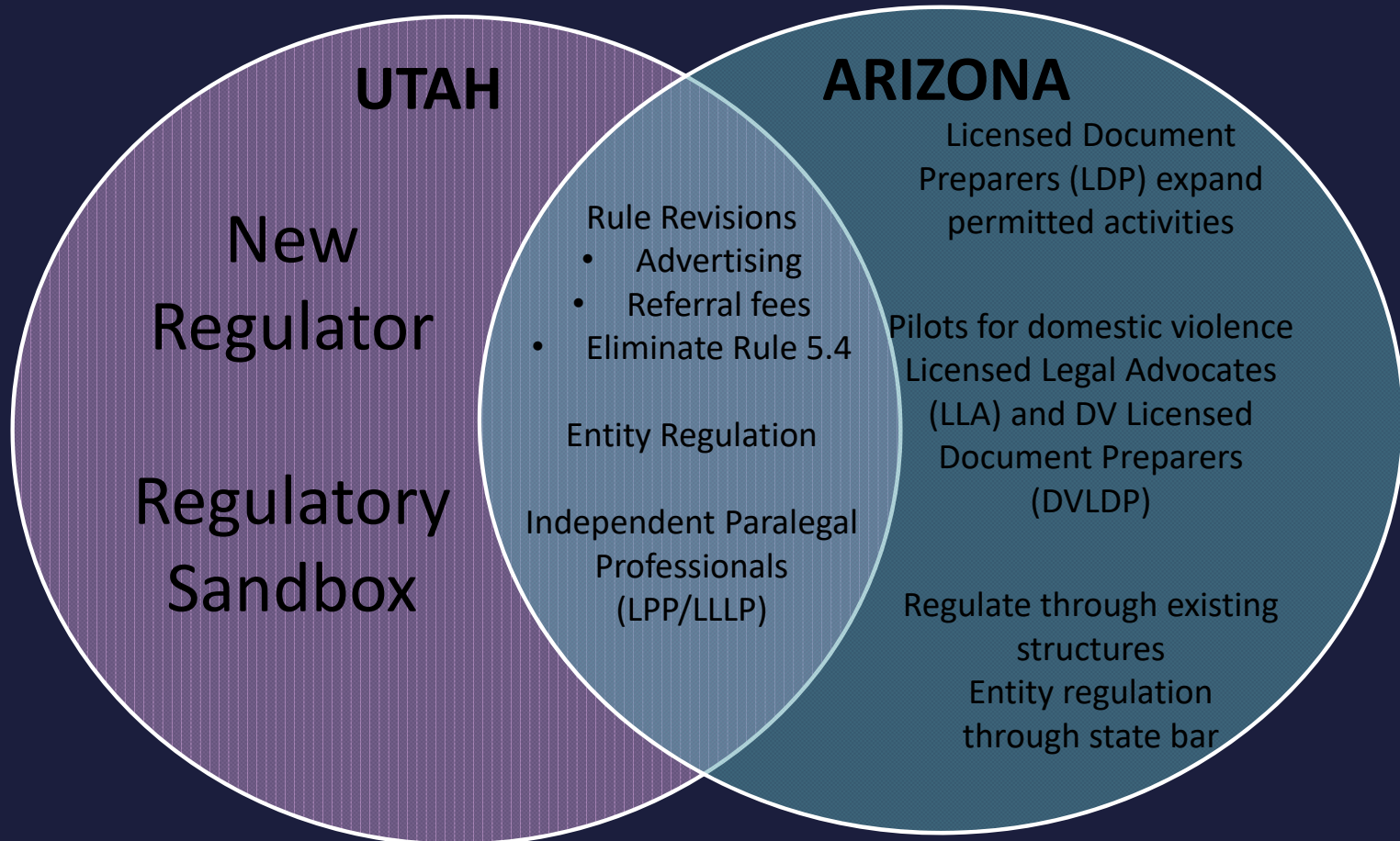


**NOTICE**

**UNAUTHORIZED  
PERSONS  
KEEP OUT**



# A Tale of Two States



# Entity Regulation

Utah		Arizona
Co-Ownership (Track A)		Alternative Business Structures (ABS) <ul style="list-style-type: none"><li>➤ Certification/Licensing for Entity</li><li>➤ Lawyer participation required</li><li>➤ Only those licensed to practice law may provide legal services in ABS</li><li>➤ Entity regulation through state bar</li><li>➤ Discipline through bar process</li></ul>
<ul style="list-style-type: none"><li>➤ Lawyer participation</li><li>➤ Notice</li><li>➤ Regulation/disciplinary action through state bar</li></ul>		
New Regulator (Track B)		
Phase I ( 2 years)	<ul style="list-style-type: none"><li>➤ Court operated &amp; regulated</li><li>➤ Risk based approach</li><li>➤ Regulatory Sandbox</li><li>➤ No required lawyer participation</li></ul>	
Phase II	<ul style="list-style-type: none"><li>➤ Independent non-profit</li><li>➤ Delegated authority</li><li>➤ All legal services</li><li>➤ Entities only or lawyers also?</li></ul>	



# Market Disconnect

**Lawyers**

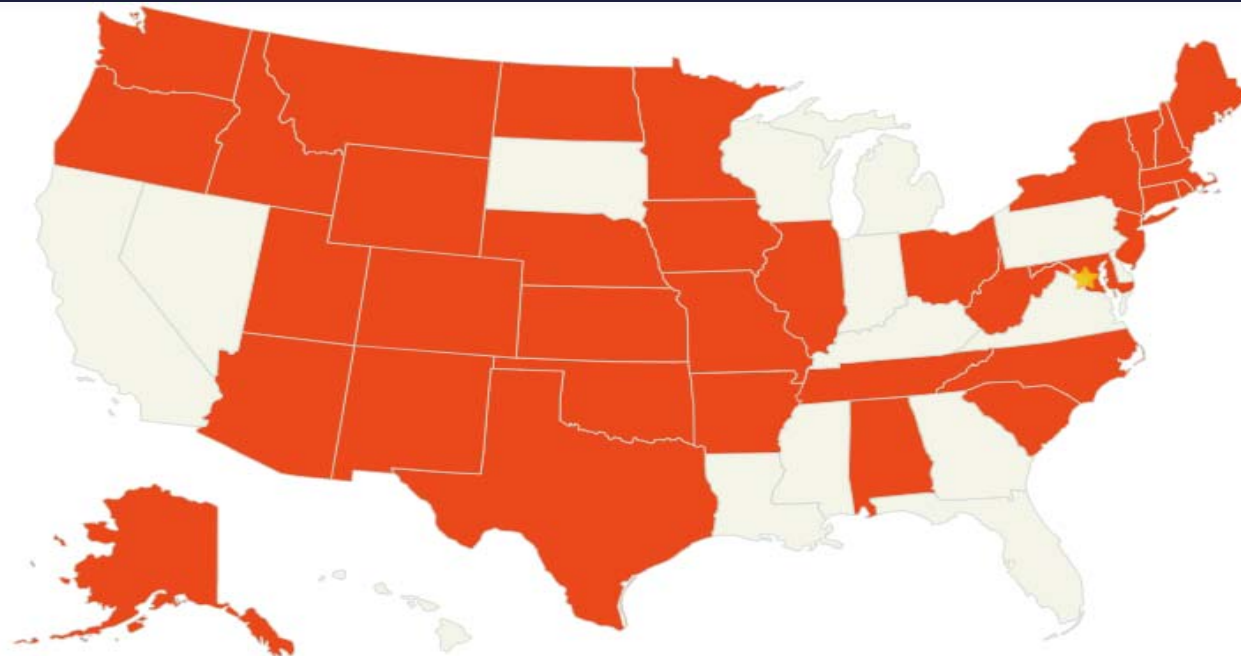
**vs**

**Customers**

# Effect of global pandemic?

- On court operations
- On lawyers
- On customers/clients/demand for legal help
- On licensing of new lawyers

## 37 States have adopted UBE



### LEGEND

- UBE Adopted
- UBE Not Adopted

### NOT SHOWN ON MAP

- District of Columbia
- Guam
- Northern Mariana Islands
- Palau
- Puerto Rico
- Virgin Islands





# CORE VALUES

# Core Values Include Those Beyond Duties To Existing Clients

## Lawyers Have Responsibilities

- to the legal system
- for the quality of justice







*"The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar."*

Preamble [12]



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# A Sharpened Call for Attorney Regulatory Reform

Posted on July 30, 2020 by Jayne Reardon



Last week I provided a roundup of actions by task forces across the U.S. that are exploring reforms to the regulation of legal services. This week I look at the issue of modernizing attorney regulations through the prism of historic events that are reshaping our lives in 2020.

COVID-19 and the ongoing social unrest following the death of George Floyd have provided disturbing insights into the public's ability to access our legal institutions and their interest in doing so. The system lawyers built is inadequate, if not irrelevant, to most Americans, many of whom would rather solve their legal problems on their own, if they even choose to pursue a challenge at all.

The COVID-19 pandemic has brought to light weaknesses in our legal and judicial systems, underscoring the urgent need for advancing regulatory reform. Americans are losing their jobs, their homes, and the sense of security that perhaps they once had. And, with the courts closed for months except for emergency matters, people have had no physical way to enforce their rights. There is a backlog in court cases and demand for legal services is pent-up.

If ever the legal profession needed an imperative to reform attorney regulation, we have it now.

## A Burgeoning Demand for Service

The U.S. Bureau of Labor Statistics recently reported a June unemployment rate of 11.1%, accounting for 17.8 million people. Although unemployment fell in May and June, the jobless rate and number of people who are unemployed are up by 7.6% and 12 million respectively since February. As of early June, over 44 million people had filed for unemployment benefits since the coronavirus shutdowns began.

In March, most state or local authorities issued a moratorium on evictions. The federal CARES Act, which was passed in early April, froze evictions for renters in federally subsidized housing. But as the country begins opening up moratoriums are ending. Surveys estimated that in May, nearly one-third of renters failed to pay their landlords on time. Experts predict an unprecedented crush of evictions, taxing our court resources and threatening millions of Americans with homelessness in the coming months and years.

According to a housing pulse survey conducted by the U.S. Census Bureau, nearly one-quarter of Illinois residents and residents nationally said they missed their last rent or mortgage payment or had little to no confidence they would be able to pay on time next month.

Media reports have shown landlords resorting to intimidation tactics for tenants who didn't pay their rent but couldn't be evicted. In Chicago, under the new COVID-19 Eviction Protection Ordinance, tenants can temporarily stave off eviction by providing landlords with information about the loss of income or employment. Experts agree that there will be an explosive number of evictions as the effects of the pandemic unfold.

Victims of domestic violence are also suffering disturbing challenges brought about by shelter-in-place orders. Experts are concerned that the stressors of sheltering in place may result in

increased incidents of domestic violence and child abuse. The victims are some of the most vulnerable people in society and must be able to protect their rights.

This is a precursor to what is expected to be an explosion in consumer legal problems in the areas of housing and domestic violence, as well as consumer debt and bankruptcy. This should translate to an increase in demand for legal services. However, for consumers to access legal services it's clear that there must be an option for delivering these services remotely through technology.

To the credit of our courts, they turned on a dime to institute remote hearings after the onset of the pandemic. As Illinois Supreme Court Justice Mary Jane Theis explained in a Reimagining Law interview, we have come to realize that court is a service, not a place. And there is no turning back.

Lawyers too have changed the way they practice to serve clients remotely. As Stephen Mayson pointed out, the pandemic has made clear that 21st-century legal services and dispute resolution will no longer be provided mainly through in-person one-on-one meetings.

## Social Unrest Magnifies Lack of Confidence

The protests and demonstrations that began with the death of George Floyd continue to hold a mirror up to our justice system. The image revealed isn't pretty. A significant number of Americans feel excluded from, even victimized by, the system that lawyers and judges embody.

Now, more than ever, the rule of law matters. As does the ability to rely on basic rights that are enforced by law. Yet studies show that people aren't turning to lawyers to solve their legal problems or to defend their legal rights in court.

People instead engage in self-help, underscoring a lack of confidence in the rule of law and lawyers' value to society. A recent report issued by the Institute for the Advancement of the American Legal System (IAALS) reveals interesting data on this point.

- A majority of participants expressed concerns about the fairness of the current civil process. Many concerns centered on perceptions of systemic racial or gender bias, differential treatment based on financial ability, and judicial biases.
- Participants reported a high level of interest in learning more about the legal system, particularly information on judicial decision-making, specific case information, court statistics, and useful terminology.

As we have written on this blog before, lawyers must build trust in the justice system. The lack of diverse participation in and support for our legal institutions undermines our legitimacy and compels a critical examination of the rules applicable to those institutions.

The Preamble to the Rules of Professional Conduct acknowledges that lawyers should “further the public’s understanding of and confidence in the rule of law and the justice system *because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.*”

## Attorney Regulation Stands in the Way

A potential cause of this disconnect between people with legal problems and lawyers are rules hampering lawyers’ ability to communicate their value to potential clients. Advertising rules prohibit lawyers from paying for referrals or soliciting clients. Rules prohibit lawyers from sharing fees with allied professionals who could help them serve clients more efficiently. And unauthorized practice of law rules prohibit legal services from being delivered by people or tech companies that are not licensed by the state supreme court where the service is rendered.

As Mayson wrote:

“ There is something deeply uncomfortable about the current regulatory approach that says, in effect: “Law is too complex for ordinary citizens, and too important to society, to allow anyone other than qualified lawyers to be regulated for its provision.” Even if we continue to stretch the boundaries of what we might mean by ‘lawyer’ in this context, it is still ultimately an exclusionary and protectionist position.

“ Worse still, that same approach also says: “But if you cannot afford a regulated lawyer, then we are prepared to leave you to your own devices.” At this point, presumably, the law is no longer to be regarded as ‘too complex or too important.’ We are then knowingly driving people into doing nothing, or representing themselves, or having to rely on hard-pressed and precariously funded providers of pro bono or voluntary services, or engaging someone who is not regulated.

Rohan Pavuluri, CEO of Upsolve and a member of the Legal Services Corporation’s Emerging Leaders Council, recently lambasted attorney regulations as promoting racial inequity and guaranteeing that Black Americans don’t have equal opportunities and equal rights under the law.

He says that the high cost of legal education keeps the number of Black attorneys at a low level. Moreover, he writes that unauthorized practice of law rules guarantee that Black people won’t have equal access to our justice system by limiting the supply of helpers available, which drives up the cost of legal assistance.

His assertion that attorney regulations should be reformed to invite new kinds of legal services and providers into the market alongside traditional lawyers is echoed by IAALS. In a recent post, IAALS organizational leaders explained how the reform models in Utah and other states can unlock legal regulations for the benefit of a larger swath of our population.

## Prioritizing the Public Interest

As we consider attorney regulation reform, it's important to remind ourselves of the words of the Preamble. As a self-governed profession, we have "a responsibility to ensure that [our] regulations are conceived *in the public interest* and not in furtherance of parochial or self-interested concerns of the bar."

What does "in the public interest" mean? We have largely focused on protecting consumers from harm caused by incompetent or inappropriate legal services. While that's important, there is a predicate meaning for "the public interest" that Mayson discussed: the public interest of furthering the rule of law and the administration of justice.






It has come into sharp focus that traditional attorney regulation has primarily centered on protecting existing clients from harm. However, we haven't been focusing enough, if at all, on furthering the rule of law and the administration of justice.

We can no longer justify attorney regulation fashioned around the perspective of some lawyers and their shrinking client bases. How can we continue to support a regulatory framework that is built around the expectations and practices of a minority group of providers? What about members of the public and potential consumers? And how about the allied professionals who are willing and able to deliver legal services in new and efficient ways?

Leaders from various jurisdictions around the country are reimagining legal services regulation to better serve in the 21<sup>st</sup> century. Kudos to them. These changes have the potential to revitalize the profession and our society.

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### Jayne Reardon

Executive Director at Illinois Supreme Court Commission on Professionalism

As a prior trial lawyer, Jayne leads lawyers to embrace the transformative possibilities of future law practice. As a prior disciplinary counsel, Jayne is passionate about promoting the core values of the legal profession. She is a graduate of the University of Michigan Law School and the University of Notre Dame. Jayne lives in Park Ridge, Illinois with her husband and those of her four children who are not otherwise living in college towns and beyond.

## Illinois Supreme Court Commission on Professionalism

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# Attorney Regulatory Reform: Where Do We Stand?

Posted on July 22, 2020 by Jayne Reardon



The legal profession is under pressure. A growing number of Americans who experience legal problems receive no or inadequate legal help. Increasingly, people are representing themselves in court rather than engaging a lawyer. At the same time, lawyers, especially those who represent



individuals and small businesses, are struggling financially. This situation is a serious market failure and has been brewing for years.

Some believe attorney regulatory reform could help address the problem. Over the last couple of years, several bar associations and state task forces (including the Chicago Bar Association/Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation), have been analyzing the changing legal landscape and considering whether some Rules of Professional Conduct should be amended to allow lawyers to leverage modern practices, including technology, to better serve consumers.

The events of 2020 are a clarion call to continue this work at a faster, but still careful, pace. The global pandemic has revealed weaknesses in the justice system and forced lawyers and judges to adjust how we work and deliver justice through our court system. Moreover, the ongoing social unrest following the death of George Floyd has revealed the depth of public distrust in the foundations of our constitutional democracy. If current attorney regulations hamper our ability to address these problems, they should be changed post-haste.

As readers of this blog know, I have been following developments in this area for some time. It is gratifying to see several task forces generating reports and recommendations on attorney regulatory reform. What is more gratifying is that implementation is already taking place. I share an update on reform efforts in several key states below.

## Illinois

After nine months of intense work, the CBA/CBF Task Force on the Sustainable Practice of Law & Innovation released its report and recommendations today. The task force, on which I serve, has focused on addressing the growing disconnect between the legal needs of the public and lawyers who could serve them.

Consumers are not having their legal needs met and yet lawyers struggle to find clients and sustain a practice. A premise of the task force's work is that this market failure may be partly explained by outmoded regulations that prevent lawyers from effectively advertising their services, connecting with clients, and leveraging technology and other professionals in the delivery of legal services.

The task force, which includes more than 50 members from across the state and from all corners of the profession, developed a series of recommendations that fall into three categories:

- Helping lawyers connect to potential clients and offer affordable and accessible solutions.
- Helping people recognize they have a legal problem and identify where they can turn for affordable and reliable legal help.

- Spurring innovation in the legal profession and the delivery of its services.

In each category, the task force suggests changes to the existing Rules of Professional Conduct and/or the adoption of new regulatory models to help achieve the goal.

A 30-day public comment period on the report and recommendations runs through August 21, 2020. The task force seeks all feedback, including suggestions for different solutions. You can submit written feedback or sign up to participate in one of the town hall Zoom meetings, currently scheduled for August 11 and 12, on the task force webpage. I encourage you to share your comments and suggestions.

Meanwhile, as I have written about before, the Illinois Attorney Registration and Disciplinary Commission (ARDC) has an Intermediary Connecting Services Proposal that is proceeding along a parallel track. The proposal puts forth a framework for the ARDC to register and regulate services that connect lawyers with clients and suggests amendments to Rule 7.2 to make clear that lawyers may pay a fee to such services without running afoul of the rules prohibiting lawyers from giving anything of value to receive a recommendation or from splitting fees with nonlawyers.

An extended comment period has ended, and the ARDC is in a consultation and collaboration period with those who issued comments and other interested parties to explore issues that were raised. It is possible that the proposals of the ARDC and the CBA/CBF Task Force will be harmonized during this time. The consultation and collaboration period ends August 27, 2020, and the ARDC has 21 days thereafter to submit its proposal to the Illinois Supreme Court.

## Utah

The Utah Supreme Court (supported by the Institute for the Advancement of the American Legal System and the National Center for State Courts) is the furthest along in implementing the recommendations of its task force. The reform proposal calls for amending certain Rules of Professional Conduct and creating a novel regulatory system involving individuals and companies who are not lawyers but provide legal services.

The primary recommended changes to the Rules of Professional Conduct fall into two categories:

- Simplifying the advertising rules. This means eliminating most provisions in Utah's Rules 7.1 through 7.5 and modifying Rule 7.1 to prohibit attorneys from making false or misleading claims about themselves or their services or interacting in a way that involves coercion, duress, or harassment.
- Amending Utah's version of Rule 5.4 by allowing lawyers or law firms to pay for client referrals and share fees with nonlawyers as long as the professional independence of the lawyer is preserved (Rule 5.4A). In addition, allowing lawyers to work together with other professionals

in structures where nonlawyers have an ownership interest as long as the professional independence of the lawyer is preserved (Rule 5.4B).

As for legal companies or individuals who are not lawyers, Utah Supreme Court Standing Order 15 created an Office of Legal Services Innovation. The office is answerable to the Court and is responsible for developing, overseeing, and regulating non-traditional legal providers and services in the regulatory sandbox.

The idea of the sandbox is to experiment and test regulations in a controlled environment, collecting data to see what works before going through the arduous process of creating rules. If a lawyer goes into business with an entity in the sandbox, the lawyer would be within the regulatory scope of the sandbox and Rule 5.4B. A two-year pilot phase for the regulatory sandbox is planned, and applications for legal services offerings are being accepted.

## Arizona

The Arizona Supreme Court has taken similar steps to implement attorney regulatory reform recommendations from its task force. A petition was filed with the Court to eliminate its Rule 5.4, which prohibits fee-sharing with nonlawyers and forming partnerships with nonlawyers in the practice of law. The rationale is that the professional independence of the lawyer is protected through other rules, including the conflict rules.

The petition requests that the Court adopts a framework for regulating entities, which may consist of both lawyer and nonlawyer owners. In addition, the Arizona petition recommends easing the anti-marketing rule (Rule 7.2) and adopting a new category of nonlawyer legal services providers called limited license legal practitioners (LLLPs).

Similar to programs adopted in Washington (Washington's program has since been abandoned) and Utah, this new category of licensed professionals could perform the routine, relatively straight-forward, and high-volume work that is rarely done by lawyers. These practitioners could also appear in court and administrative hearings in limited practice areas. The Court is expected to rule on the implementation proposals in August.

## California

Meanwhile, in California, the state bar is considering the implementation of wide-ranging attorney regulatory reform recommendations that the Task Force on Access Through Innovation of Legal Services issued last summer. As recommended by the task force, the Board of Trustees formed a working group to explore increasing access to legal services through the limited licensure of paraprofessionals. This work will be completed by July 2021.

More recently, the Trustees approved a Working Group on Closing the Justice Gap to explore developing a regulatory sandbox. The working group also considering possible changes to existing laws and rules that inhibit the development of innovative legal service delivery systems and other new delivery systems that are created through the collaboration of lawyers, law firms, technologists, entrepreneurs, and others.

The working group may consider relaxing rules and laws regarding the unauthorized practice of law, fee-sharing, and nonlawyer ownership. In addition, the working group is charged with assessing concepts for amendments to the rules governing lawyer advertising and solicitation and fee-sharing with nonlawyers. This work is slated to be completed by September 2022.






## Next steps


Momentum around the country appears to be building. The ABA's Center for Innovation is tracking regulatory reform jurisdiction by jurisdiction. Other jurisdictions considering or implementing regulatory reform to better serve the profession and the public include Connecticut, New Mexico, Florida, and Washington, D.C.

I will explore the increased urgency for advancing attorney regulatory reform efforts in a post next week. Stay tuned.

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**Jayne Reardon**  
Executive Director at Illinois Supreme Court Commission on Professionalism

As a prior trial lawyer, Jayne leads lawyers to embrace the transformative possibilities of future law practice. As a prior disciplinary counsel, Jayne is passionate about promoting the core values of the legal profession. She is a graduate of the University of Michigan Law School and the University of Notre Dame. Jayne lives in Park Ridge, Illinois with her husband and those of her four children who are not otherwise living in college towns and beyond.

CATEGORIES: Future Law

[Edit](#)

## **REGULATORY REFORM RESOURCE LINKS**

### **National**

#### **Conference of Chief Justices**

[Resolution 2](#) adopted February 2020 urged state supreme courts to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services, while ensuring necessary and appropriate protections for the public.

#### **American Bar Association**

ABA [Resolution 115](#) (Feb. 2020) (encouraging U.S. jurisdictions to consider innovative approaches to access to justice)

ABA [Resolution 10A](#) Adopting ABA Best Practice Guidelines for Online Legal Document Providers (Aug. 2019)

Legal Innovation [Regulatory Survey](#), ABA Center of Innovation (Aug. 2019, with ongoing updates)

#### **Institute for the Advancement of the American Legal System (IAALS)**

1. Unlocking Legal Regulation [Portal](#)
2. [Knowledge Center](#) for Regulation Reform has up to date information on regulatory reform efforts across the country

#### **Association of Professional Responsibility Lawyers**

The APRL website is populated with many resources related to the Future of Lawyering Committee generally and related to the [Rule 5.4 Subcommittee](#) in particular.

### **State-by-State**

#### **Arizona**

1. Final Task Force [Report](#): Task Force on the Delivery of Legal Services
2. [Website](#) of Legal Services Task Force
3. Arizona Supreme Court Rules [Forum](#)

#### **California**

1. Landscape [Report](#) by Prof. Bill Henderson
2. 2019 California Justice Gap [Survey](#)
3. Final [Report & Recommendations](#), State Bar of California Task Force on Access Through Innovation of Legal Services (ATILS) (Mar. 6, 2020)

#### **Connecticut**

State of the Legal Profession [Task Force](#)

#### **District of Columbia**

Global Legal Practice Committee sought comments on RPC 5.4 including ABS and MJP early in 2020 and since then is [reportedly](#) in “study phase.”

## Florida

Florida Bar [Special Committee](#) to Improve the Delivery of Legal Services (“will address lawyer advertising, referral fees, fee splitting, entity regulation, regulation of online service providers, and regulation of nonlawyer providers of limited legal services”); projected completion date July 1, 2021)

## Illinois

1. [Report and Recommendation](#) of Chicago Bar Association / Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation
2. Illinois Attorney Registration & Disciplinary Commission Intermediary Connecting Services [Proposal](#)

## New Mexico

Supreme Court [endorses](#) proposals in Report: Innovation to Address the Access to Justice Gap

## Utah

1. Final Task Force [Report](#): Narrowing the Access to Justice Gap by Re-Imaging Regulation
2. Utah Legal [Sandbox](#)
3. Utah Supreme Court’s [press release](#) about unanimous vote (8/13/20) to amend Rule 5.4 to allow for non-lawyer ownership and investment and establishing a regulatory sandbox.

## Washington

[Established and subsequently phased out](#) the Limited License Legal Professional (LLLT) as a professional other than J.D. to deliver some legal services.