

Innovation to Address the Access to Justice Gap



Report to the New Mexico Supreme
Court of the Ad Hoc Licensed Legal
Technicians Workgroup

December 2019

CHAMBERS OF
DONNA J. MOWRER
DISTRICT JUDGE
Division IV



ROOSEVELT COUNTY COURTHOUSE
109 WEST FIRST, SUITE 202
PORTALES, NEW MEXICO 88130
Ph: (575) 359-6922
Fax: (575) 356-4930

STATE OF NEW MEXICO

Ninth Judicial District Court

December 23, 2019

New Mexico Supreme Court
Post Office Box 848
Santa Fe, NM 87504-848

Dear Chief Justice Nakamura, Justice B. Vigil, Justice M. Vigil, Justice Bacon and Justice Thomson:

Enclosed please find the report ordered by this Court on May 13, 2019. As you will recall, the impetus for this workgroup was a team of judges, court staff and bar representatives attending the Conference of Chief Justices Innovation Summit in May 2018.

Following the summit, the Innovation Team identified projects worthy of study and implementation in New Mexico to address the access to justice gap in our state. This workgroup was tasked with studying alternative methods to address unmet legal needs for low and moderate needs individuals, specifically considering an assessment of licensed legal technicians or other non-attorney professionals.

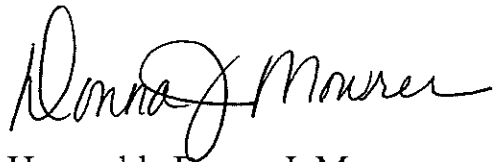
In 2015, The Access to Justice Commission recommended that the Supreme Court consider Limited Licensed Legal Technicians (although with a name change). This group would like to thank ATJ for their report and recommendation. Our report to you today contains a modified recommendation regarding further study of Licensed Legal Technicians.

Our report also makes three additional recommendations for the Supreme Court to consider. The workgroup felt these recommendations provided the best potential to ease the access to justice gap for our citizens.

Many of the materials utilized in this research project are available for your reference on the LLT Dashboard at the State Bar of New Mexico's website. The dashboard can be found at: <https://www.nmbar.org/LLLTworkgroup>.

To quote a member of our committee, "If our goal as a judiciary is justice, then the law must adapt, rather than be a barrier to justice."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Donna J. Mowrer". The signature is fluid and cursive, with a large initial "D" and "M".

Honorable Donna J. Mowrer,
Ninth Judicial District Court Judge, Div. IV
Ad Hoc New Mexico Licensed Legal Technicians Workgroup Chair

Introduction

Information is easy to come by now, just enter a legal search term in virtually any search engine and one can receive thousands of hits. Self-diagnosis is possible, although not recommended, with WebMD online. A quick Google search of “how to do a will online” yielded more than 22 billion hits. Some of those hits included Rocket Lawyer, Legal Zoom and other online legal services. However, this increased access to information about the law “has done nothing to reduce the access-to-justice gap.”¹

Despite the best efforts of the Bar and Supreme Courts across the United States, “most people living in poverty and the majority of moderate-income individuals, do not receive the legal help they need.”² A staggering 86% of low-income Americans receive either inadequate or no legal assistance for their civil legal problems each year.³ Every licensed attorney in the United States would have to perform more than nine hundred *pro bono* hours each to even begin “to provide some measure of assistance to all households with legal needs.”⁴

¹ OSB FUTURES TASK FORCE, THE FUTURE OF LEGAL SERVICES IN OREGON: EXECUTIVE SUMMARY, 4 (Jun. 2017),

http://www.osbar.org/docs/resources/taskforces/futures/FuturesTF_Summary.pdf

² ABA COMM’N ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES-11 (2016),

http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

³ LEGAL SERVICES CORPORATION, THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 30, 55 N.32 (Jun. 2017),

<http://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>

(stating that “This figure includes problems for which respondents indicated (1) they sought no help of any kind (2) they sought some sort of assistance from others and/or information online, but they did not seek the help of a legal professional, (3) they sought help from a legal professional, but were unable to get it, or (4) they sought and received help from a legal professional, but felt that they did not or would not be able to get as much legal help with the issue as they felt they needed.”)

⁴ ABA COMM’N ON THE FUTURE OF LEGAL SERVICES, *supra* note 2, at 14

http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

No program has significantly reduced the access to justice gap.⁵ Not only are the low-income individuals not able to receive legal help, the middle class has also been effectively priced out of an attorney. “Our laws and procedures are too complex, and legal advice too expensive, for poor and even middle-class Americans to get help and vindicate their rights.”⁶

The access to justice gap can be attributed to:

- A lack of attorneys in rural and underserved areas;
- The high cost of legal services;
- Generational changes;
 - Active members of the bar are aging and retiring, and not being replaced by younger members
 - The number of students entering law school has declined and those graduating are not entering a traditional law practice.

“The real world of legal problems looks like an emergency room, with too many patients and too little time and money.”⁷ Consequently it is easy to diagnose the problem. However, finding solutions is much more difficult. Our prior efforts such as on-line forms, self-help centers, unbundled legal services, endorsing limited representation, scribing programs, etc. have provided some relief. Nevertheless, the problem still exists and is growing. The legal emergency room is still too full with patients.

The medical system would triage the patients in the emergency room, treating those most ill or most seriously injured first. Paraprofessionals have been used for years in offering medical care to patients through nurse practitioners, physician’s assistants, midwives, etc. These medical professionals and paraprofessionals provide cheaper, faster care and triage, referring when necessary to surgeons, laboratories, and radiology. All these other professionals and paraprofessionals then surround the patient and consult, becoming the patient’s care team.

The legal system should triage as well. This report will examine the nature of the problem in New Mexico, identify the gap in both access to attorney representation,

⁵ *Id.*

⁶ Benjamin Barton & Stephanos Bibas, *REBOOTING JUSTICE: MORE TECHNOLOGY, FEWER LAWYERS AND THE FUTURE OF THE LAW-4* (2017).

⁷ *Id.* at 7.

and the cost of that representation. The report will then outline possible steps, recommending four that this Court should consider. The suggestions identified in this report will not only address the low hanging fruit but will offer other solutions to more long-standing problems.

What this work group is proposing can be considered disruptive innovation. The Theory of Disruptive Innovation claims that true disruptive innovations begin by examining areas that are often overlooked and truly disruptive innovations will often initially be considered inferior.⁸ Most innovation, whether disruptive or not, often starts as a small scale experiment.⁹ Clayton Christensen in his book *The Innovator's Dilemma: The Revolutionary Book that Will Change the Way you do Business*, says a disruptive product or service addresses a market that previously was not properly served or it offers a simpler, cheaper or more convenient alternative to an existing product or service.¹⁰ Disruptive innovation is not negative, consider positive examples such as the internet, cell phones, artificial intelligence, and even online dispute resolution.

No one program or tool will fully mitigate the access to justice crisis. However, even with a small innovation, the gap could be reduced.

The Nature of the Problem in New Mexico

Approximately 97 percent of the land of the United States is considered rural.¹¹ The 2010 U.S. Census data shows that while some 60 million people live in areas

⁸ Clayton M. Christensen, Michael E. Raynor & Rory McDonald, *What is Disruptive Innovation?* Harv. Bus. Rev., Dec. 2015, 44-53, <https://hbr.org/2015/12/what-is-disruptive-innovation>.

⁹ *Id.*

¹⁰ Clayton M. Christensen, *THE INNOVATOR'S DILEMMA: THE REVOLUTIONARY BOOK THAT WILL CHANGE THE WAY YOU DO BUSINESS*, xviii (1997)

¹¹ The U.S. Census Bureau defines rural America as an area or population that is outside of an urban area and has less than 2,500 residents. Michael Ratcliffe et. al., *DEFINING RURAL AT THE U.S. CENSUS BUREAU* 1 (Dec. 2016) https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf. See also Press release, U.S. Census Bureau, *New Census Data Show Differences Between Urban and Rural Populations-* (Dec. 2016). <https://www.census.gov/newsroom/press-releases/2016/cb16-210.html>; CONF. OF STATE COURT ADMINISTRATORS, *COURTS NEED TO ENHANCE ACCESS TO JUSTICE IN RURAL AMERICA* (2018),

defined as rural, the population there is declining dramatically while urban growth expands.¹² New Mexico, as the fifth largest state, is no different. Urban areas inside the Rio Grande corridor continue to grow, while rural populations in New Mexico decline. Attorney demographic data is no different.

Geographic Distribution of Active Attorneys in New Mexico¹³

New Mexico has an average of one attorney for every 430 residents, but New Mexico's counties show a significant disparity in the number of attorneys per population. According to New Mexico State Bar records, three counties have no "active"¹⁴ attorneys with their primary place of business in that county: De Baca, Harding, and Hidalgo. Thirty-three percent of New Mexico counties have ten or fewer attorneys and 21% of the counties have five or fewer lawyers. Citizens in areas such as De Baca County are faced with a Hobson's Choice, go without an attorney or pay an out of town attorney and incur not only travel costs for the attorney to attend proceedings, but incur travel costs for the litigant to meet with the attorney.

The range of active attorney densities in the state runs from one attorney per 147 residents in Santa Fe County to one attorney per 4,341 residents in Guadalupe County.¹⁵ However, a per-county tally does not provide the full picture, as active

<https://cosca.ncsc.org/~/.media/Microsites/Files/COSCA/Policy%20Papers/Policy-Paper-1-28-2019.ashx>

¹² 2010 CENSUS URBAN AND RURAL CLASSIFICATION AND URBAN AREA CRITERIA, U.S. Census Bureau (2010), <https://www.census.gov/geo/reference/ua/urban-rural-2010.html>.

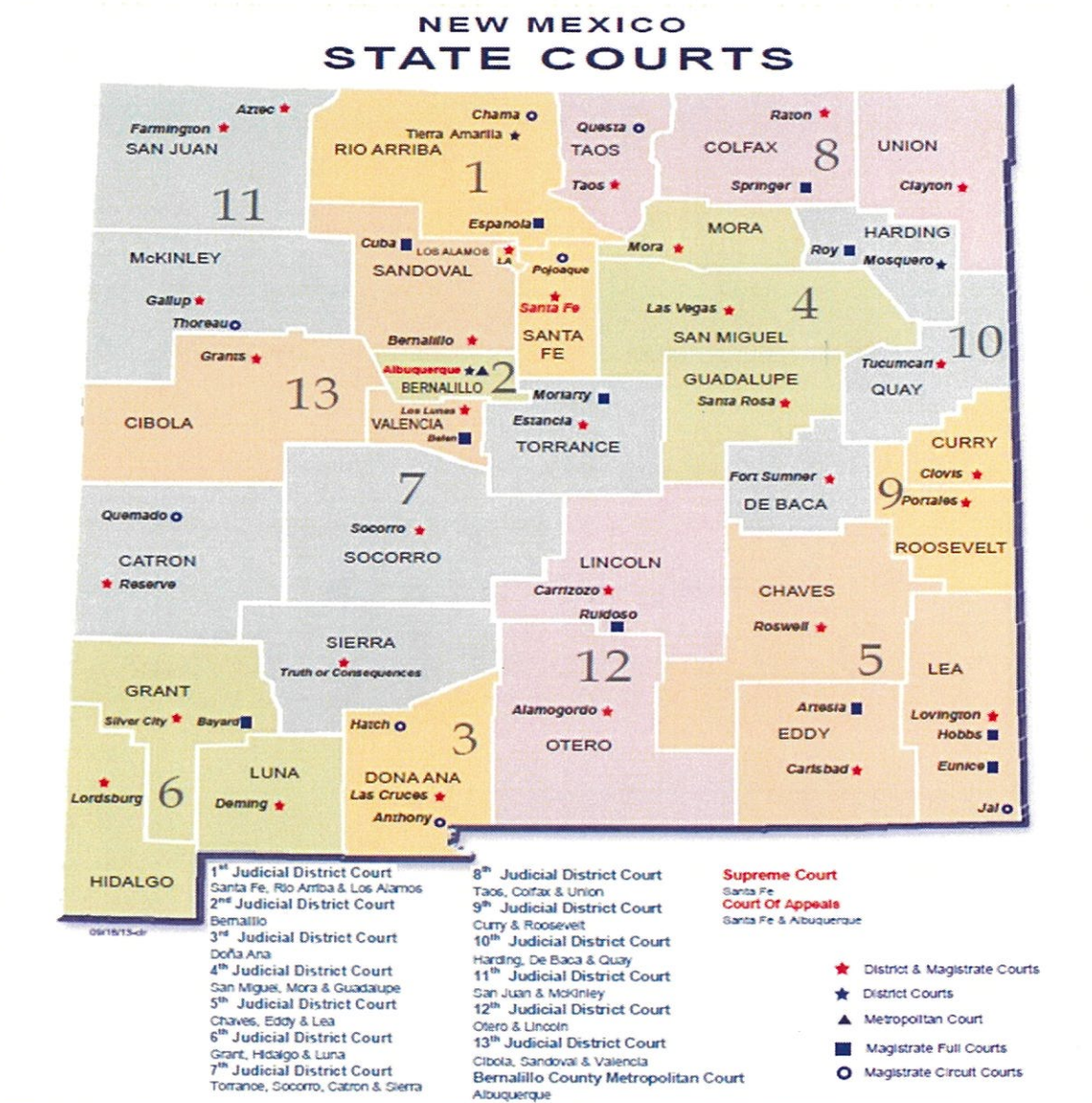
¹³ All attorney data is derived from the State Bar of New Mexico's member database, obtained on May 31, 2019 and July 17, 2019.

¹⁴ An "active" attorney, for the purpose of this report, is defined as an active-status, non-judge and non-limited license attorney. A limited license attorney is, by definition, an employee of a state or municipal government, the public defender's office, or a civil legal services provider. Not all lawyers employed by governmental entities or legal services providers have limited licenses, but their employment precludes their providing other legal services. *See* Rule 15-301.1 and 301.2 NMRA.

¹⁵ In 2009, the national average attorney density was one attorney for every 429 U.S. residents, which is consistent with the New Mexico average. Legal Services Corporation, *Documenting the Justice Gap in America* 19 (2009),

attorneys may office in one county but serve residents in several counties. The map of state judicial district courts provides useful geographic groupings and will be used here instead of breaking up the data below by county. See Figure 1, New Mexico Judicial District Map.

Figure 1: New Mexico Judicial District Map, State Bar of New Mexico¹⁶



<https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGainAmerica2009.pdf>.

¹⁶ New Mexico State Courts Map, available online at <https://www.nmcourts.gov/state-courts.aspx>

When viewed by judicial district, the data shows a range of attorney densities ranging from one attorney per 227.97 residents in the First Judicial District to one attorney per 1,493.74 residents in the Sixth Judicial District. See Figure 2, Attorney Density by State Judicial District.

Figure 2: Attorney Density by State Judicial District (sorted by attorneys per population)

Judicial District	Population ¹⁷	Attorneys	Per Population
First Judicial District	247,572	1,086	227.97
Second Judicial District	789,810	2,992	263.97
Eighth Judicial District	60,987	93	655.77
Third Judicial District	224,286	287	781.48
Fifth Judicial District	196,527	200	982.64
Fourth Judicial District	40,902	39	1,048.77
Thirteenth Judicial District	249,981	236	1,059.24
Tenth Judicial District	12,168	11	1,106.18
Eleventh Judicial District	177,276	158	1,122.00
Twelfth Judicial District	96,441	81	1,190.63
Seventh Judicial District	50,244	40	1,256.10
Ninth Judicial District	75,903	57	1,331.63
Sixth Judicial District	68,712	46	1,493.74

The highest concentration of active attorneys by judicial district is concentrated in the First, Second, and Eighth Judicial Districts, although we acknowledge,

¹⁷ U.S. CENSUS, ANNUAL ESTIMATES OF HOUSING UNITS FOR THE UNITED STATES, REGIONS, DIVISIONS, STATES, AND COUNTIES: APRIL 1, 2010 TO JULY 1, 2018: 2018 POPULATION ESTIMATES, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2019_PEPANNHU&prodType+table. Throughout this section of the report, population and demographic data is based in census information, which is not current to 2019. The dates of each section of census data are provided where used.

anecdotally, that Bernalillo County attorneys often also practice in the Thirteenth Judicial District and similar cross-district practice likely exists throughout the state. Note, too, that these numbers do not consider New Mexico-licensed active attorneys with principal places of business along the New Mexico border in Texas, Arizona, or Colorado.

While the average population per active attorney state-wide is 430, only two districts – the state’s first and third most populous – enjoy a higher density of attorneys than the average, and eight of the thirteen judicial districts have per-population numbers above 1,000 residents per attorney.

Of course, these numbers do not paint a complete picture, as many of the attorneys in Santa Fe, for example, practice on behalf of state or federal government and are not available to work with private clients. Other attorneys across the state are prosecutors, public defenders, work for Child Support or the Children, Youth and Families Department. Still others serve as in-house counsel or lobbyists or may practice in areas applicable to only a small portion of the population, making them unavailable to or inappropriate to the needs of the average rural resident.

In its 2009 report, *Documenting the Justice Gap In America*, the Legal Services Corporation estimated that nationally “there is one lawyer providing personal legal services (that is, services aimed at meeting the legal needs of private individuals and families) for every 429 people in the general population.”¹⁸ Even an optimistic reading of the averages for New Mexico suggests that less than half of the state’s population has the access to legal services enjoyed by the country as a whole, and that this scarcity is concentrated in the state’s rural counties.¹⁹

¹⁸ Legal Services Corporation, *supra* note 16.

¹⁹ About 20% of the nation lives in a rural area, but only 2% of the small law practices are in a rural area. See Lisa Pruitt, Amanda L. Cool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-state Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 22 (2018); Council of State Governments, *Discovering Rural America*, Capitol Ideas Magazine, May/June 2018 at 13; see also CONF. OF STATE COURT ADMINISTRATORS, *supra* note 11.

Age of New Mexico Active Attorneys, by Judicial District

Nationally, state bars have expressed concern over the perception that the pool of attorneys is aging and is not being replaced at the same rate by new attorneys. In New Mexico, the average age of all active attorneys is 52 years old. Within the judicial districts, the average age ranges from 51 in the Second, Third, and Ninth Judicial Districts to 58 in the Eighth Judicial District. *See Figure 3, Average Attorney Age by Judicial District.*

Figure 3: Average Attorney Age by Judicial District

Judicial District	Counties	Average Attorney Age
First Judicial District	Santa Fe, Rio Arriba and Los Alamos	55
Second Judicial District	Bernalillo County	51
Third Judicial District	Doña Ana County	51
Fourth Judicial District	Guadalupe, Mora and San Miguel	55
Fifth Judicial District	Chaves, Eddy and Lea	52
Sixth Judicial District	Luna, Grant and Hidalgo	57
Seventh Judicial District	Sierra, Catron, Torrance and Socorro	56
Eighth Judicial District	Colfax, Taos, and Union	58
Ninth Judicial District	Curry and Roosevelt	51
Tenth Judicial District	De Baca, Harding and Quay	54
Eleventh Judicial District	McKinley and San Juan	52
Twelfth Judicial District	Otero and Lincoln	52
Thirteenth Judicial District	Cibola, Sandoval and Valencia	54

The Sixth, Seventh, and Eighth Judicial Districts are notable for the relative age of their active attorney populations as compared to the average for the state as a whole. New Mexico is well ahead of the national curve. Nationally, the average

age of an attorney is approaching 49.²⁰ “[T]he shortage in rural America becomes even more critical as local, rural attorneys nearing retirement age will cease practicing without anyone to replace them.”²¹

Communities in Need: Low Income

An astounding 86% of low-income Americans with civil legal problems receive inadequate or no legal help at all.²² Compounding this problem is that even moderate income individuals do not receive the legal help they need.²³ The National Center for State Courts estimates that at least one party is self-represented in approximately 75% of all civil cases.²⁴ The Self-Represented Litigation Network estimates 30 million people each year lack representation in state courts, subjecting them to potentially dire consequences.²⁵

“A hospital will not last long with no doctors, and a courthouse and judicial system with no lawyers faces the same grim future.”²⁶

²⁰ CONF. OF STATE COURT ADMINISTRATORS, COURTS NEED TO ENHANCE ACCESS TO JUSTICE IN RURAL AMERICA, 3 (2018), <https://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Policy-Paper-1-28-2019.ashx>

²¹ *Id.*

²² Mary E. McClymont, *Nonlawyer Navigators in State Courts: An Emerging Consensus*, 8 (June 2019), <http://napco4courtleaders.org/wp-content/uploads/2019/08/Nonlawyer-Navigators-in-State-Courts.pdf> (citing Legal Services Corp., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* 14 (2017)).

²³ *Id.* (citing ABA COMM’N ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 6 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf)

²⁴ *Id.* (citing National Center for State Courts, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS iv (2015) <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>

²⁵ *Id.* (citing SRLN Brief: How Many SRLs? (SRLN 2019), Self-Represented Litigation Network, <https://www.srln.org/node/548/srln-brief-how-many-srls-slrn-2015> (last visited August 20, 2019)).

²⁶ South Dakota Chief Justice David Gilbertson in his 2013 State of the Judiciary message, quoted in Lisa R. Pruitt, J. Cliff McKinney & Bart Calhoun, *Justice in*

In New Mexico, as throughout the country, free civil legal services are made available to indigent clients, defined as those individuals living at up to 200% of the federal poverty level. As of July 2019, the federal poverty level per household is \$21,330 for a family of three (levels increase per household member, but at less than a 1:1 ratio), meaning that households with an annual income of \$42,660 could potentially qualify for free legal assistance from New Mexico Legal Aid.²⁷

Figure 4: Households (HHDs) at 200% of Federal Poverty Level by State Judicial District (sorted by percent at 200%, 2015)²⁸

Judicial District	Total HHDs	HHDs at 200%	Percentage at 200%
Fourth Judicial District	13,634	8,681	63.67%
Tenth Judicial District	4,056	2,537	62.55%
Seventh Judicial District	16,748	9,759	58.27%
Sixth Judicial District	22,904	13,175	57.52%
Eighth Judicial District	20,329	10,879	53.51%
Third Judicial District	74,762	38,142	51.02%
Ninth Judicial District	25,301	12,754	50.41%
Twelfth Judicial District	32,147	16,050	49.93%
Eleventh Judicial District	59,092	28,218	47.75%
Second Judicial District	263,270	113,310	43.04%
Fifth Judicial District	65,509	26,481	40.42%
Thirteenth Judicial District	83,327	33,552	40.27%
First Judicial District	82,524	31,315	37.95%

the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It, 37 U. Ark. Little Rock L. Rev. 537 (2015); see also CONF. OF STATE COURT ADMINISTRATORS, *supra* note 11.

²⁷ New Mexico Legal Aid utilizes several formulas to determine whether it can provide services to an individual. Cases funded by the Legal Service Corporation require that the client have basic income up to 200% of the current Federal Poverty Level, and additional asset limits are applied. In some cases, New Mexico Legal Aid may provide services regardless of income or assets or may apply a formula based on 80% of HUD income limits. Email interview with Carol E. Garner, Statewide Centralized Intake Unit Managing Attorney, New Mexico Legal Aid (Jul. 15, 2019)

²⁸ U.S. CENSUS, *supra* note 17.

The judicial districts showing the greatest percentage of indigent households are the Fourth, Tenth, Seventh, and Sixth, but as expected, the judicial districts with the greatest *number* of such households are the Second and Third. While an increase of legal services in rural counties and judicial districts is likely desirable, these are not necessarily the areas with the greatest projected need as a percentage of population.

Figure 5: Concentration of Attorneys and of Households at 200% of Federal Poverty Limits, Ranked

Concentration of Attorneys (high to low)	Concentration of Households (low to high)
1. First Judicial District	1. First Judicial District
2. Second Judicial District	2. Thirteenth Judicial District
3. Eighth Judicial District	3. Fifth Judicial District
4. Third Judicial District	4. Second Judicial District
5. Fifth Judicial District	5. Eleventh Judicial District
6. Fourth Judicial District	6. Twelfth Judicial District
<hr/>	
7. Thirteenth Judicial District	7. Ninth Judicial District
8. Tenth Judicial District	8. Third Judicial District
9. Eleventh Judicial District	9. Eighth Judicial District
10. Twelfth Judicial District	10. Sixth Judicial District
11. Seventh Judicial District	11. Seventh Judicial District
12. Ninth Judicial District	12. Tenth Judicial District
13. Sixth Judicial District	13. Fourth Judicial District

Four of the judicial districts appear on the lower half of both columns, meaning that they have both a relatively low number of attorneys per population and a relatively high percentage of households at or below 200% of the federal poverty limit: the Tenth, Seventh, Ninth, and Sixth Judicial Districts.

Communities in Need: Middle Class

Scarcity of legal services is not limited to individuals living at or below the poverty level, and while those up to 200% of the federal poverty level may be able to access some free legal services through New Mexico Legal Aid, the need is greater than what can be met through existing civil legal services. In addition, middle-class individuals may be or believe themselves to be priced out of legal services.

The Pew Research Institute defines “middle class” as “those with an income that is two-thirds to double the U.S. median household income”.²⁹ According to the U.S. Census, the U.S. median household income in 2017 was \$60,336.³⁰ In New Mexico, the median was only \$47,386.³¹ Using the federal income numbers, a middle class, three-person household would have income between \$40,244 and \$120,732 per year.³² In New Mexico, there is some small crossover between the middle class and the eligibility amounts for free legal services.

Per the federal middle-class definition, the middle-class population made up approximately the following percent of the population in each judicial district:

Figure 6: Household Middle Class Density by State Judicial District (sorted by percent in middle class, 2015)³³

Judicial District	Total HHDs	HHDs in Middle Class	Percentage in Middle Class
Sixth Judicial District	22,904	13,175	57.52%
Thirteenth Judicial District	83,327	40,903	49.09%

²⁹ Richard Fry & Rakesh Kochhar, Are you in the American middle class?, Pew Research Center (Sept. 6, 2018), <https://www.pewresearch.org/fact-tank/2018/09/06/are-you-in-the-american-middle-class/>.

³⁰ U.S. CENSUS, HOUSEHOLD INCOME: 2015, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_S1901&prodType=table.

³¹ *Id.*

³² *Id.*

³³ U.S. CENSUS, INCOME IN THE PAST 12 MONTHS: 2017 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_S1901&prodType=table

Judicial District	Total HDDs	HDDs in Middle Class	Percentage in Middle Class
Fifth Judicial District	65,509	31,799	48.54%
First Judicial District	82,524	37,415	45.34%
Second Judicial District	263,270	118,169	44.89%
Twelfth Judicial District	32,147	13,958	43.42%
Eleventh Judicial District	59,092	25,425	43.03%
Ninth Judicial District	25,301	10,733	42.42%
Third Judicial District	74,762	30,231	40.44%
Eighth Judicial District	20,329	7,872	38.72%
Seventh Judicial District	16,748	6,057	36.17%
Tenth Judicial District	4,056	1,369	33.75%
Fourth Judicial District	13,634	4,472	32.80%

Two of the six judicial districts with the highest percentage of residents in the middle class, the First and Second Judicial Districts, also have the highest concentration of attorneys per population. But the attorney density does not match up in any easily recognizable way with the rest of the population data; for example, the Fourth Judicial District, which has the lowest percentage of residents in the middle class and the highest percentage meeting the 200% threshold, has a better attorney-to-resident ratio than more than half of the other districts.

Figure 7: Household Middle Class and Poverty Percentages and Attorney Density by State Judicial District (sorted by attorneys per population, 2015)

Judicial District	Middle Class	200%	Attorney Per Population
First Judicial District	45.34%	37.95%	227.97
Second Judicial District	44.89%	43.04%	263.97
Eighth Judicial District	38.72%	53.51%	655.77

Judicial District	Middle Class	200%	Attorney Per Population
Third Judicial District	40.44%	51.02%	781.48
Fifth Judicial District	48.54%	40.42%	982.64
Fourth Judicial District	32.80%	63.67%	1,048.77
Thirteenth Judicial District	49.09%	40.27%	1,059.24
Tenth Judicial District	33.75%	62.55%	1,106.18
Eleventh Judicial District	43.03%	47.75%	1,122.00
Twelfth Judicial District	43.42%	49.93%	1,190.63
Seventh Judicial District	36.17%	58.27%	1,256.10
Ninth Judicial District	42.42%	50.41%	1,331.63
Sixth Judicial District	57.52%	57.52%	1,493.74

Yellow shading: Six districts with the highest percentage of middle-class households.

Green shading: Six districts with the highest percentage of 200%-qualifying households.

Blue shading: Six districts with the lowest number of attorneys per residents.

The Sixth Judicial District stands out as well: It has identical numbers of households in both the 200% grouping and in the middle class, suggesting a large number in the crossover space between the two groups. Both groups are in the top six for the population. It also has the worst attorney per population percentage in the state.

The percentage of cases featuring self-represented litigants (SRLs) may be a useful tool for evaluating lack of access to attorneys. According to New Mexico’s Judicial Information Services, the percentage of cases in New Mexico’s courts, in which one or more litigants is self-represented, largely tracks with that district’s

percentage of the population, suggesting that no particular district has an unusually high percentage of SRLs. There are, however, four exceptions: Both the Second and Third Judicial Districts are notable for their overrepresentation of SRLs as a percentage of the population, and both the First and Thirteenth Judicial Districts have a lower percentage of SRLs compared to their populations.

Figure 8: Number and Percentage by District of Self-Represented Litigants, Compared to Percentage of Residents in the State (sorted by difference in percentage, fiscal year 2018-2019)³⁴

Judicial District	No. SRL cases	Percentage SRL	Total Pop.	% of NM Pop.	Difference in %
First Judicial District	5,970	3.90%	247,572	10.81%	-6.90%
Thirteenth Judicial District	7,524	4.92%	249,981	10.91%	-5.99%
Fifth Judicial District	9,475	6.20%	196,527	8.58%	-2.38%
Sixth Judicial District	1,841	1.20%	68,712	3.00%	-1.80%
Ninth Judicial District	2,486	1.63%	75,903	3.31%	-1.69%
Eighth Judicial District	1,591	1.04%	60,987	2.66%	-1.62%
Seventh Judicial District	1,830	1.20%	50,244	2.19%	-1.00%
Twelfth Judicial District	5,411	3.54%	96,441	4.21%	-0.67%
Fourth Judicial District	1,997	1.31%	40,902	1.79%	-0.48%
Tenth Judicial District	418	0.27%	12,168	0.53%	-0.26%
Eleventh Judicial District	12,232	8.00%	177,276	7.74%	0.26%
Third Judicial District	30,409	19.88%	224,286	9.79%	10.09%
Second Judicial District	71,759	46.92%	789,810	34.48%	12.44%

³⁴ This is from the data provided by the Judicial Information Division regarding the number of cases with an active self-represented litigant in the fiscal year July 1, 2018 to June 30, 2019.

Note that the Districts are sorted by the difference between the percentage of the population represented by that district and the percentage of pro se cases in that district. These numbers suggest an interesting possibility: That even though both the Second and Third Districts have a relatively high percentage of middle-class residents, those residents may be affirmatively choosing to self-represent or may be unable to secure legal representation. Further study would be useful to help the group draw further conclusions from this data.

The initial conclusion the group can reach through these numbers is that the judicial districts most in need of services for the middle class and for households at 200% of the poverty level are not the same. As a result, a one-size-fits all program is unlikely to address both of the Court's concerns.

Generational Changes

Generational theory posits that each generation engages with the world in slightly different ways.³⁵ The expected behaviors of the two newest generations should be taken into consideration as the Court plans its responses to the needs in our state. While each generation is complex and no one generation is entirely uniform in its behaviors, the following have been observed of Millennials (sometimes referenced as ages 25 to 42) and/or Generation Z:

- Both generations are cautious with money and suspicious of debt. Millennials lived through the most recent recession and are leery of spending. They do, however, struggle with large student loan debt.³⁶
- Generation Z has seen how millennials struggle with their student loans and are avoiding taking out large debt through a variety of tactics, including delaying or extending higher education or working while in school.³⁷

³⁵ Kurt Cagle, *Rethinking Millennials and the Generations Beyond*, Forges, Aug. 22, 2019, <https://www.forbes.com/sites/cognitiveworld/2018/08/22/rethinking-millennials-and-generations-beyond/#13d3ca211893>.

³⁶ Brian Chappatta & Elaine He, *Millennials Could Be Ready to Save the Economy*, Bloomberg.com, Sept. 30, 2019, <https://www.bloomberg.com/graphics/2019-opinion-millennials/>.

³⁷ PBS News Hour, *Anxious about debt, Generation Z makes college choice a financial one*, Mar. 27, 2019, <https://www.pbs.org/newshour/show/anxious-about-debt-generation-z-makes-college-choice-a-financial-one>.

- Generation Z is very comfortable seeking out information on the internet and using online self-help tools.³⁸
- Generation Z is considered less sophisticated when it comes to information analysis (even adjusting for age), which may hamper their ability to self-help on more complicated matters.³⁹
- Generation Z is often more dependent than prior generations on financial and other assistance from their parents. Where the resources are there, parents may be able and willing to finance legal services for their children well into adulthood.⁴⁰

Rural New Mexico is not unique in that other barriers to access compound the attorney shortage. The numbers of lawyers in rural areas of New Mexico are declining because they are aging and retiring without replacement, much like attorneys in Georgia, Wisconsin and Minnesota.⁴¹ Recruiting lawyers to rural areas is often deterred by high student loan debt as attorneys in urban areas receive better pay than their rural counterparts.⁴² State surveys indicated that a lack of computers, cell phone or data and internet access, transportation, language barriers, illiteracy and health problems all compound the access to justice problem.⁴³ Politics also can play a factor in the access to justice gap. Rural communities “generally have little political clout when it comes to advocating successfully for their own justice system needs.”⁴⁴

The number of students applying to the University of New Mexico (UNM) School of Law has been declining for the past five years, according to data from the admissions office. UNM statistics reveal that law school applicants from New Mexico went from 339 in 2015 to 273 in 2019. The American Bar Association reported that the 1L class from 2018 at UNM is 106, some 13.82% smaller than the

³⁸ Tracy Francis & Fernanda Hoefel, *‘True Gen’: Generation Z and its implications for companies*, McKinsey & Co., <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/true-gen-generation-z-and-its-implications-for-companies>.

³⁹ Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. at 40 (pending), https://papers.ssrn.com/so13/papers.cfm?abstract_id=3271137##.

⁴⁰ *Id.* at 23.

⁴¹ Pruitt, Cool, et. al., *supra* note 19, at 122.

⁴² *Id.*

⁴³ *Id.* at 126-127.

⁴⁴ *Id.* at 128.

2017 1L class of 115.⁴⁵ The 2019 1L class at UNM is even smaller at 82, with only 65 of those being from New Mexico. A decline in applicants to our flagship law school is no surprise. Nationwide, numbers have declined as students realize the expense of a degree, coupled with the reduction in force at major firms do not make the debt of a degree worth the return.⁴⁶ Nevertheless, the AccessLex Institute in its 2018 report found that for those with a juris doctorate degree earned in 2010 or later, 60% had borrowed more than \$100,000 to complete the degree.⁴⁷

Law school debt means that even those students entering private practice must charge high hourly rates in order to keep the doors open and service their student loan debt. The overall hourly average rate for an attorney in New Mexico is \$213, while the median hourly rate is \$200 per hour, while the average low “starting point” per hour was \$165 in 2012.⁴⁸ Given the number of New Mexicans in poverty or even at 200% of the federal poverty level, it is apparent that many are not having their civil legal needs met.

While the problems thus far identified loom large, some solutions are available. This workgroup is recommending the implementation of three programs and the continued study of a fourth potential program.

⁴⁵ *Statistics: 2017 v. 2018 Change in 1L Enrollment*; AmericanBar.org, https://www.americanbar.org/groups/legal_education/resources/statistics/.

⁴⁶ Noam Scheiber, *An Expensive Law Degree, and No Place to Use It*, N.Y. TIMES, June 16, 2016, <https://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html>, see also Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs are Cut*, N.Y. TIMES, Jan. 30, 2013, <https://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html>; and David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, <https://www.nytimes.com/2011/01/09/business/09law.html>.

⁴⁷ ACCESSLEX INSTITUTE, *Examining Value, Measuring Engagement A National Study of the Long-Term Outcomes of a Law Degree*, 3 (2018), http://www.abajournal.com/files/AccessLex_report_1.17-2018.pdf.

⁴⁸ STATE BAR OF NEW MEXICO, *THE ECONOMICS OF LAW PRACTICE IN NEW MEXICO, LAWYER COMPENSATION: SUMMARY OF RESULTS*, 13 (2012) <https://www.nmbar.org/NMBARDOCS/PubRes/Reports/2012LawyerCompensationSurvey.pdf>.

Recommendation One – Recruit qualified attorneys to New Mexico, targeting rural areas with UBE Transfer

In 2016, New Mexico joined a group of states and other U.S. jurisdictions that participate in the Uniform Bar Examination (UBE). As of today, 36 total U.S. jurisdictions allow bar examinees to transfer qualifying bar exam scores earned in other UBE jurisdictions into their own states for the purpose of admissions.⁴⁹ Each state sets its own qualifying score, and New Mexico is among five states (also including Alabama, Minnesota, Missouri, and North Dakota) that share the lowest qualifying score in the country: 260.⁵⁰

The next highest qualifying score is 266 (shared by Connecticut, Washington D.C., Illinois, Iowa, Kansas, Maryland, Montana, New Jersey, New York, South Carolina, and the U.S. Virgin Islands). In 2021, Texas will begin to administer the UBE; its qualifying score will be 270.⁵¹

Anyone taking the UBE who scores between a 260 and a 265 is a potential target for recruitment to practice in New Mexico, as those examinees must choose, if they did not test in a 260 state, whether to try the exam again or to apply immediately to start practice via UBE score transfer. In 2018, nationwide, 1,560 examinees earned scores between a 260 and a 265, inclusive.⁵² Only 41 examinees of those 1,560 took the exam in New Mexico.

UBE Transfer offers a potential for recruitment even at scores above 260. There are, for example, seven attorneys in the Ninth Judicial District that transferred a UBE score from Vermont of 270 to practice in New Mexico. All these attorneys currently practice in either the District Attorney’s Office or in the Law Offices of the Public Defender.

Law schools would have an incentive to share information about recruitment to New Mexico, as American Bar Association accreditation standards require reporting of each school’s number of graduates employed in “bar passage

⁴⁹ *UBE Participating Jurisdictions*, New Mexico Board of Bar Examiners, <http://www.nmexam.org/transfer-ube-score/>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Email interview with Kellie Early, Chief Strategy Officer, Nat’l Conf. of Bar Examiners (Jul. 16, 2019).

required” occupations.⁵³ Law schools seek to place as many of their graduates into J.D.-required jobs as possible, both as a matter of mission and because job placement numbers affect rankings.⁵⁴

Simply recruiting qualifying UBE transfer applicants without partnering with local employers and communities, however, is unlikely to increase attorney presence in rural New Mexico; applicants via UBE transfer are not required to live or work in New Mexico. Some seek licensure in New Mexico in order to expand an interstate practice based in another part of the country and would typically be licensed in multiple states. Some choose to limit their practice to the Federal Courts, using a New Mexico license even though they are located elsewhere.⁵⁵

Given the well-documented high rates of student loan debt experienced by many new attorneys, New Mexico might consider a program similar to that offered to professionals working in health care, including doctors and dentists.⁵⁶ The Health Professional Loan Repayment Program (HPLRP) provides repayment for outstanding student loans in exchange for a two-year commitment to practice full-time in a “designated medical shortage area.”⁵⁷ The HPLRP pays up to \$25,000 to \$35,000 in student loan debt per year and participants may renew their commitment to the program in subsequent years.⁵⁸ The HPLRP is funded with a

⁵³ See, e.g., *University of New Mexico Employment Summary for 2017 Graduates*, UNM School of Law,

<http://lawschool.unm.edu/careers/common/docs/employment-summary-2017-grads.pdf>

⁵⁴ Robert Morse, Kenneth Hines & Elizabeth Martin, *Methodology: 2020 Best Law Schools Rankings*, U.S. News and World Reports, Mar. 28, 2019, <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

⁵⁵ As of November 4, 2019, 54% of the 191 UBE transfer licensees have a state other than New Mexico listed in their Address of Record with the New Mexico Supreme Court.

⁵⁶ AMERICAN DENTAL ASS’N, DENTAL STUDENT LOAN REPAYMENT PROGRAMS & RESOURCES 13 (2014)

<https://www.ada.org/~media/ADA/Education%20and%20Careers/Files/dental-student-loan-repayment-resource.pdf>; HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM, <https://hed.state.nm.us/financial-aid/loan-repayment-programs/health-professional> (last visited Dec. 18, 2019).

⁵⁷ HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM SUPRA note 56.

⁵⁸ *Id.*

combination of federal and state funding, which currently is not available to the legal community. However, New Mexico might assess other sources of funding and need not offer as much student loan support to new attorneys as the HPLRP offers to medical professionals.

This workgroup believes that a properly crafted loan forgiveness program could entice attorneys to relocate to New Mexico, and perhaps a rural area. To specifically target rural middle and low income New Mexicans, thereby having the most impact on the access to justice gap, a greater percentage of the law school loans could be forgiven for documented work for clients in this area. This workgroup is aware that ATJ may be considering a loan forgiveness program. However, the contours of that proposed program or legislation had not been fully fleshed out at the time of this report. We believe that a partnership with ATJ as they move forward with a loan forgiveness program would be beneficial, provided that there are mechanisms in place to target rural and underserved areas of New Mexico.

Attorneys could be recruited to rural areas of New Mexico via a UBE transfer to open a private law practice, to take over an existing practice from a retiring attorney or to partner with an attorney contemplating retirement. Recruitment could also benefit civil legal services and government agencies seeking to staff rural offices. The workgroup felt that any attempt to recruit a UBE transfer attorney to a specific area should be done in conjunction with that local community, perhaps through the chamber of commerce and possibly as part of a program that also includes Recommendation Three – Implementation of a Rural Law Opportunity Program. Additionally, the State Bar’s Senior Lawyers Division could also be enlisted to provide input. As members plan to retire, recruitment could take place to insure that communities have legal services.

The workgroup recommends that the Supreme Court consider a UBE recruitment program, perhaps in cooperation with local underserved areas to actually recruit transfer applicants who desire to live and work in a more rural setting.

Recommendation Two – Implement a Court Navigators Program

“There is now a major movement in the United States to expand the use of appropriately trained and supervised individuals without full formal legal training to provide help to people who would otherwise be without legal assistance of any kind.”⁵⁹ Across the United States are some 23 Court Navigator programs in fifteen states and the District of Columbia, covering some 80 different locations.⁶⁰ These programs, according to the Georgetown Justice Lab report of June 2019, “provide direct ‘person to person’ assistance to SRLs with basic civil law issues.”⁶¹

Many jurisdictions, including New Mexico, provide legal consumers with self-help resources that are available at both courthouses and online. For example, in 2016 the New Mexico judiciary published a comprehensive District Court Self-Help Guide that offers general legal information (not advice) to self-represented litigants in domestic relations, kinship guardianship, name changes, simple probate, and appeals. Additionally, several courts have established courthouse self-help service centers where self-represented litigants can obtain forms and general information, and in some cases personal assistance, but no other guidance. Navigators, according to the Justice Lab, provide more without getting to legal advice. These Navigators have no law degree and form no attorney-client relationship.

This report will not assess each of the 23 existing Navigator programs, but will utilize information from two programs, those in New York and Colorado, to provide context.

In February 2014, New York City launched its Court Navigator Program which allows non-lawyer volunteers to assist unrepresented litigants in court appearances in landlord-tenant and consumer debt cases. According to the New York State Unified Court System website (<https://www.nycourts.gov/courts/nyc/housing/rap.shtml>), Court Navigators support and assist unrepresented litigants - people who do not have an attorney -

⁵⁹ Rebecca L. Sandefur & Thomas Clarke, ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECTS 3 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2949038.

⁶⁰ McClymont, *supra* note 22, at 5 and Appendix listing all programs, <http://napco4courtleaders.org/wp-content/uploads/2019/08/Nonlawyer-Navigators-in-State-Courts.pdf>.

⁶¹ *Id.*

during their court appearances in landlord-tenant and consumer debt cases. Court Navigators provide general information, written materials, and one-on-one assistance to eligible unrepresented litigants.

In addition, Court Navigators provide moral support to litigants, help them access and complete court forms, assist them with keeping paperwork in order, in accessing interpreters and other services, explain what to expect and what the roles of each person is in the courtroom. Court Navigators are also permitted to accompany unrepresented litigants into the courtroom in the Bronx, New York, Kings, and Queens County Housing Court and Bronx Civil Court. While these Court Navigators cannot address the court on their own, they are able to respond to factual questions asked by the judge.

New York Court Navigators:

- Help in using computers located in the courthouse to obtain information and fill out court forms using the Do It Yourself (DIY) computer programs.
- Help find information about the law and how to find a lawyer on a website called Law Help.
- Help persons find resources in the courthouse and outside the court to assist in resolving their cases.
- Help persons collect and organize documents needed for their cases.
- Accompany persons during hallway negotiations with opposing attorneys.
- Accompany persons in conferences with the judge or the judge's court attorney.
- Respond to a judge's or court attorney's questions asking for factual information on the case.

Court Navigators **do not** give legal advice or get involved in negotiations or settlement conferences. Generally, court navigators also do not give out legal information except with the approval of the Chief Administrative Judge of the Courts.

Court Navigators do not have to have any particular education or experience but are generally college students or others that the program deems suitable. Navigators must attend a three-hour training seminar on civil and housing court processes, the basics of consumer debt cases, interviewing and communication techniques, and the proper use of court computers. In exchange for the training, Court Navigators are expected to provide 30 hours of volunteer service within the first three months after they are trained. Court Navigators appear to be supervised and regulated by Navigator Program supervisors in the New York Unified Court System rather than by attorney regulation or grievance committees.

According to a 2016 American Bar Foundation Study, the Navigator Program, “can impact several kinds of outcomes, ranging from litigants’ understanding of court processes and empowerment to present their side of the case, to providing more relevant information to the decision-maker, to formal legal outcomes and the real-life outcomes experienced by assisted litigants and their families.”⁶²

In June, 2013, the Colorado Judicial Branch created the Self-Represented Litigant Coordinator program (“Sherlocks”) to provide one-on-one procedural support for self-represented individuals.⁶³ Sherlocks do not have to have any specific education or experience and are trained by the Colorado State Court Administrative Office and local district courts on their role. In the last three years for which statistics have been compiled, 2015-2017, Sherlocks have had almost 450,000 contacts with unrepresented parties.⁶⁴

Mary E. McClymont, in the Justice Lab nationwide survey, reports that Navigators provide assistance on a variety of civil cases “such as family, housing, debt collection, domestic violence, conservatorship and elder abuse.”⁶⁵ Several states use AmeriCorps members to staff their Navigator programs, while others integrate Navigators into existing court operations.⁶⁶ Other programs use paid staff, recent college graduates, retirees or university interns to staff Navigator positions.⁶⁷ In the Justice Lab National Survey, Navigators were defined as: having no formal legal credentials, but trained to assist SRLs, without acting under an attorney/client relationship, with no traditional professional liability accruing to the Navigators or the supervising entity, and as part of a formal program so Navigators do not act in their individual capacity.⁶⁸ Navigators do not provide legal advice, but merely provide legal information, resulting in **no** complaints for the unauthorized practice

⁶² See *Roles Beyond Lawyers: Evaluation of the New York City Court Navigators Program and its Three Pilot Projects*, ABA,

<http://americanbarfoundation.org/research/A2J/RolesBeyondLawyers>.

⁶³ See generally Supreme Court of Colorado Chief Justice Directive 13-01, https://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf.

⁶⁴ See *Self Help Information*, Colorado Judicial Branch, https://www.courts.state.co.us/Self_Help/information.cfm

⁶⁵ McClymont, *supra* note 22 at 6.

⁶⁶ *Id.*

⁶⁷ *Id.* at 14.

⁶⁸ *Id.* at 12.

of law.⁶⁹ Navigators traditionally only help one client at a time and offer services to either side in litigation “just for the day.”⁷⁰

This workgroup is initially recommending that the Supreme Court pilot a Navigator program in both a rural district and a large district with a high number of SRLs in civil cases. A Navigator in these Courts could provide forms, information, option guidance, procedural information as well as referrals. This workgroup envisions Navigators attending court hearings to only be supportive and not directly addressing the Court unless questioned. The workgroup felt that a Navigator program could be implemented rather quickly and would recommend that the chosen districts partner with local entities. The workgroup felt that the State Bar and/or the Access to Justice Commission could provide some level of training for the supervisors as well as the actual Navigators. Local entities such as the United Way, Chambers of Commerce and universities or community colleges would be resources to recruit volunteer Navigators. In a very small rural area, the workgroup suggests that the Navigator supervisor could actually be a specially trained court employee.⁷¹ The workgroup understands that the Access to Justice Commission is planning a report recommending that the Supreme Court consider Navigators. Additionally, a small group has been working since June 2019 to explore Navigators in central New Mexico, hoping to pilot them with an AmeriCorps volunteer coordinator in Los Lunas District Court and in the District and Metropolitan courts in Albuquerque by 2020.

With a new program, data collection and methodology analysis will be imperative to determining the success of the endeavor. A post-court survey of the SRL as to the impact of the Navigator’s assistance, education of the SRL and referrals is essential. Additionally a judicial survey of the preparedness of the SRL, the SRL’s apparent understanding of procedures, etc. could also provide valuable information.

A Navigator Program can be tailored to any district, large or small. It is relatively low cost and can truly provide assistance to those who often go without. Consequently, this workgroup recommends that the Supreme Court implement Navigators for New Mexico.

⁶⁹ *Id.* at 17.

⁷⁰ *Id.* at 19.

⁷¹ *Id.* at 31 (noting that three programs have supervisors that are court employees).

Recommendation Three – Implementation of a Rural Law Opportunity Program

“The easiest way to add a lawyer to a particular community is to educate and train a person who hails from that community and wishes to return.”⁷² However, this is not always an easy option. To combat this problem, South Dakota has taken an innovative approach to recruiting attorneys to practice in rural areas. South Dakota offers a government stipend in exchange for a commitment to live and practice in selected rural counties.⁷³ Selected attorneys work for five years in rural South Dakota and in addition to their salary, receive \$12,500 annually.⁷⁴ This unique program relies on funding not only from the bar, and the legislature, but a commitment from the local communities (counties with a population of 10,000 or less) receiving an attorney.⁷⁵ Attorneys are not recruited to move to the most remote areas of the state, as the program recognizes “that long-term fit is the most important objective when placing an attorney.”⁷⁶ None of the South Dakota attorneys placed through the Rural Attorney Recruitment Program have left the program due to a lack of work.⁷⁷

In addition to the South Dakota program, the University of Nebraska College of Law has instituted a “Rural Law Opportunities Program” partnering with other universities to jointly recruit rural incoming college freshmen to pursue legal jobs outside the urban area. Universities offer free tuition, in exchange, students must maintain a 3.5 GPA and score at an appropriate level on the Law School Admissions Test and then the law school automatically admits the students.⁷⁸

⁷² PRUITT, COOL, ET. AL., *supra* note 19 at 147.

⁷³ Conf. of State Court Administrators, *supra* note 11 at 19.

⁷⁴ *Id.*

⁷⁵ PRUITT, COOL, ET. AL., *supra* note 19 at 102-103.

⁷⁶ *Id.* at 109.

⁷⁷ *Id.* at 102, 110.

⁷⁸ Leslie Reed, “Nebraska Law Tackles State’s Rural Legal Needs”, Nebraska Today, Oct. 26, 2016; *see also* CONF. OF STATE COURT ADMINISTRATORS, *supra* note 11.

Arkansas has started a Rural Practice Incubator Project at the William H. Bowen School of Law at the University of Arkansas at Little Rock.⁷⁹ Funded by the attorney general and donations, this 18-month long program offers training, introductions to rural attorneys and judges, and law office management assistance. Most of the participants have set up solo legal practices, some in the rural counties where they grew up.⁸⁰

This workgroup recommends that the Supreme Court partner with the State Bar and the UNM School of Law to explore a rural law opportunity type program for New Mexico's underserved rural areas. New Mexico's program could conceivably be a program that takes the best portions of other programs, such as recruiting from state universities, guaranteed admission, mentoring and commitment from underserved rural areas for support. This option will require financial support at all levels. The workgroup recognizes that this option will not provide a quick solution. However, it may offer a sustainable solution to the underserved rural areas of New Mexico.

While the workgroup recognizes that an attorney in every rural area is not realistic, alternatives exist to serving rural areas. The Conference of State Court Administrators in its 2018 Policy Paper, *Courts Need to Enhance Access to Justice in Rural America*, documents an "untried solution to providing legal services for rural areas" where legal centers or community justice centers are created in rural communities in existing buildings, such as public libraries, where attorneys from around the state could have "virtual offices" and not have to travel to provide access to justice.⁸¹ For example an attorney in Deming in the Sixth Judicial District, could have a virtual office at the public library in Silver City and Lordsburg, thereby covering a three county area.

The New Mexico State Bar has an Entrepreneurs in Community Lawyering (ECL) program which acts as a legal incubator program. The workgroup felt that as part of the push to attract attorneys to rural areas, there could be an increased emphasis on the ECL program and a partnership with the State Bar and underserved areas could be created to try to encourage rural representation.

⁷⁹ April Simpson, For Hire: *Lawyers in Rural America*, *Governing*, Jun. 27, 2019, <https://www.governing.com/topics/public-justice-safety/sl-Lawyers-in-Rural-America-Wanted.html>

⁸⁰ *Id.*

⁸¹ CONF. OF STATE COURT ADMINISTRATORS, *supra* note 11 at 21.

The ECL program has only been in operation for three years. ECL's mission, according to the Bar, is two-fold: to assist entrepreneurial new lawyers develop successful solo practices; and to provide legal services for people of moderate means throughout New Mexico. In collaboration with the private and public bars, and access-to-justice non-profits and state agencies, ECL offers a flexible, twenty-four month program that provides a sheltered environment and rigorous mentorship in ethics, professionalism, law practice management and substantive law. Participating lawyers are encouraged to employ alternative billing methods, offer unbundled services and limited scope representation, and consider innovative business practices to maintain the desired affordability. While in the ECL program, participating lawyers are encouraged to practice in the areas of law most needed by the moderate-means populations in our communities, including: family law (divorce and custody, domestic violence, kinship guardianship and adoption); adult guardianship; children's advocacy; workers' compensation; probate; and simple estate planning.

By the end of December 2019, ten newly licensed lawyers will have been admitted to ECL and five will have completed a full two years in the program. The five lawyers who have completed the program have modestly successful solo practices that provide a variety of legal services to New Mexicans of moderate means. Each of these lawyers has represented clients who live outside of the Albuquerque area, including Carlsbad, Artesia, Farmington, Estancia, Los Alamos, Rio Rancho and Las Cruces. However, none of ECL's lawyers has opted to relocate their practice to a community outside of Albuquerque, preferring instead to travel to smaller towns and cities for client meetings, depositions and court hearings, which cannot be conducted by telephone or skype. Even though several lawyers admitted into the ECL program were raised in New Mexico's smaller communities (Grants, Artesia, Socorro and Rio Rancho) and have families in those communities, they have preferred to remain in Albuquerque. This has been a source of concern for ECL, as one of the program's goals is to train lawyers willing to establish practices in communities outside of Albuquerque. As ECL grows in the coming years, the State Bar of New Mexico plans to work to identify obstacles that keep new lawyers from establishing successful solo practices outside of Albuquerque and encourage successful ECL graduates to relocate to communities around the state.

As mentioned in Recommendation One, this workgroup recognizes that the high cost of a legal education is a deterrent to attorneys operating outside of the Rio Grande corridor. Dr. Paul Roth, Chancellor of the UNM Health Sciences Center on Monday October 21, 2019 announced his bold plan to address a doctor shortage

throughout New Mexico.⁸² Dr. Roth’s proposal is that students would be given free tuition to UNM’s medical school with a commitment that they return to NM to practice once residency is completed.⁸³ The workgroup is not advocating for free tuition for law school, but advocates that some sort of loan forgiveness be implemented. The loan forgiveness could, perhaps, be at a higher rate if services were provided in rural or underserved areas of New Mexico.

Loan forgiveness, accompanied by a Rural Law Opportunity type program and in conjunction with the State Bar’s ECL could change the legal landscape in rural New Mexico⁸⁴. While the workgroup recognizes that this is a long term approach and will not provide quick access to justice, it is a program area worth our time and investment. This workgroup again respectfully recommends that the Supreme Court partner with the University of New Mexico School of Law, the State Bar and implement a program that will incentivize rural law practice.

Recommendation Four – Further study regarding licensing non-lawyers to perform limited legal work

Access to justice is more than just finding attorneys. Georgia Supreme Court Justice Nels Peterson said, “If we’re going to expand access to justice, we have to think about access to justice as being more than access to a lawyer.”⁸⁵ The New Mexico Access to Justice Commission in 2015 recommended to the New Mexico Supreme Court that it study and implement a program licensing non-lawyers to perform limited legal work. This workgroup, while not making an implementation recommendation, does recommend further study, accompanied by intensive survey work before moving forward.

Herbert Kritzer, a political scientist has conducted a study regarding non-lawyer advocates and their efficacy in four administrative law settings. “On the whole non-lawyers did as well as lawyers, and better than lawyers who did not have

⁸² Ryan Boetel, *UNM Dean Proposes Free Medical School*, ALBUQUERQUE JOURNAL, October 21, 2019, <https://www.abqjournal.com/1381305/med-school-dean-proposes-free-tuition-for-commitment.html>.

⁸³ *Id.*

⁸⁴ Since many of the lawyers in rural counties are government attorneys, efforts could be put into retaining them in the area when they leave public employment or retire.

⁸⁵ PRUITT, COOL, ET. AL., *supra* note 19 at 135.

experience in the particular tribunal.”⁸⁶ The conclusion of this study is rather startling: “The presence or absence of legal training is less important than substantial experience with the setting.”⁸⁷ Understanding the law does not necessarily mean having a law degree.

Washington State pioneered this innovative program, the Limited Licensed Legal Technician (LLLT). This is a program whereby trained non-lawyers offer legal services on a limited basis in a single area of law, currently family law.⁸⁸ In Washington, Limited Licensed Legal Technicians (“LLLT”) are required to: (a) obtain an associate’s degree plus 45 hours of legal studies at an American Bar Association-accredited or LLLT Board approved educational institution; (b) perform 3,000 hours of paralegal or legal assistant work; (c) pass two licensure exams and one ethics exam; and (d) pass a character and fitness evaluation.⁸⁹ In 2017, the estimated educational cost of becoming a LLLT was \$14,440.⁹⁰

Once licensed, a LLLT can provide limited services in the area of domestic relations. Such services include drafting forms, offering legal advice to clients, and generally assisting clients in navigating through a domestic relations matter. The legal matter must be relatively simple and currently LLLTs are not allowed to advocate on behalf of a client before a tribunal or in mediated negotiations.

The Washington Supreme Court, in adopting the program said:

“Our adversarial civil legal system is complex. It is unaffordable not only to low income people but ... moderate income people as well. ... Every day, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts. Many of these are low

⁸⁶ Barton, *supra* note 6 at 105.

⁸⁷ *Id.* at 106.

⁸⁸ *Id.* at 22.

⁸⁹ The substance of the Washington State LLLT program can be found in the Washington State Court Rules: Admission and Practice Rules, Rule 28, http://www.courts.wa.gov/court_rules/Word/gaapr28.doc.

⁹⁰ See Thomas M. Clarke and Rebecca L. Sandefur, Preliminary Evaluation of the Washington State Limited License Legal Technician Program (March, 2017), http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf.

income people who seek but cannot obtain help from an overtaxed, underfunded civil legal aid system. Many others are moderate income people for whom existing market rates for legal services are cost-prohibitive and who, unfortunately, must search for alternatives in the unregulated marketplace.”⁹¹

Utah followed Washington and in 2019 began licensing non-lawyers to provide services. In Utah, a Licensed Paralegal Practitioner (“LPP”) must have either: (a) a law degree from an American Bar Association-accredited school; (b) an associate’s or bachelor’s degree in paralegal studies from an accredited school; or (c) a bachelor’s degree in any field from an accredited school plus a paralegal certificate or 15 hours of paralegal studies from an accredited school.⁹² If the LPP candidate does not have a law degree, he/she must take a course in professional ethics, and a specialized course of instruction in each area in which he/she seeks to be licensed. Additionally, LPPs who do not have a law degree must; (a) obtain a certification from one of three national paralegal/legal assistance associations; and (b) have a total of 1,500 hours of substantive law-related experience including 500 hours in family law for licensure in family law, and/or 100 hours in forcible entry and detainer or debt collection for licensure in other areas. LPPs must pass a licensure exam in each area they wish to be licensed as well as a separate ethics exam. Further, LPPs must pass a character and fitness evaluation. Estimating the cost of becoming an LPP is difficult because of the varied educational routes a candidate might take to obtain a license.

LPPs may be licensed to provide legal assistance and advice to clients in family law, landlord-tenant disputes, and certain consumer debt matters. Like LLLTs, LPPs cannot advocate on behalf of a client before a tribunal, but unlike LLLTs they may represent a client in mediated negotiations. Utah currently has only four

⁹¹ The Supreme Court of Washington: Order No. 25700-A-1005, *In the Matter of the Adoption of New APR 28 – Limited Practice Rule for Limited License Legal Technicians*, Jun. 15, 2012, <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

⁹² The substance of the Utah LPP program can be found in the Utah Supreme Court Rules of Professional Practice, Chapter 15, https://www.utcourts.gov/resources/rules/ucja/#Chapter_15.

licensed LPPs; expectations are that the number could double by March, 2020 and grow to more than 200 within ten years.⁹³

Currently, only Washington State and Utah license paraprofessionals to practice law with a limited scope, but more are on the horizon. In 2017, Oregon's Futures Task Force recommended that the Oregon Supreme Court adopt a paraprofessional licensing program.⁹⁴ In 2019, a state bar task force in California proposed rules to create licenses for non-lawyers to provide limited legal advice and services in "areas of critical need (e.g. housing, health and social services, domestic relations, domestic violence)," to allow technology-driven online delivery of legal services, and to allow non-lawyer ownership of legal service entities.⁹⁵ The goal of each is to address the growing need for low and moderate income persons to access affordable legal services. The Washington State and Utah programs are similar in their educational and experiential requirements. "The most compelling argument for licensing paraprofessionals is that the Bar's other efforts to close the access-to-justice gap have continued to fall short."⁹⁶

Both Washington's LLLTs and Utah's LPPs can practice independent of a fully licensed lawyer and both are regulated by their respective state's regulatory body. Both are required to take continuing education after licensure; LLLTs must obtain 30 credit hours over a three-year compliance period, and LPPs must complete 12 hours in every two-year compliance period. LLLTs are required to demonstrate financial responsibility sufficient to respond to damages claims for malpractice. Specifically, they are required to maintain professional liability insurance in

⁹³Lyle Moran, *Utah's Licensed Paralegal Practitioner Program Starts Small*, ABOVE THE LAW, December 12, 2019, <https://abovethelaw.com/2019/12/utahs-licensed-paralegal-practitioner-program-starts-small/>.

⁹⁴ See State Bar of Oregon Futures Task Force, *Reports and Recommendations of the Regulatory Committee and Innovations Committee* (June 2017), https://www.osbar.org/docs/resources/taskforces/futures/FuturesTF_Reports.pdf.

⁹⁵ See State Bar of California Task Force on Access Through innovation of Legal Services, *Request to Circulate Tentative Recommendations for Public Comment*, <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000024450.pdf>.

⁹⁶State Bar of Oregon Futures Task Force, *The Future of Legal Services in Oregon: Executive Summary* 8 (June 2017) *The Future of Legal Services in Oregon*, p. 8, http://www.osbar.org/docs/resources/taskforces/futures/FuturesTF_Summary.pdf.

minimum amounts of \$100,000 per claim and a \$300,000 annual aggregate limit. LPPs have no such requirement.

Advocates of licensed paraprofessional programs believe that licensed paraprofessionals will be able to charge lower fees premised primarily on the idea that their educational debt is likely to be lower than a three-year law school graduate. Because of the age of each program – Washington’s first LLLTs were licensed in 2015 and Utah anticipates licensing its first LPPs in 2019 - it is too early to determine if this premise is accurate. Regardless, a March 2017 study of Washington’s LLLTs reported general client satisfaction with LLLTs, and a growth in LLLT numbers (as of April, 2019, there were 36 actively licensed LLLTs in Washington).⁹⁷ The study also found that, despite the strong pool of available clients, LLLTs who were working independent of a law firm were having difficulty attracting enough clients to sustain a viable business. The study suggested that an increased emphasis on marketing designed to educate the public on the availability of and services offered by LLLTs could potentially remedy this concern. Ultimately, the study concluded that, overall, the program was a success and met a significant need. Washington’s program is, however, costly. In the September 2019 edition of *NW Lawyer*, the Washington State Bar Treasurer, opined that the \$1.5 million spent from 2015 to 2019 for the now 37 active LLLTs means the program is not cost effective.⁹⁸ Washington is clearly struggling to make its program self-sustaining and less of a cost burden to the judiciary.

Washington State licenses a second category of individuals with a narrower scope of practice than LLLTs; Limited Practice Officers (“LPOs”). LPOs are licensed to prepare and complete documents that have been approved by the LPO Board for use in the closing of a loan, extension of credit, and the sale or other transfer of real or personal property.⁹⁹ Approved documents are limited to deeds, promissory

⁹⁷ See Thomas M. Clarke & Rebecca L. Sandefur, [Preliminary Evaluation of the Washington State Limited License Legal Technician Program](http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf) (March, 2017), http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf.

⁹⁸ Dan Bridges, *The Cost of LLLTs*, *NW Lawyer* (Sept. 2019), http://nwlawyer.wsba.org/nwlawyer/sept_2019/MobilePagedReplica.action?pm=2&folio=48#pg50.

⁹⁹ The substance of the Washington State LPO program can be found in the Washington State Court Rules: Admission and Practice Rules, Rule 12,

notes, guaranties, deeds of trust, reconveyances, mortgages, satisfactions, security agreements, releases, Uniform Commercial Code documents, assignments, contracts, real estate excise tax affidavits, bills of sale, and powers of attorney. Once licensed, an LPO is authorized to select and prepare the proper legal documents based on the type of transaction and the parties' written agreement or instructions. An LPO can use her/his experience and judgement in selecting which documents need to be prepared for each transaction. An LPO can perform services for a transaction only if all the parties to the transaction approve. LPOs are required to be 18 years of age and they must pass a substantive exam and a character and fitness evaluation prior to being licensed. LPOs are regulated by the LPO Board and, like Washington State LLLTs, are required to complete 30 hours of continuing education over a three-year compliance period. LPOs must either maintain professional liability insurance in a minimum amount of \$100,000 per claim or demonstrate a net worth of at least \$200,000.

Some jurisdictions, including the United States Bankruptcy Court, allow trained individuals to assist others in the preparation and/or completion of legal documents. Often considered "scriveners," these individuals are not authorized to offer legal advice in the course of completing or preparing documents but, in some cases, may offer general legal information.

Effective July 1, 2003, Arizona began certifying non-attorney legal document preparers ("CLDP") to provide document preparation assistance to individuals and entities who were not represented by an attorney.¹⁰⁰ CLDPs are not required to be supervised by a licensed attorney, and they can provide general legal information but cannot give legal advice. The program was developed, in part, in recognition of the public's need for access to legal services while allowing the Arizona Supreme Court to maintain regulatory oversight of such nonlawyer legal services. CLDPs are supervised and regulated by a Board and have their own code of professional conduct and minimum continuing education requirements (10 hours per year). It does not appear that CLDPs are required to carry professional liability insurance.

To apply to become a CLDP, an individual must have either: (a) a high school diploma and two years of legal experience; (b) a college degree and one year of legal experience; (c) a paralegal certificate from an American Bar Association-

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=apr&ruleid=gaapr12.

¹⁰⁰ See generally Arizona Legal Document Preparer Program, AZ Courts, <https://www.azcourts.gov/cld/Legal-Document-Preparer-Program>.

accredited program; or (d) a JD. In order to obtain certification, a CLDP applicant must pass an examination and a character and fitness evaluation. Once certified, a CLDP is authorized to:

- Prepare or provide legal documents, without the supervision of an attorney, for a person or entity in any legal matter when that person or entity is not represented by an attorney;
- Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a person or entity about possible legal rights, remedies, defenses, options, or strategies;
- Provide general factual information pertaining to legal rights, procedures, or options available to a person or entity in a legal matter when that person or entity is not represented by an attorney;
- Make legal forms and documents available to a person or entity, who is not represented by an attorney; and
- File, record, and arrange for service of legal forms and documents for a person or entity in a legal matter when that person or entity is not represented by an attorney.

With limited exceptions, a CLDP may not sign any document he or she prepares for or provides to a person or entity.

In many tribal jurisdictions across the country Tribal Court Advocates, who are not licensed attorneys, can represent clients in both civil and criminal proceedings in tribal court. The qualifications for Tribal Court Advocates vary from tribe to tribe, but generally limit the position to enrolled tribal members who can demonstrate good moral character and knowledge of the tribe's culture and legal system. In the Navajo Nation, for instance, non-attorneys can apply for membership in the Navajo Nation Bar Association upon condition that they pass an examination and maintain Navajo specific CLEs.¹⁰¹ In contrast, in the Mescalero Apache tribe, in order to practice in the Tribal Court, lay advocates need only submit a written application for approval to the Tribal Counsel and pay the \$250.00 application fee; the tribe

¹⁰¹ Courts & Peacemaking in the Navajo Nation: A Public Guide; <http://www.navajocourts.org/publicguide.htm>.

does not maintain a bar association.¹⁰² Tribal members can represent clients in criminal and civil proceedings, while non-member attorneys must apply for approval from the Tribal Council and can only represent clients in criminal proceedings.

According to a member of the New Mexico Access to Justice Commission, New Mexico Legal Aid (“NMLA”) is piloting a project in which NMLA teaches community members, presently limited to counselors working in a domestic violence shelter in Gallup, NM, interview techniques designed to identify whether individuals being interviewed need legal representation. The interviewers, called Community Justice Workers, are taught how to spot potential legal issues and then instructed on resources available for the interviewees. The interviewer does not offer legal advice and is, essentially, triaging the interviewee’s potential legal problems.

While the concept of a licensed paraprofessional is relatively new in state court jurisdictions in the United States, it is not entirely new in other countries and venues. The Law Society of Ontario, Canada began licensing paralegals in 2007. Without having to work under the supervision of a fully-licensed lawyer, licensed paralegals in Ontario are allowed to advise clients and represent them before courts and tribunals in four types of proceedings: (a) small-claims proceedings; (b) provincial offenses before the Ontario Court of Justice (for example traffic-citations); (c) summary-conviction proceedings (criminal matters with penalties not to exceed six months in jail or a \$5,000 fine); and (d) proceedings before administrative tribunals, including landlord-tenant and immigration matters.¹⁰³ A licensed paralegal can select, draft, complete, or revise any legal document for use in the proceeding, provide advice about any legal rights or responsibilities related to the proceeding, negotiate on the client’s behalf, and advocate before a tribunal.

In order to obtain a license, an individual must graduate from an accredited paralegal program and perform a minimum of 120 hours of field work.¹⁰⁴ They

¹⁰² Tribal Law Journal UNM School of Law, *Tribal Court Handbook*, http://lawschool.unm.edu/tlj/handbook/pdfs/Mescalero_Apache_2012.pdf.

¹⁰³ The substance of the Law Society of Ontario’s licensed paralegal scope of practice can be found in the Law Society Act, Bylaw 4, <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/by-law-4.pdf>.

¹⁰⁴ The substance of the Law Society of Ontario’s licensing process for paralegals can be found in the Law Society of Ontario’s Licensing Process Policies,

must also pass an examination testing their substantive, procedural, ethical and practice management skills, and undergo a character and fitness evaluation. Ontario paralegals are regulated by the Law Society of Ontario and are required to complete 12 hours of continuing education annually and carry professional liability insurance with minimum policy limits of \$1 million per claim and \$2 million in the aggregate.

A 2012 five-year study of Ontario's licensed paralegals determined that 74% of clients surveyed were satisfied or very satisfied with the paraprofessionals' services, and 68% found their services to be a good or very good value.¹⁰⁵ The Law Society of Ontario is considering expanding paraprofessional services to include limited family law matters.

While not a state jurisdiction, in the United States, patent agents have been allowed to represent clients before the United States Patent and Trade Organization ("USPTO") for many years. Like a patent attorney, patent agents can file a patent with the USPTO and advise clients on patentability issues. A patent agent does not need to have a law degree, but must have a BS, MS or PhD in a technical or scientific field from an accredited university and must pass the same patent bar exam as a patent attorney. The USPTO regulates the conduct of patent agents in the same manner that it regulates patent attorneys. Patent agents are not required to maintain professional liability insurance. Generally speaking, patent agents are believed to be more affordable than a patent attorney but their scope of practice is much more limited in that they cannot appear in court, cannot offer legal advice on patent infringement, and cannot perform legal work in related business matters or in other areas of intellectual property such as trademark and copyright law.

Pursuant to 11 U.S.C. § 110, a person other than an attorney or someone working for an attorney may prepare for compensation bankruptcy documents for a debtor for filing with the United States Bankruptcy Court. There are no educational or experience requirements for an individual to become a bankruptcy petition preparer ("BPP"), nor does a BPP have to pass any type of exam or undergo any character or fitness evaluation. BPPs are regulated by the United States

<https://lso.ca/becoming-licensed/paralegal-licensing-process/licensing-process-policies>.

¹⁰⁵ See Law Society of Upper Canada, *Report to Attorney General of Ontario Pursuant to Section 63.1 of the Law Society Act* (Jun., 2012), <http://lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf>.

Bankruptcy Court under the terms of 11 U.S.C. § 110 and cannot provide legal advice or direction, including advice about what type of bankruptcy a person should pursue, how assets and liabilities should be listed or disclosed, and whether a debtor has exempt assets. Instead, a BPP is limited to completing information on the debtor's chosen forms; in essence, serving as a scrivener.

Each of these existing programs has its benefits and drawbacks. This workgroup is not making a full recommendation for implementation of such a program for New Mexico. As mentioned above, Washington's program is not as successful at reducing the access to justice gap as officials had hoped. This workgroup recommends that New Mexico continue to monitor and study other states that are implementing these types of programs. This workgroup was not unanimous in its recommendation of further study for licensing non-lawyers, as some members felt the program should immediately move forward and others were so concerned with protection of the public that they felt this type of program should not move forward in our state. The workgroup also felt that intensive survey work needed to be done before any recommendation could be made to move forward, as Washington's program is costly and has only yielded 37 active LLLTs. Research and survey work is imperative as there is no mechanism to gauge whether litigants would actually utilize such a program, whether people would choose being an LLT as a career path and finally whether, even in a rural community, an LLT could earn a living. This workgroup recommends that the Supreme Court contract with an entity and conduct this market research before starting any program.

If the Supreme Court continues to study the possibility of licensing non-lawyers, this workgroup has identified several areas that should be considered by the Court, and perhaps be included in the initial round of market research and surveys.

Education: Washington's program has been criticized for the length of time to license new participants. Utah's program currently has only one university providing the educational component. Consequently, the workgroup, which included two representatives from New Mexico community colleges, gravitated toward local education prior to licensure. The workgroup felt that the nature of community colleges could be a good fit to keeping people in underserved areas. For example, Clovis Community College could be an avenue for a De Baca County resident to be educated. Local community colleges offer a general lower cost option and provide the farthest reach. Washington's program does not qualify to entitle its students to receive federal financial aid. The workgroup felt that perhaps a degree program like an Associate's degree could be crafted to qualify for

federal financial aid for students in need. Working with the community colleges as well as the School of Law, the parties could be able to craft an appropriate educational component. Some concern was expressed amongst workgroup members whether appropriate training could be crafted to prepare students for a limited practice while protecting the public.

Another concern of the workgroup regarding education was testing. As mentioned above, Washington's program is expensive, probably due in large part to the licensing examination. A licensing examination with appropriate testing reliability would be very costly. An ethics examination would add additional cost and should be a consideration moving forward.

Potential Pool of LLTs: The workgroup also felt, like the ATJ did in 2015 that if New Mexico were to consider LLTs in the future, that it should implement a grandfather mechanism or clause to allow appropriately trained and certified paralegals a pathway to become LLTs. Additionally, individuals who had graduated from an American Bar Association-accredited law school, but not testing for the bar examination, could, perhaps, be grandfathered in as LLTs. The workgroup, however, felt strongly that attorneys suspended or disbarred not be considered for LLTs. Finally, the workgroup recommended if the Supreme Court, in the future considered LLTs, that individuals within a few points of a 260 on the Uniform Bar Examination be considered for LLTs if they are not able to pass the bar examination. Research and survey work would be essential here, to determine whether current paralegals would want to participate as LLTs with additional training.

Areas of Practice: In addition to the types of legal service providers that may be available to the public, the committee considered the areas in which such providers could be allowed to practice. Family law, landlord-tenant, and consumer debt appear to be a common area in which licensed paraprofessionals are allowed to offer some type of service in most jurisdictions. There were 44,621 family law cases across New Mexico with a self-represented litigant within the last fiscal year. The workgroup felt that family law with its subgroups of divorce, custody, support and paternity could potentially be a good practice area for LLTs. However, some workgroup members expressed concern about the areas of practice and thought supervision of LLTs by an attorney was important and afforded the most protection to the public. The group was not in favor of allowing anyone other than an attorney to prepare a Qualified Domestic Relations Order (QDRO). This workgroup did not gather data from JID further breaking down the self-represented litigants in cases just labeled as civil. In other words, no data was mined regarding how many debt

and money due cases, tort cases, and landlord/tenant cases were represented in the civil category.

None of the U.S. jurisdictions appear to allow paraprofessionals to offer services in criminal law. Ontario, Canada does allow licensed paralegals to offer services for certain criminal misdemeanor type offenses. One area that does not appear to have been explored is mediation; i.e. training and allowing a licensed paraprofessional to serve as a mediator, whether as a supplement to an online dispute resolution program, an addition to other areas in which licensed paraprofessionals were allowed to perform services, or as a stand-alone service.

The 2015 report to the Supreme Court from the ATJ Commission identified potential activities that an LLT could perform such as “select, complete, draft, file and serve pleadings and other legal documents from statutory, court and attorney approved forms, including: petitions/complaints and summons, uncontested divorce documents, garnishment and wage withholding documents, child support worksheets, Kinship Guardianship pleadings, and standard discovery requests.” Some members of this workgroup, like the ATJ Commission believe that an appropriately licensed LLT could potentially advise clients regarding the nature of the pleadings above, draft orders by reviewing audio or court transcripts, provide advice about legal procedures, review and assess relevance of documents and exhibits, help obtain exhibits, and provide organizational assistance in preparation of hearings, to name a small few tasks.

Geographic Service Areas: One of the stated goals of many licensed paraprofessional programs is to offer legal services to underserved, rural areas. Again, because of the age of the programs in the United States, it is too early to determine if that goal is being achieved. Moreover, it does not appear to have been a specific focus of the 2012 review of the licensed paralegal program in Ontario, Canada. Despite the lack of a large amount of data on this issue, undoubtedly the question of whether a paraprofessional will provide services to or in a rural area is closely tied to whether the provider can earn a living by providing services to such communities, including: (a) whether the provider will be expected to live in the rural community; (b) whether the provider’s scope of practice is sufficiently broad to generate enough business; and (c) whether the provider can repay student loans attendant to obtaining licensure. These are all areas that should be explored with market research.

If the Supreme Court were, at some future date, to implement LLTs, this workgroup believes consideration would have to be given, among other things, to:

(a) the appropriateness of a paraprofessional living in a larger community and having “office hours” in a smaller community, or providing services remotely; (b) the likely student loan debt a paraprofessional will carry when first licensed; (c) whether some type of loan forgiveness may be available for those living in and providing services to rural communities; and (d) whether some type of incentive may be appropriate to encourage a provider to move to and provide services in a rural community.¹⁰⁶

If the New Mexico Supreme Court were to someday license LLTs, regulation would also have to be considered. Existing rules of Professional Conduct and Rules Governing Discipline could be easily adapted to provide a regulatory framework for LLT practitioners. Potentially, the regulation could be performed by the disciplinary board without a significant increase in cost because it would take some time for the program to grow. The New Mexico Disciplinary Board has indicated its willingness to regulate the licensure of paraprofessionals such as LLTs.

Furthermore, if the Supreme Court were to recommend LLTs, consideration should be given to the potential overlap as some Tribal Court Advocates may wish to work in both State and Tribal Courts.

Finally, the workgroup feels that once Navigator pilots are established (see Recommendation Two, above), the data collection and survey work done post-Court appearance for the SRL could include questions regarding the usefulness of an LLT. Questions could include topics such as if a service were available, would you utilize it, and what would you be willing to pay for such a service. At the end of a full year of Navigator service, a focus group should be convened to address whether training Navigators as potential LLTs would be appropriate. Perhaps a

¹⁰⁶ See, e.g., South Dakota Rural Attorney Recruitment Program, <https://ujs.sd.gov/uploads/RuralAttorneyRecruitmentProgram.pdf>. This program provides qualifying attorneys an incentive payment in return for five continuous years of practice in an eligible rural county. Specifically, attorneys enter into a contract with the South Dakota Unified Judicial System, the South Dakota State Bar and an eligible County (one with less than 10,000 residents) to practice in the rural county. In return, the attorney receives an incentive payment, payable in five equal annual installments, each payment equal to 90% of one year’s resident tuition and fees at the University of South Dakota School of Law, as determined on July 1, 2013.

special rule change and a pilot program of LLTs could be implemented with appropriate supervision. The pilot program, under attorney supervision, would not only protect the public, but offer an assessment of the true viability of LLTs in New Mexico. The workgroup specifically felt that a pilot project in a busy legal aid office in a more rural area could be a starting point for LLTs.

In summary, this workgroup was not unanimous on a recommendation for the Supreme Court. Even though Washington's program is the "oldest," it is still relatively new and untested. As Utah and Oregon move forward, New Mexico can monitor their programs and continue to assess. This workgroup specifically recommends that the Utah program be assessed after it has been operational for a full year.

This workgroup specifically solicits feedback from the New Mexico Supreme Court and stands willing to continue to study LLTs.

Ad Hoc New Mexico Licensed Legal Technicians Workgroup Members

Honorable Donna J. Mowrer, Ninth Judicial District Court Judge, Div. IV

Emmalee Atencio, State Bar of New Mexico Paralegal Division

George Chandler, Commissioner, New Mexico Commission on Access to Justice

Professor April Land, UNM School of Law, Community Lawyering Clinic

Cindy Lovato-Farmer, Chair, NM Board of Bar Examiners

Susan E. Page, Private Attorney

Steven Scholl, Shareholder, Dixon, Scholl, Carrillo, PA

William Slease, Chief disciplinary Counsel, NM Disciplinary Board

Scot Stinnett, Publisher/Editor DeBaca County News

Kathy Ulibarri, New Mexico Independent Community Colleges

Dr. Katharine Winograd, Central New Mexico Community College

Sophie Martin, Executive Director, NM Board of Bar Examiners

Richard Spinello, Executive Director, NM State Bar

Kip Bobroff, Commissioner, New Mexico Commission on Access to Justice and
In-house Attorney, Pueblo of Laguna

Innovation Team Members

Honorable Judith K. Nakamura, Chief Justice, New Mexico Supreme Court

Honorable Donna J. Mowrer, Ninth Judicial District Court Judge, Div. IV

Honorable Jane Levy, Second Judicial District court Judge, Div. XXV

Jerry Dixon, President, State Bar of New Mexico

Kennon Crowhurst, Court Executive Officer, Fifth Judicial District Court

Arthur W. Pepin, Director, New Mexico Administrative Office of the Courts

Barry Massey, Public Information Officer, New Mexico AOC

Beth Wojan, Communications Officer, New Mexico AOC

Deborah Dungan, Attorney Administrative Assistant to the Chief Justice,
New Mexico Supreme Court