

# EXECUTIVE SUMMARY

## I. LEGAL EDUCATION AND ENTRY INTO THE PROFESSION

The Legal Education and Entry into the Profession Subcommittee was tasked with identifying issues currently impacting and likely to impact legal education and entry into the legal profession and the practice of law over the next 20 years, and to make short-term, mid-term and long-term recommendations concerning those issues. The subcommittee considered and discussed various societal and economical shifts/changes/factors occurring over the past 40 years affecting legal education and entry into the profession, and the positive and negative consequences and ramifications thereof.

Also considered was what the future might, or more appropriately, should look like and those potential consequences/ramifications. Considered issues included law school education and cost, diploma privilege, the role of law schools in the life-long education of licensed attorneys, the accreditation standard, competencies versus doctrinal training, new lawyer orientation, clinical and practical skills training, business management and development and professionalism, job preparedness/ readiness, the concept of state service for young lawyers, re-entry into the profession, incentives to go to underserved areas, admission of foreign educated lawyers, portability of admission to practice

(impairments and facilitators), the trade versus profession debate, types of lawyers (traditional/ non-traditional, limited license/ paraprofessional), types of legal jobs, consumer access to legal services, and technological advances.

The Subcommittee loosely divided the broad scope of this charge into three subject areas: (1) legal education, (2) licensure and admission to the practice, and (3) legal employment and the market view of job readiness. We reviewed and summarized current and emerging information concerning these subject areas and sought to identify programs, initiatives and best practices/ perceived solutions being explored or having been undertaken in other jurisdictions concerning these areas. This Subcommittee Report discusses our findings, **and our recommendations are as follows:**

1. Require newly licensed lawyers to participate in a mentoring program within their first year of practice;
2. Encourage and support law schools in the development of additional and practical learning experiences such as law school incubator and residency programs;
3. Develop programs designed to encourage newly licensed lawyers to practice law in underserved rural areas;
4. Avoid adopting, or supporting the adoption of state-specific "add-ons" to securing a legal education or admission to the Bar;

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5. Work to position Missouri to be a leader in national discussions which promote legal education and bar admission standards that encourage exploration of education models that will better prepare law students for the practice of law in the futures;
6. Support programs and initiatives that seek to protect and restore the value of a law license as an embodiment of the profession's integral role as the caretaker of the Rule of Law; and
7. Hire staff whose duties and responsibilities would be to oversee implementation of the short-term, mid-term, and long-term goals recommended by this Task Force.

## II. LEAVING OR LIMITING THE PRACTICE OF LAW

The Leaving or Limiting the Practice Subcommittee of the Future of the Profession Task Force, focused on three areas, and its report makes findings and recommendations in each of those areas.

### A. Retirement and Pro Bono

The Missouri Bar, like the general population, is aging. The data reflect that nearly one-third of the Bar's membership is age 55 or older. At present, an attorney desiring to retire from the active practice of law has limited choices. Rule 5.25 permits a lawyer to surrender his or her license, but is neither desirable nor workable because application of the rule results in disbarment of the

attorney. Under Rule 6.03, any lawyer not currently stricken from the roll of attorneys may take inactive status by making a written request to the clerk of the Supreme Court. Under Rule 6.01(d), a lawyer becomes exempt for purposes of paying the annual enrollment fee at age 75, after practicing for 50 years or more, upon becoming a retired judge, or upon becoming a retired commissioner of a Missouri court of record.

In 2013, the Advisory Committee drafted and submitted to the Court a new Rule 6.035, which would have permitted an attorney to retire from the active practice of law. The Committee's goals in drafting Rule 6.035 were to: (a) create a retirement status for lawyers who elect to leave the practice - without the requirement of paying annual enrollment or inactive fees; (b) eliminate the need for the practice of refraining from collecting inactive status fees from senior lawyers; (c) encourage payment of inactive fees for those lawyers who are either planning to later return to active status or are unsure about returning; and (d) enable and encourage senior lawyers to provide pro bono services in association with certified legal service agencies. The Court has not yet adopted the Advisory Committee's proposed Rule 6.035.

### B. Trustee Rule

The Missouri Bar's 2015 Economic Survey showed that among both full-time and part-time sole practitioners, 54% report having a

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designated successor lawyer in case of their disability or death and 46% do not have a designated successor.

## C. Long-Range Planning

The Long-Range Planning (LRP) subgroup defined its charge to be looking “down the road” at issues impacting lawyers’ decisions or ability to leave the practice of law. The group initially identified two areas to consider: temporarily leaving the practice, and planning for retirement or disability. The keys to addressing these important issues in the future will be leadership and communication from the Missouri Bar.

Current examples for communication efforts concerning issues related to lawyers’ decisions or ability to leave the practice of law include the following: website; articles; Mo Bar publications; video; PowerPoint presentations; CLEs and/or webinars; standalone presentations or sections to be included in other select presentations or sections to be included in other select presentations, such as at ODC Ethics School; materials distributed at MOLAP information booths; Solo and Small Firm Conference presentation.

### The three recommendations of this subcommittee are as follows:

**1.** Recommend a revised Rule 6.035. Under this draft rule, lawyers 65 and older may elect to retire and avoid MCLE obligations and inactive fees. Lawyers taking retirement status are authorized

to provide pro bono legal services under certain circumstances set forth in the Subcommittee’s report and proposed rule;

**2.** Recommend a revised trustee rule, Rule 5.26, to permit an attorney to name a trustee to transition his or her law practice due to disability, disappearance, death or discipline. Any member of the Bar in good standing may serve as a trustee. Lawyers who are employed at a law firm (referenced as a “Fiduciary Entity”) or in an organization not engaged in the private practice of law are not included. Upon the disability, disappearance, death or discipline of a Lawyer, the circuit court in the circuit where the Lawyer maintained an office may appoint either the trustee designated by the Lawyer or, if no trustee has been so designated, may appoint one or more other members of the Bar to serve as a trustee and to transition the Lawyer’s law practice; and

**3.** Recommend that The Missouri Bar develop a long-term communication strategy to:

- Educate its members about the importance of retirement planning with emphasis on newer members, including specific strategies targeting young lawyers and those at later stages of their careers;
- Educate its members, new and older, about the proposed surrogacy rule and how it works; and
- Educate its members about the proposed retirement rule and how it works.

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## III. TECHNOLOGY AND ITS IMPACT ON THE PRACTICE OF LAW

Accelerating technological change may irrevocably alter the legal profession and landscape sooner than we expect. Competence regarding technology has become an explicit lawyer ethics consideration in a growing number of states. Yet even the largest firms struggle to keep abreast of technology issues. It is virtually impossible for all other lawyers.

The Missouri Bar is the logical entity to bridge this gap, and perhaps the only one with sufficient standing, market power, membership, and resources to do so. What lawyers cannot do alone may be achieved, at least in part, through committed action by the organized statewide bar.

**This subcommittee makes the following recommendations to the Missouri Bar:**

1. Prioritize the ongoing, meaningful tracking and consideration of mid-to-long term technology issues via permanent qualified committees or other appropriate means, preferably in communication (and cooperation where appropriate) with the judiciary on matters of shared or common concern;
2. Actively assist membership as to relevant technology, not only by offering education, but also by evaluating technology services and

providers and otherwise assisting lawyers in exercising due diligence and reasonable care as to tech-related issues and concerns;

3. Survey members with appropriate regularity and as needed on “Future of the Profession” and other significant issues, including but not limited to technological competency;

4. Remain vigilant to privacy concerns of clients and the public as technology advances and expands; and

5. Encourage and help firms and attorneys to value, commit to, and achieve healthier work-life balances and quality of life for both lawyers and staff and take steps to preserve the enduring principles of decorum and civility in the practice of law.

## IV. ACCESS TO LEGAL SERVICES AND SUSTAINABILITY OF LEGAL PRACTICE

This subcommittee was tasked by the Missouri Supreme Court and the Missouri Bar with studying and recommending ways for the legal profession to provide more accessible legal services to every person and business that needs the important (and often life changing) legal services lawyers provide.

The need for quality legal services remains acute but, for many, access to those services is

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perceived to be either unaffordable or otherwise inaccessible. Legal needs remain unmet, and in increasing numbers, individuals are turning to self-help or using on-line legal service providers as an alternative to local, licensed counsel.

With the goal of increasing access to quality legal services, the Subcommittee solicited, received and reviewed suggestions from Missouri lawyers and the changes being proposed or evaluated in other states. This approach led to the realization that many of the rules and practices that surround the Missouri legal profession were adopted and justified under circumstances far different from those confronting practitioners and potential clients today.

**As a result, the Subcommittee on Access and Sustainability respectfully recommends the following to the Missouri Bar:**

1. Advocate a change to the United States Tax Code adding “legal services” to the list of authorized expenditures made under group cafeteria plans;
2. Endorse the use of legal insurance by reputable providers;
3. Expand the existing community partnership program to include bar sponsorship of small business incubators;
4. Coordinate (with the assistance of local bar associations) the use of rapid response teams to provide legal services in areas of special or emergent needs;

5. Expand and simplify the Missouri Bar website to allow potential clients ready access to information necessary to evaluate and retain counsel; and

6. Support the work of the Supreme Court’s Commission on Racial and Ethnic Fairness, assist in the implementation of the recommendations of this Commission, and continue working to implement the recommendations of the Joint Commission on Women in the Profession.

**The subcommittee also further recommends a review of the following Supreme Court Rules to determine whether the following rules impose greater costs than benefits in today’s rapidly changing environment, plus one new rule as described below:**

1. Rule 4-1.5(8) to determine whether the prohibition against flat rate fee agreements remains justified;
2. Rule 4-5.5 to determine whether licensing nonlawyers under the supervision of licensed practitioners will support the profession in increasing access to needed legal services, and what multijurisdictional restrictions (if any) can be justified in an increasingly national and global marketplace;
3. Rules 4-7.2 and 4-7.3 to determine whether current restrictions on advertising remain justified in a this age of increasingly sophisticated marketing;

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**4.** Rule 4-7.4 to determine whether lawyers and consumers of legal services would benefit from the creation of a system of certified or reviewed specialization and allowing practitioners to market the same;

**5.** Rule 5-5.4 to determine whether the present restrictions on access to capital stifle innovation and put practitioners at a disadvantage in competing with unlicensed market disrupters; and

**6.** Creation of a new rule to add mental health issues to the annual requirement for continuing legal education.