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Big Changes Coming?

The Utah Work Group on Regulatory Reform has released its recommendations to the Utah Supreme Court - and that could mean changes like client solicitation and nonlawyer ownership are on the way

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In late 2018, the Utah Supreme Court organized the Utah Work Group on Regulatory Reform and tasked that Work Group with finding ways to change the regulations governing the practice of law to encourage innovation and expand the legal market. The goal of these changes was straightforward: increase access to affordable legal services.

The Work Group, headed by Supreme Court Justice Deno Himonas and John Lund, past president of the Utah Bar Association, issued its report and recommendations in August, proposing reforms that, if adopted, could dramatically change the practice of law in Utah and, hopefully, provide people with access to quality, affordable legal services.

The foundation of the Work Group's report is a driving concern that many people in Utah cannot find affordable legal services. Citing national statistics, the Work Group noted that low-income Americans are the ones most likely to go it alone in dealing with legal issues. It appears to be that way in Utah, too.

Pointing to cases in Utah's 3rd District Court (the trial court network that handles cases in Salt Lake, Summit and Tooele counties), the Work Group observed that "the idealized adversarial system in which both parties are represented by competent attorneys is not flourishing in Utah. At least one party was unrepresented throughout the entirety of the suit in 93 percent of all civil and family law disputes disposed of in the 3rd District in 2018."

Against that backdrop, the Work Group made two sweeping recommendations to increase access to affordable legal services. First, the Work Group proposed that the Utah Supreme Court "substantially loosen restrictions on the corporate practice of law, lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing." These loosened restrictions would, among other things, allow lawyers to directly solicit people needing legal assistance, to enter into partnerships with nonlawyers and to share fees with nonlawyers.

These changes are already underway, as a separate committee is currently working through amendments to the Utah Rules of Professional Conduct, the rules that govern lawyers in the practice of law.

Second, the Work Group recommends the creation of a new regulatory body to oversee legal services in Utah under the direction of the Utah Supreme Court. One very interesting role the Work Group envisions for the regulatory body would be to oversee a "regulatory sandbox," that is, "a

policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal (or unethical) under current regulations, can be piloted and evaluated.” In other words, the regulatory body would, in part, provide a testing ground for new types of legal services. The regulatory body would then evaluate how these services worked (or didn’t work) with a focus on risk to the consuming public and use that data to recommend policy changes to the Utah Supreme Court.

Based on its report, the Work Group seems to believe that these changes will allow for “disruptive innovation,” or simply “disruption,” in the Utah legal market. The key to this disruption is technology. Put simply, the Work Group believes that its recommendations will provide incentives for companies to invest in technology that will make legal services — currently out of reach for many people in Utah — much more affordable and accessible.

So, what impact will this have on legal services in Utah? It’s not entirely clear. Decades ago, the District of Columbia loosened restrictions on the practice of law with similar goals of expanding legal services, and the impact was virtually nonexistent. One concern is that the same result will follow here.

Because other states have the traditional restrictions on the practice of law that Utah has, it’s very possible that technology companies will not be willing to invest significantly for services that can only be used in Utah. One answer to this problem is that, while Utah is at the forefront in loosening its restrictions on the practice of law, it may not be alone for long. Organizations in Arizona and California are considering similar changes, and state supreme courts throughout the western United States will be considering the issue over the next year. Beyond that, the success of disruption in Utah could pave the way for more states to loosen their restrictions on the practice of law.

One thing that cannot be ignored is that the changes to the Utah Rules of Professional Conduct will almost certainly have impacts in the legal market beyond efforts to address a shortage of affordable legal services. For example, an accountant, business consultant and lawyer could form a partnership, allowing businesses to consolidate some of their outside professional services.

The Work Group’s report also shows that it is sensitive to a concern that many lawyers have about loosening restrictions on the practice of law. For example, what happens when a lawyer partners with a nonlawyer who is concerned more about profits than professional obligations?

To be clear, the changes proposed by the Work Group would not allow a nonlawyer to practice law — that still could only be done by a lawyer or other professional authorized by the Utah Supreme Court.

Here’s an example: A technology company could invest in artificial intelligence to provide estate planning services with the assistance of lawyers who work for the technology company and advise customers of

the legal impacts of their estate planning decisions. How will those lawyers respond to directions from the company to limit the time spent with customers or to purchase additional products or services regardless of the lawyers' professional judgment about the need for those products or services? The Work Group proposes to address these concerns through robust regulatory oversight, but it's too early to analyze whether this is, or can be, effective to address these types of situations.

One last concern to note: Utah courts are already significantly backlogged. Civil cases routinely take years from filing to trial. If the Work Group's recommendations do create significantly greater access to legal services, will our court system be overwhelmed? Or will it save time and resources as people can more efficiently address their legal needs? Or both?

Whatever the answers to these and other concerns, one thing is clear at this point: The recommendations in the Work Group's report are going to be put into effect in some form, and this will happen quickly. The Utah Supreme Court's Advisory Committee on the Rules of Professional Conduct is drafting amended rules now to address the Work Group's recommendations.

Over the next year, we'll all step into uncharted territory when it comes to the practice of law in Utah.

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