NEW FRONTIERS IN ATTORNEY REGULATION: INTRODUCTION TO VOLUME I OF II

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Challenges facing the legal profession and attorney regulation are evolving at a rapid pace. There are increasing demands on legal services to adapt to new technologies, such as generative artificial intelligence (GenAI), and to provide greater access to legal services for low- and middle-income individuals and families. At the same time, the bar exam is being re-constructed, and questions are being raised about various aspects of attorney regulation. This Symposium, *New Frontiers in Attorney Regulation*, is a two-volume exploration of these and other challenges facing the legal profession and legal education.

This first Volume focuses on four key topics: certifying and regulating new legal services providers, rethinking mandatory state bars, addressing perceived racial and ethnic disparities in attorney discipline, and evaluating the content and focus of the Multi-State Professional Responsibility Examination (MPRE). Volume II will address additional issues, including: the role of GenAI in delivering legal services to low- and middle-income persons,[1] AI and the regulation of the unauthorized practice of law,[2] and the duty of efficiency and GenAI pedagogy.[3] Additionally, Volume II will address the NextGen Bar Exam,[4] attorney competence and public

1. *See* Barbara Glesner Fines, *AI, UPL, & A2J – Generative AI's Disruptions in the Delivery of Legal Services to Low-Income Individuals*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025).

2. *See* Carol A. Needham, *Regulation of the Use of Generative Artificial Intelligence Tools in the Delivery of Legal Services: Verification and Accountability*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025).

3. *See* Megan E. Boyd & Brian L. Frye, *The Duty of Efficiency & Generative AI Pedagogy*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025).

4. *See* Marsha Griggs, *Bar Examination: A Verb, Not a Noun*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025); Shannon Heery & Emily Hughes, *Attorney Competence and Public Confidence: Evolving Standards for Law Schools and Licenses*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025).

confidence,[5] lessons lawyers could learn from the corporate practice of medicine,[6] and the perverse effects of mandatory judicial reporting to bar authorities of ineffective assistance of counsel determinations.[7]

This Volume begins with two articles examining the certification and regulation of new legal services providers. Both articles start with the fact that most low- and middle-income individuals and families are unable to afford legal services.[8] Given the lack of legal help for a majority of people, many advocates for access to justice have called upon states to certify or license individuals to provide limited legal services.[9] In response, some states have begun to experiment with licensing individuals to provide limited legal services in areas such as debt collection, some aspects of family law, and landlord-tenant law.[10]

In his Article, Professor Benjamin Barton assesses the viability of the state of Washington's Limited Licensed Legal Technicians (LLLTs) and argues that current experiments that impose onerous licensing requirements and strict limits on the legal services such persons may provide are unlikely to close the access to justice gap.[11] Professor Barton looks at the economic struggles providers of limited legal services are likely to face given how many solo practitioner lawyers struggle to make a good living.[12] Instead of licensing individuals to provide limited legal services, Professor Barton argues that technology-driven solutions and/or programs where courts provide assistance to *pro se* litigants through free legal forms and self-help websites for common legal problems is likely a better way to close the justice gap.[13]

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5.   *See* Shannon Heery & Emily Hughes, *Attorney Competence and Public Confidence: Evolving Standards for Law Schools and Licenses*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025).

6.   *See* Melissa D. Mortazavi, *What Lawyers Could Learn from the Corporate Practice of Medicine*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025).

7.   *See* Tigran W. Eldred & David M. Siegel, *The Perverse Effects of Mandatory Judicial Reporting to Bar Authorities of Ineffective Assistance of Counsel Determinations*, 77 WASH. U. J.L. & POL'Y (forthcoming 2025).

8.   *See* Benjamin H. Barton, *The LLLT Conundrum*, 76 WASH. U. J.L. & POL'Y 5 (2025); Bruce A. Green & M. Ellen Murphy, *Replacing This Old House: Certifying and Regulating New Legal Services Providers*, 76 WASH. U. J.L. & POL'Y 45 (2025).

9.   *See* Bruce A. Green & M. Ellen Murphy, *Replacing This Old House: Certifying and Regulating New Legal Services Providers*, 76 WASH. U. J.L. & POL'Y 45 (2025).

10.   *See id.*

11.   *See* Benjamin H. Barton, *The LLLT Conundrum*, 76 WASH. U. J.L. & POL'Y 5 (2025).

12.   *See id.*

13.   *Id.*

In the second Article, Professors Bruce Green and Ellen Murphy provide a framework for exploring how new categories of limited legal services providers should be certified and regulated.[14] They examine the ways in which some federal agencies permit parties to be represented by someone who is not a lawyer, and how those agencies ensure competence of the non-lawyer representatives.[15] Professors Green and Murphy recommend that state courts should experiment with different approaches and eventually arrive at a uniform way to promote and support new legal services providers.[16]

In recent years, mandatory state bars have faced a growing number of legal challenges to compulsory bar membership, mandatory dues, what they can do, and what they can say. In the face of such legal challenges, Professor Leslie Levin maintains that it is time to rethink the wisdom and usefulness of mandatory state bars.[17] Professor Levin starts by analyzing some of the constitutional challenges to state bars, and she examines whether mandatory state bars are better than alternatives in other states at regulating lawyers or protecting the public from the harms of incompetent representation.[18] Professor Levin concludes by urging courts and legislators to rethink whether it makes sense to continue mandatory state bars.[19]

The percentage of lawyers of color has increased significantly in recent years, but how lawyers of color are treated by bar disciplinary authorities has been questioned. In their Article, Professors Susan Saab Fortney and Heather Zirke examine whether there are racial and ethnic disparities in attorney discipline.[20] They begin by discussing perceptions of disparate treatment of lawyers of color in disciplinary matters, and then draw upon study findings of disparities in lawyer discipline since the 1980s.[21] They recommend additional research into how disciplinary authorities treat

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14. *See* Bruce A. Green & M. Ellen Murphy, *Replacing This Old House: Certifying and Regulating New Legal Services Providers*, 76 WASH. U. J.L. & POL'Y 45 (2025).
15. *See id.*
16. *See id.*
17. *See* Leslie C. Levin, *Rethinking Mandatory State Bars*, 76 WASH. U. J.L. & POL'Y 123 (2025).
18. *See id.*
19. *See id.*
20. *See* Susan Saab Fortney & Heather Zirke, *Addressing Perceived Racial and Ethnic Disparities in Attorney Discipline*, 76 WASH. U. J.L. & POL'Y 163 (2025).
21. *See id.*

lawyers of color, and they identify steps regulators should take to address possible disparities and improve the regulation of lawyers.[22]

This first Volume of the Symposium closes with an Article from Professor Margaret Raymond, who takes the National Conference of Bar Examiners to task for testing the Comments to the American Bar Association (ABA) Model Rules of Professional Conduct on the MPRE.[23] Professor Raymond provides a number of reasons why the MPRE should not test the Comments, not the least of which is that Comments are too long and complex. Professor Raymond also demonstrates how the Comments have grown in number and complexity over the years to resemble a Restatement.[24] She concludes that just as the Multistate Bar Examination does not expect exam takers to be familiar with each relevant Restatement, the MPRE should not expect exam takers to know all of the Comments to the ABA Model Rules of Professional Conduct.[25]

The articles in this first Volume of the Symposium are important contributions to literature around attorney regulation and the legal profession. Along with the articles in the forthcoming second Volume of the Symposium, they highlight new and important issues around attorney regulation.

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22. *See id.*
23. *See* Margaret Raymond, *No Comment: The MPRE Should Not Test Knowledge of the Comments to the Model Rules*, 76 WASH. U. J.L. & POL'Y 215 (2025).
24. *See id.*
25. *See id.*