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

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This is the second Volume of the Symposium, *New Frontiers in Attorney Regulation*, examining many of the challenges facing the legal profession and attorney regulation. These challenges range from demands on legal services to adapt to new technologies, such as generative artificial intelligence (generative AI or GenAI), reconsideration of what the bar examination should test and how to test for lawyer competencies and knowledge, the potential role of new nonlawyer legal services providers, and questions about various aspects of attorney regulation. Along with Volume I of this Symposium, Volume II contributes to the exploration of some of the most important issues facing the legal profession and legal education.

This Volume focuses on key topics such as: the NextGen Bar Exam, evolving standards for law schools to promote attorney competence and public confidence, the role of GenAI in the practice of law and in legal education, what lawyers could learn from the corporate practice of medicine, and the perverse effects of mandatory reporting to bar authorities of ineffective assistance of counsel determinations. This Volume follows Volume I, which addressed the following important issues: certifying and regulating new legal services providers,[1] rethinking mandatory state bars,[2] addressing perceived racial and ethnic disparities in attorney discipline,[3] and

1. *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).

2. *See* Leslie C. Levin, *Rethinking Mandatory State Bars*, 76 WASH. U. J.L. & POL'Y 123 (2025).

3. *See* Susan Saab Fortney & Heather Zirke, *Addressing Perceived Racial and Ethnic Disparities in Attorney Discipline*, 76 WASH. U. J.L. & POL'Y 163 (2025).

evaluating the content and focus of the Multi-State Professional Responsibility Examination (MPRE).[4]

This Volume begins with an article examining new developments in attorney licensure, with a focus on the NextGen Bar Exam (NextGen exam).[5] In her article, Professor Marsha Griggs notes that the proponents of the NexGen exam claim it will be more relevant to the practice of law by asking integrated questions that test lawyering skills as well as legal knowledge, and that it promises to influence legal education with the exam's greater emphasis on lawyering skills.[6] Professor Griggs starts by critically examining the function and evolution of the bar exam in the United States, and proceeds to explore reform efforts in states that have so far declined to adopt the NextGen exam, as well as reforms in states that have adopted the new exam format.[7] Finally, Professor Griggs connects the developments in attorney licensure to developments in legal education.[8]

In their article, Professors Shannon Heery and Emily Hughes examine three rules the American Bar Association (ABA) has adopted—which are aimed at promoting attorney competence and public confidence in the legal profession.[9] They begin by discussing the first component of diversity and inclusion (DI) programming in Minimum Continuing Legal Education (MCLE), which the ABA enacted as a Model Rule for MCLE in 2017.[10] Professors Heery and Hughes see this as related to the second component—an earlier change in the ABA Model Rules of Professional Conduct, adopted in 2016—which states that discrimination and bias in the practice of law constitutes professional misconduct.[11] The authors then point to the ABA

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4.   *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).

5.   *See* Marsha Griggs, *Bar Examination: A Verb, Not a Noun*, 77 WASH. U. J.L. & POL'Y 6 (2025). Professor Griggs's article is a nice tie-in with the last article in the first Volume of this Symposium by Professor Margaret Raymond, which argued that the Multistate Professional Responsibility Exam (MPRE) should not test knowledge of the comments to the ABA Model Rules of Professional Conduct. *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).

6.   *See* Marsha Griggs, *Bar Examination: A Verb, Not a Noun*, 77 WASH. U. J.L. & POL'Y 6 (2025).

7.   *Id.*

8.   *Id.*

9.   *See* Shannon Heery & Emily Hughes, *Attorney Competence and Public Confidence: Evolving Standards for Law Schools and Licenses*, 77 WASH. U. J.L. & POL'Y 55 (2025).

10.   *Id.*

11.   *Id.*

Council of the Section of Legal Education and Admissions to the Bar adoption of accreditation Standard 303(c) in 2022, which requires law schools to provide law students with instruction on bias, cross-cultural competency, and racism, as the third component of the ABA's effort to ensure attorney competency and public confidence in the legal profession.[12]

This Volume continues with three articles examining various aspects of the possible uses of GenAI in the delivery of legal services and in legal education. The rise of GenAI over the last decade has been transformative, and the authors discuss some of its likely impacts on the legal profession from multiple perspectives.

The first GenAI article, by Professors Megan Boyd and Brian Frye, explores the legal profession's fiduciary duties of care and loyalty that, combined, require lawyers to provide competent legal representation as efficiently as possible.[13] The authors maintain that, as a result, lawyers must adopt new technologies, including AI, that enable lawyers to be more efficient.[14] Professors Boyd and Frye explain how lawyers can use AI tools and some of the problems lawyers may encounter in doing so. They conclude by arguing that law schools should be teaching law students how to use AI tools, rather than prohibiting their use.[15] As Professors Boyd and Frye note, AI will soon become an essential part of legal practice, and law schools have an obligation to teach students how to use it effectively and efficiently.[16]

The next article, by Professor Babara Glesner Fines, delves into GenAI's disruptions in the delivery of legal services to low-income individuals.[17] Instead of focusing on GenAI as a tool for lawyers, as many other commentators have, Professor Glesner Fines looks at GenAI from the perspective of individuals consuming legal services and how they could use AI tools in seeking do-it-yourself (DIY) solutions for their legal programs.[18] In this regard, she focuses on how internet searches and document

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12. *Id.*
13. *See* Megan E. Boyd & Brian L. Frye, *The Duty of Efficiency & Generative AI Pedagogy*, 77 WASH. U. J.L. & POL'Y 96 (2025).
14. *Id.*
15. *Id.*
16. *Id.*
17. *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 126 (2025).
18. *Id.*

automation programs provide DIY solutions for persons unable to afford, or secure free, legal services.[19] Professor Glesner Fines concludes by arguing that rather limit the use of GenAI tools, the legal profession should encourage the use of such tools as well as permit nonlawyers to assist consumers of legal services to use the tools effectively.[20]

The next GenAI article in this Volume, by Professor Carol Needham, explores the regulation of its use.[21] Professor Needham explores what legal ethics counsel, bar association committees, and others are doing to provide guidance for the use of GenAI in providing legal services.[22] The beginning point of such guidance focuses on the lawyer's duties of competence and client confidentiality, which include competence in using technology and awareness of how confidential client information may be compromised if inputted into tools such as ChatGPT.[23] Professor Needham identifies some of the weaknesses in general guidance that is short on specifics, and she also advocates for regulators to take a more proactive role in evaluating and establishing clear regulatory frameworks for the legal profession's use of GenAI.[24]

Shifting away from the discussion of GenAI, Professor Melissa Mortazavi takes on another development in the regulation of the legal profession—the emergence of alternative business structure (ABS) law firms.[25] Her article, exploring the results of the corporate practice of medicine, serves as a cautionary tale for what lawyers may reap from the nonlawyer ownership of law practices.[26] Professor Mortazavi focuses on the potential loss of lawyer independence and identifies that the promise of greater access to legal services via ABS law firms may be illusory.[27] She then focuses on how the corporate practice of medicine has not lowered medical costs or expanded access to health care, serving as an omen to what

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19. *Id.*
20. *Id.*
21. 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 184 (2025).
22. *Id.*
23. *Id.*
24. *Id.*
25. *See* Melissa D. Mortazavi, *What Lawyers Could Learn from the Corporate Practice of Medicine*, 77 WASH. U. J.L. & POL'Y 212 (2025).
26. *Id.*
27. *Id.*

may happen in the legal profession.[28] Professor Mortazavi concludes that the legal profession must critically examine the claims of those advocating for nonlawyer ownership of law firms and ensure that lawyers do not lose their independence, as so many have in the medical profession.[29]

The concluding article, by Professors Tigran Eldred and David Seigel, analyzes the perverse effects of mandatory reporting to bar authorities of ineffective assistance of counsel (IAC) determinations resulting in the reversal of convictions.[30] The authors begin by pointing out how California judges have concluded that they have an obligation to report defense lawyers after finding the lawyers have provided ineffective assistance of counsel to their clients.[31] As a result, such reporting to disciplinary counsel triggers an investigation that is time consuming for those lawyers and serves as a disincentive for trial counsel to cooperate with successor counsel evaluating IAC claims.[32] Professors Eldred and Seigel also note that empirical research into the judicial reporting of IAC has been inconsistent and rarely results in formal professional discipline.[33] Instead of the present system, Professors Eldred and Seigel recommend a reporting system more carefully drawn to the deficient quality of representation and not based on reversal of conviction.[34]

The articles in this second Volume of the Symposium join those in the first Volume as important contributions to developments in attorney regulation of the legal profession. Combined, the articles in this two-volume Symposium highlight important and emerging issues around attorney regulation. By focusing on these significant issues, the authors in this Symposium aim to ensure that the legal profession and legal education evolve in ways that enhance competency, fairness, and access to justice.

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28.   *Id.*
29.   *Id.*
30.   *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 244 (2025).
31.   *Id.*
32.   *Id.*
33.   They state that informal discipline, such as a warning letter sent to the lawyer by disciplinary counsel, is more common. *Id.* at 251.
34.   *See id.*