



# Utah State Courts

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## Supreme Court Task Force to Examine Limited Legal Licensing

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Report and Recommendations November 18, 2015

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The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

**SUPREME COURT TASK FORCE TO EXAMINE LIMITED LEGAL LICENSING**

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## **(1) INTRODUCTION AND SUMMARY**

### **(a) INTRODUCTION**

Probably most Utah communities are not that different from “Middle City, USA,” a mid-size, mid-West community that was the location of the 2014 Community Needs and Services Study by the American Bar Association.<sup>1</sup> In a random sampling of adults in Middle City, 66% of the respondents had experienced an average of 3.3 “civil justice situations”<sup>2</sup> in the previous 18 months, almost half of which resulted in “a significant negative consequence.” Yet respondents identified only 9% of the situations as “legal” and another 4% as “criminal.” In other words, many may not have recognized recourse to the courts as an option.

About 16% of the people facing a civil justice situation did nothing; 46% relied on self-help; and 23% relied on the help of family or friends. Only 22% used the assistance of a lawyer or other professional. Somewhat surprisingly, 21% of the situations were described as “properly dealt with within the family or community.” In other words, to a substantial minority, using an outside third party to seek a legal remedy seemed inappropriate.

Forty-six percent relied on self-help. That is, as well as we can estimate, about the percentage of self-represented parties in select types of litigation in the Utah district court, and the imbalance of self-representation between petitioners and respondents is even more stark. Probably the other circumstances, opinions and responses of the residents of Middle City represent those of Utah residents as well.

The cost of legal services is often cited as a major reason that people with need of legal services do not employ lawyers,<sup>3</sup> yet in the Community Needs

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<sup>1</sup> Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study. Rebecca L. Sandefur, American Bar Association, University of Illinois at Urbana-Champaign, 2014. ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2478040](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478040); <http://perma.cc/3K7P-UPD2>).

<sup>2</sup> Employment, rental housing, owned housing, money, debt, insurance, government benefits, education, relationship breakdown, personal injury, criminal negligence.

<sup>3</sup> See, for example, Robert Ambrogi, *Washington State moves around UPL, using legal technicians to help close the justice gap*, ABA JOURNAL (Jan. 1, 2015, 5:50 AM), ([http://www.abajournal.com/magazine/article/washington\\_state\\_moves](http://www.abajournal.com/magazine/article/washington_state_moves)

and Services Study “concerns about cost were a factor in 17% of cases,” even though 58% of respondents agreed with the statement that “lawyers are not affordable for people on low incomes.”<sup>4</sup> The cost of legal services cannot be ignored as a factor in the number of self-represented parties, but a common perception is that an increasing number of people choose to represent themselves and seek help only as needed.

Given our charge and the high concentration of self-represented parties in select casetypes, we have focused primarily on creating a supply of non-lawyer paraprofessionals qualified to provide specified legal services in specified practice areas. In doing so, we have been guided by the ABA Commission on the Future of Legal Services draft resolution<sup>5</sup> urging “each state’s highest court, and those of each territory and tribe, to be guided by the ABA Model Regulatory Objectives to help (1) assess the court’s existing regulatory framework and (2) identify and implement regulatory innovations related to legal services beyond the traditional regulation of the legal profession” The commission’s regulatory objectives are:

- Protection of the public
- Advancement of the administration of justice and the rule of law
- Access to information about, and advancement of the public’s understanding of, the law, legal issues, and the civil and criminal justice systems
- Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
- Delivery of affordable and accessible legal services
- Efficient, competent, and ethical delivery of legal services
- Protection of confidential information

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[around upl using legal technicians to help close the;](http://perma.cc/FL75-QKAR)  
<http://perma.cc/FL75-QKAR>): “[M]ultiple state and federal studies [show] that 80 to 90 percent of low- and moderate-income Americans with legal problems are unable to obtain or afford legal representation. The economics of traditional law practice make it impossible for lawyers to offer their services at prices these people can afford.”

<sup>4</sup> Community Needs and Services Study, *Id.* at pages 3, 13 and 15.

<sup>5</sup>

[http://www.americanbar.org/content/dam/aba/images/office\\_president/draft\\_regulatory\\_objectives.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/draft_regulatory_objectives.pdf); <http://perma.cc/2HWB-9LNY>).

- Independence of professional judgment
- Accessible civil remedies for breach of duties owed and disciplinary sanctions for incompetence, misconduct, and negligence
- Diversity and inclusion among legal services providers and freedom from discrimination in the delivery of legal services and in the justice system

We have also included five other strategies to meet the needs of self-represented parties for assistance with their civil justice situations and to improve access for everyone.

We recognize the value of a lawyer representing a client in litigation, or advising a client about options, or counseling a client on a course of action. We recognize the valuable services that lawyers provide to their clients every day, in and out of court. But the data show that, even after years of effort with pro bono and low bono programs, a large number of people do not have a lawyer to help them. The data also show that the demand is focused on the areas where the law intersects everyday life, creating a “civil justice situation.” The people facing these situations need correct information and advice. They need assistance. Our purpose is to consider and recommend whether there is an alternative source for that assistance.

Given the time available to us and the need for policy decisions before beginning the arduous work of implementation, this report remains a planning blueprint. If our recommendations are approved, we recommend that the supreme court appoint a steering committee to guide the next steps.

**(b) TASK FORCE CHARGE**

In May, 2015, the supreme court created this task force to:

- examine emerging strategies and programs that authorize individuals to provide specific legal assistance in areas currently restricted to licensed lawyers; and
- recommend whether similar programs should be established in Utah.

Specifically, the court asked us to:

- examine the Limited Licensed Legal Technician Program in the State of Washington—as well as other, similar programs;
- determine the origin, purpose, content, requirements, cost, authorizing entity, administration and evaluation of these programs;

- evaluate whether the programs would materially improve access and affordability for select types of legal assistance;
- evaluate the balance between increasing access and ensuring consumer protection;
- evaluate where the greatest need for legal assistance exists and how these programs might address that need; and
- consider issues that would have to be addressed in the implementation, regulation and administration of a program, such as:
  - role definition;
  - training/certification requirements;
  - scope of services;
  - regulatory authority; and
  - supervision/quality control/complaint process.

We were ably assisted in this inquiry by Dr. Thomas Clarke, Director of Research and Technology for the National Center for State Courts. At our request, Dr. Clarke and the National Center for State Courts prepared a white paper with analysis and recommendations.<sup>6</sup> Dr. Clarke’s experience and opinions were invaluable, and we express our sincere appreciation.

Our research and materials, including this report, are on the court’s website at [http://www.utcourts.gov/committees/limited\\_legal/](http://www.utcourts.gov/committees/limited_legal/); <http://perma.cc/9GCN-2J3R>.

**(c) SUMMARY OF RECOMMENDATIONS**

(1) The supreme court should:

- Exercise its constitutional authority to govern the practice of law to create a subset of discrete legal services that can be provided by a licensed paralegal practitioner in three practice areas:
  - temporary separation under [Section 30-3-4.5](#), divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change;
  - eviction; and
  - debt collection.

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<sup>6</sup> Non-Lawyer Legal Assistance Roles—Efficacy, Design, and Implementation. Thomas Clarke, Director of Research and Technology for the National Center for State Courts.

([http://www.utcourts.gov/committees/limited\\_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf](http://www.utcourts.gov/committees/limited_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf); <http://perma.cc/A92U-NBQJ>)



- Within an approved practice area, authorize a licensed paralegal practitioner to:
  - establish a contractual relationship with a client who is not represented by a lawyer;
  - conduct client interviews to understand the client's objectives and to obtain facts relevant to achieving that objective;
  - complete court-approved forms on the client's behalf; advise which form to use; advise how to complete the form; sign, file and complete service of the form; obtain, explain and file any necessary supporting documents; and advise the client about the anticipated course of proceedings by which the court will resolve the matter;
  - represent a client in mediated negotiations and consider whether to authorize a licensed paralegal practitioner to represent a client in unmediated negotiations;
  - prepare a written settlement agreement in conformity with the mediated agreement; and
  - advise a client about how a court order affects the client's rights and obligations.
- Establish education requirements and regulatory requirements to qualify as a licensed paralegal practitioner.

(2) If the supreme court approves these recommendations, the court should appoint a steering committee to plan, design and implement the program details.

(3) The board of bar commissioners should implement as soon as possible the recommendations of its futures commission to build an online lawyer directory and for increasing the use of discrete task legal services.

(4) The judicial council should:

- work with the committee on resources for self-represented parties to:
  - develop forms appropriate for approved practice areas;
  - improve existing forms; and
  - publish information about the facts and procedures relevant to the forms;
- establish a pilot program of assisted resolution of family law and/or debt collection cases involving self-represented parties;
- continue to plan, design and build an online dispute resolution application; and

- request an appropriation to fund additional work by the self-help center to instruct court staff, public library staff, community and faith-based groups and other volunteers to enable them in turn to assist others, for free, with general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies and to assist in completing court-approved forms.

**(2) THE PRACTICE OF LAW IN UTAH**

**(a) AUTHORITY OF THE SUPREME COURT TO GOVERN THE PRACTICE OF LAW**

“The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.”<sup>7</sup> “Admission to practice law” should retain its traditional meaning; that is, lawyers who are licensed by the supreme court after meeting the minimum qualifications established by rule and the procedures of the board of commissioners of the Utah State Bar. Elsewhere in Utah law—the qualifications of a judge of a court of record, for example—the phrase is used as a term of art to mean “lawyers.”

Later in this report we recommend that the supreme court exercise its authority to “govern” the practice of law to establish rules authorizing a paraprofessional who is not a lawyer to do some of the things traditionally reserved for lawyers. The paraprofessional will be engaged in the practice of law by performing specified tasks in specified practice areas, but will not be “admitted” to practice law.<sup>8</sup> The limited tasks fit well within the traditional definition of the practice of law, even though the paraprofessional is not a lawyer. The supreme court’s exclusive authority to establish this policy is established in the Utah constitution and recognized by statute. Utah Code [Section 78A-9-103\(1\)\(a\)](#) provides:

*Unless otherwise provided by law or court rule, an individual may not practice law or assume to act or hold himself or herself out to the public as an individual qualified to practice law within this state if that individual is not admitted and licensed to practice law within this state.... (emphasis added)*

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<sup>7</sup> Utah Constitution [Art VIII, Section 4](#).

<sup>8</sup> We also recommend separate licensing, conduct, discipline, and administrative regulations for this new paraprofessional.

The respective authority of the supreme court and the legislature over the practice of law has been described as the supreme court governing the authorized practice of law and the legislature governing the unauthorized practice of law. See [Board of Commissioners of the Utah State Bar v. Petersen](#), 937 P.2d 1263, 1270 (Utah 1997). [Section 78A-9-103](#) prohibits practicing law without a license and provides a civil remedy for the board of commissioners of the Utah State Bar.

**(b) SUPREME COURT RULES**

The practice of law is a defined term, and, with certain exceptions, only lawyers may do it. Initially adopted in 2005 under a different system for organizing the rules governing the practice of law, Rule 14-802 now provides:

[O]nly persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah. ... The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

Special Practice Rules. [Rule 14-802\(a\)\(2\) and \(b\)](#).

Rule 14-802(c) then removes from the definition certain services that possibly satisfy the general definition, but which nevertheless are not the practice of law. In other words, sometimes a non-lawyer with specified credentials and sometimes anyone may perform the following services; sometimes for a fee and sometimes only for free; always without the supervision of a lawyer.

- (1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.
- (2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person’s facts or circumstances.
- (3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.<sup>9</sup>

(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(7) Representing a party in any mediation proceeding.

(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(11) Lobbying governmental bodies as an agent or representative of others.

(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

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<sup>9</sup> [Rule 13](#) provides: "A party in a small claims action may be self-represented, represented by an attorney admitted to practice law in Utah, represented by an employee, or, with the express approval of the court, represented by any other person who is not compensated for the representation."

(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

Special Practice Rules. [Rule 14-802\(c\)](#).

In addition to restricting the practice of law to “active, licensed members of the Bar in good standing” under Rule 14-802, a separate rule, which prohibits practicing law without a license covers much of the same ground.

Pursuant to Rule 14-506(a), no person who is not duly admitted and licensed to practice law in Utah as an attorney at law or as a foreign legal consultant nor any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay his or her license and other fees or otherwise, shall practice or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. Such practice, or assumption to act or holding out, by any such unlicensed or disbarred or suspended person shall not constitute a crime, but this prohibition against the practice of law by any such person shall be enforced by such civil action or proceedings, including writ, contempt or injunctive proceedings, as may be necessary and appropriate,

which action or which proceedings shall be instituted by the Bar after approval by the Board.

Rules of Integration and Management. [Rule 14-111](#).<sup>10</sup>

A third rule authorizes paralegals to perform an unspecified range of legal services that would normally be performed by a lawyer, provided the services are for a lawyer or the paralegal is supervised by a lawyer.

A paralegal is a person qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity of function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform. A paralegal includes a paralegal on a contract or free-lance basis who works under the supervision of a lawyer or who produces work directly for a lawyer for which a lawyer is accountable.

Rules of Integration and Management. [Rule 14-113\(a\)](#).

We have restated the laws regulating the practice of law in some detail because our charge is to examine whether and to what extent someone other than a licensed lawyer might practice law.

### **(3) PROGRAM DESIGN PRINCIPLES**

We have tried to identify the gaps in legal services and to find solutions that address those gaps. We have tried to view the need for legal services from the client's perspective: the desire for relevant, competent, accessible and affordable service.

We conclude that the authority of a paraprofessional should be limited along two lines of inquiry: (1) the potential demand for assistance within a practice area, as measured by the high concentration of self-represented parties; and (2) specified authority, as determined by the needs of the client or by what is proper for the paraprofessional's minimum qualifications, whichever limit is reached first.

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<sup>10</sup> The supreme court should consider repealing this rule. Given the provisions of Rule 14-802 and Section 78A-9-103, it seems superfluous.

**(4) PRACTICE AREAS OF GREATEST DEMAND**

There is little point to extending the authority of a paraprofessional into areas in which there is no demand. To detail the first line of inquiry, we look to fiscal year 2015 court records that show the casetypes in which parties largely are not represented by lawyers. Previous years are similar.

**Table 1. Self-Represented Parties in Select Casetypes**

Casetype	Case Filings	Both Parties Represented	One Party Represented	No Party Represented	Self-Represented Petitioner	Self-Represented Respondent
Paternity	1,043	36%	44%	20%	23%	61%
Contracts	2,608	28%	71%	1%	1%	71%
Protective Order	4,744	23%	35%	42%	48%	71%
Custody & Support	1,281	20%	49%	31%	36%	76%
Divorce/Annulment	13,227	19%	31%	50%	52%	80%
Temporary Separation	85	19%	38%	44%	52%	73%
Civil Stalking	858	13%	18%	69%	79%	77%
Eviction	7,465	4%	83%	13%	13%	96%
Debt Collection	67,510	2%	98%	0%	0%	98%
Guardianship	1,622	1%	43%	56%	57%	3%
Conservatorship	143	1%	84%	15%	15%	2%
Adoption	1,352	1%	84%	14%	14%	4%
Name Change	1,014	0%	17%	83%	83%	1%
Personal Representative	2,107	0%	87%	12%	12%	0%
Total	105,059	6%	81%	12%	13%	87%

Focusing on the three areas in which the concentration of self-represented parties is highest—family law cases, including temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change; eviction; and debt collection—the number of self-represented parties is very high, both in the absolute number of self-represented parties and in the number of self-represented parties as a percent of all parties.

Case Type	Case Filings	Both Parties Represented	One Party Represented	No Party Represented	Self-Represented Petitioner	Self-Represented Respondent
Family Law	23,604	18%	36%	46%	49%	69%
Debt Collection	67,510	2%	98%	0%	0%	98%
Eviction	7,465	4%	83%	13%	13%	96%

The gaps in these areas are substantiated by two 2014 data sets from Utah Legal Services.

**Table 2. Utah Legal Services Areas of Client Services**

Area	Clients	Area	Clients
Divorce	3506	All others	157
Housing, utilities	2996	Guardianships, Conservatorships	153
Small estates and consumer protection	2106	Food	70
Paternity, support, custody, visitation	1508	Adoption	66
Adult services	1500	Indian and Tribal law	63
Domestic violence, abuse and neglect, child abuse	1467	Education	15
SSI, SSDI	975	Disability	6
Medicaid, Medicare	490	Independence, communication	3
Employment	220	Total	15,301

**Table 3. Areas of Client Service by Pro Bono Lawyers Recruited by ULS**

Area	Clients	Area	Clients
Bankruptcy/Debtor Relief	250	Contracts	3
Divorce	192	Adoption	2
Paternity/Custody	56	Name Change	2
Domestic Abuse	25	Stalking	2
Advanced Directives	14	Human Trafficking	2
Guardianship/Conservatorship	12	Torts	2
Wills/Estates	10	Support	1
Other	9	State Assistance	1
Collection	7	SSI	1
Housing	5	Total	596

**(5) PROCEDURAL AREAS OF PARAPROFESSIONAL COMPETENCE**

The process of civil litigation that has evolved over centuries is not simple, and it continues to evolve. Some parts of that process must be reserved for lawyers because only law school teaches the necessary information and skills. Other parts of the process can be negotiated by a paraprofessional. To detail the second line of inquiry, we have tried to identify through the course of litigation the services that a self-represented party might need and whether a paraprofessional might appropriately provide those services.

**(a) HOW DO PEOPLE GET ADVICE ABOUT REMEDIES TO THEIR “CIVIL JUSTICE SITUATIONS”?**

Paraphrasing Rule 14-802: “Do I need someone to apply the law to my circumstances and inform, counsel, advise, assist, advocate for or draft



documents for me?” Based on the experience of task force members, we know that unlicensed providers are serving some of these needs beyond what is now permitted.

General legal information is available from a variety of sources. In addition to the Utah state courts and government agencies, non-profit organizations such as the Utah State Bar, Utah Legal Services and the Legal Aid Society of Salt Lake City provide information, primarily for self-represented parties. Private attorneys sometimes include on their websites general information about rights and remedies in the area of law in which they practice. Several commercial internet sites do the same. There are several free legal clinics around the state. Schools, libraries, law enforcement agencies and consular officials are resources. Homeless shelters, domestic violence shelters, and community and faith-based organizations assist as well.

Many organizations provide court-approved forms. Some organizations provide them for free; others charge a fee.

Filtering and providing information, opinions and recommendations about relevant laws and procedures are tasks appropriate for a paraprofessional. A paraprofessional should be able to do at least as much as is permitted by Rule 14-802(c)(2): “Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person’s facts or circumstances.”

A paraprofessional can be educated to conduct initial client interviews, identify needs, advise whether those needs can be met by the paraprofessional or require a lawyer’s skills, and otherwise inform clients of options. A paraprofessional can be educated to provide information on navigating the legal system: what are the steps in the litigation process; what forms are needed; where to obtain them; how to file them; etc.

Unless there is an approved form, moving beyond “information, opinions or recommendations” to counsel and advice should be reserved for a licensed lawyer. Just as diagnosis of a symptom’s cause is at the core of the physician’s role, recognizing that a person’s circumstance creates legally enforceable obligations, rights and remedies is at the heart of what lawyers do. Lawyers, also like doctors, should be the only professionals authorized to advise on a course of action, and assist in completing that course of action.

Compare the services of Rule 14-802(b)(1), which only a licensed lawyer may provide,

The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

with the services of Rule 14-802(c)(2), which anyone provide.

Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person’s facts or circumstances.

The difference between “specific advice” and “general ... opinions or recommendations” about rights, remedies, defenses, options or strategies is a fine line to be sure. But it is a line paraprofessionals should be educated to understand and honor.

In the area of “general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies,” Utah law would currently allow a paraprofessional to provide much more value to a client than is permitted in most other states without crossing that line.

The permission given by Arizona law, for example, is exactly opposite Utah. As is described in the section on [Arizona](#) document preparers, the document preparer is expressly prohibited from giving opinions or recommendations about possible legal rights, remedies, defenses, options, or strategies. In Utah a person is expressly permitted to do just that. A step beyond is the [Washington](#) limited license legal technician who can advise a client about his or her particular circumstances.

#### **(b) HOW DO PEOPLE OBTAIN AND PREPARE FORMS?**

Court forms have been around for at least decades if not centuries. The offices of court clerks always used to include a forms cabinet with a pigeon hole for each form. Advice on which form to use and how to complete it was often requested and given. The primary difference today is that approved forms are on the internet rather than in the cabinets of court clerks.

Unapproved forms also are available on the internet rather than at the stationer’s shop. A paraprofessional will appreciate the difference between approved and unapproved forms. A self-represented party might not. Unapproved forms may or may not be legally sufficient. A person filing an unapproved form may spend a lot of time and money only to have the proceeding dismissed.

If an approved form exists within a practice area, then an authority has decided that a particular collection of information is necessary to achieve a particular objective. The form is designed to elicit that information. The same is true whether the form is a traditional fill-in-the-blank-and-check-the-box form or a web-based interactive interview conducted by software that produces a digital file suitable for saving and electronic filing.

Advising a client about which form to use overlaps a little of the attorney's core role, but choosing one set of forms rather than another is a relatively simple task. Approved district court forms are organized by objective: "I want to:

- garnish a debtor's wages
- change my visitation schedule
- be appointed guardian of Dad
- evict a tenant
- adopt my stepchild
- etc."

If a client comes with an objective in mind and a form has been approved to request that result, selecting the correct form is a task suitable for a paraprofessional. For a contrary approach, see the authority of a [California](#) legal document assistant.

Once the form is selected, a paraprofessional can help gather the information needed to complete the form. Sometimes the information is simple; sometimes complex. In either event, a paraprofessional is capable of the task.

Under Rule 14-802, anyone can provide "clerical assistance" to another to complete a court-provided form when no fee is charged to do so. Presumably "clerical assistance" means acting as a scribe. The [California](#) legal document assistant is limited to the scrivener's role.

If assistance goes only so far, it is of little value. To increase the value to a client, assistance must include the authority to explain the purpose, relevance and relationship of the entries and to assist with phrasing an entry. Once prepared, a paraprofessional should have the authority to sign, file and complete service of the form on behalf of his or her client. This is similar to the [Arizona](#) legal document preparer.

Rule 14-802 allows a person to provide clerical assistance in completing court-approved forms on behalf of another. If a paraprofessional is authorized to provide greater advice and assistance with forms in an approved practice area, the paraprofessional should also be able to obtain

and explain documents necessary to support the form. For example, if a paraprofessional assists a client to complete a financial declaration form as part of establishing child support, the paraprofessional should also be able to help the client obtain his or her tax return, which is a necessary supporting document. Or, under [Section 26-2-25](#), upon entry of a decree of divorce or adoption, a form must be filed with the Office of Vital Records and Statistics. It is not a court form, but it is a necessary part of the court process.

If there is no approved form for a particular objective, then there is no agreed-upon collection of information needed to achieve that objective. That being the case, drafting pleadings and other documents for which there is no form should be reserved for a licensed lawyer. For a contrary approach, see the description of a [Louisiana](#) notary public. A [Washington](#) limited license legal technician may prepare documents other than forms, but only if the document is reviewed and approved by a lawyer.

In the previous section we identified debt collection cases as an area in which there is a need for legal services. However, there are no approved forms specifically for debt collection cases, and, until there are, the services of a paraprofessional in this practice area will necessarily be limited to other specified tasks and forms that apply more generally but can be used in this practice area.

### **(c) HOW DO PEOPLE PARTICIPATE IN MEDIATION?**

Rule 14-802(c)(7) permits anyone to represent another in mediated negotiations. We believe that a paraprofessional should have at least the same authority as any other person, but we are divided on whether a paraprofessional should be authorized to negotiate without a mediator. Some see no sound reasons for distinguishing between the two circumstances. Others see the third-party neutral as creating a dynamic that levels any power imbalances, enabling a non-lawyer to negotiate on behalf of a client.

Mediators sometimes but not always memorialize settlement agreements. Parties often are not represented in mediated negotiations, and the only person with the wherewithal to memorialize the agreement is the mediator. If a paraprofessional is representing someone in the mediation, that person is in as good a position as the mediator to memorialize the agreement. There should be no risk of overreaching because the mediator can identify any discrepancy between the written and oral agreements and the other party can reject the written agreement as not conforming to the oral agreement.

However, a paraprofessional should be able to prepare a form of order based on the settlement agreement only if there is an approved order form.

**(d) HOW DO PEOPLE PARTICIPATE IN HEARINGS?**

Traditionally only lawyers and self-represented parties have been permitted to participate in hearings. Unlike forms and general information and opinions, for which a person can look to resources other than lawyers, in a hearing a person must have a lawyer or go it alone. Advocacy, like advice and counsel specific to the client's particular circumstances, is at the heart of what lawyers do. Eliciting testimony, selecting evidence, applying the law to the facts presented and weaving them together in a cogent argument should be reserved for a licensed lawyer.

**(e) HOW DO PEOPLE LIVE WITHIN THE RESOLUTION OF THEIR LEGAL ISSUE?**

There is no program for explaining to a self-represented party the outcomes, rights and responsibilities encompassed in a court order. An individual might turn to a family member or to a trusted friend or colleague to provide an explanation of a written order. Or a volunteer attorney at a workshop or clinic might explain an order.

The general opinions or recommendations that Rule 14-802(c)(2) permits at the beginning of a consultation should be just as permissible at the end of litigation. In the beginning, a paraprofessional might provide information and opinions to a client about relevant laws and procedures. And, if there is an approved form, the paraprofessional might advise about the forms and the procedures to achieve the client's particular objectives. At the end of the process, a paraprofessional might do the same regarding the order that the court has just entered: advise the client about his or her rights and obligations under that order; how to enforce the order; whether the order can be modified, under what circumstances and how to do it; whether the order must be served on anyone else; and so forth.

**(f) HOW DO PEOPLE FIND A LAWYER?**

The Utah State Bar's directory of lawyers is essentially a listing of lawyers with contact information. Unless one is looking for a particular lawyer, it is not effective. We urge the Bar to make the improvements we recommend in the section on the [online lawyer directory](#).

Someone in need of a lawyer might get lucky with a Google search with the relevant search terms. Many people will ask family, friends or colleagues for suggestions. Telephone directories are still around.

A major component of a paraprofessional practicing law in limited circumstances is that he or she understands and honors the boundaries of the profession. A paraprofessional should be authorized and encouraged to refer a client to a lawyer if a needed service is beyond the person's professional competence or is not authorized. Finding competent counsel is difficult and stressful; a paraprofessional can help.

#### **(6) CHALLENGES TO ESTABLISHING A PARAPROFESSIONAL PROGRAM**

According to a survey conducted by the futures commission of the Utah State Bar, 60% of the responding lawyers either disagreed or strongly disagreed with a proposal to explore limited licenses for certain practice areas (with 41% "strongly" disagreeing).<sup>11</sup> One barrier to establishing a paraprofessional program, therefore, may be opposition from lawyers. However, the nature and magnitude of the opposition may depend on program design. A fine-tuned program, which is clear about training, certification and scope of practice, could minimize opposition.

Also, we encourage lawyers, as they consider our analysis and proposal, to embrace their role as public citizens:

A lawyer is ... a public citizen having special responsibility for the quality of justice. .... As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.

As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate

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<sup>11</sup> Report and Recommendations on the Future of Legal Services in Utah. Employer's survey, page 19. ([https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommission\\_Employers.pdf](https://www.utahbar.org/wp-content/uploads/2015/07/2015FuturesCommission_Employers.pdf); <http://perma.cc/KWK9-A444>).

legal assistance and therefore, all lawyers should devote professional time and resources and use civic influence in their behalf to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

....

The profession has a responsibility to ensure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the Bar.<sup>12</sup>

General opposition is not the only barrier to establishing a paraprofessional program:

**Barrier: Lack of rural markets.** The American Bar Association task force on the future of legal education identified a paraprofessional program as a method of placing legal services in rural areas.<sup>13</sup> But, the argument goes, if there is no viable market for lawyers in rural areas, there may be no viable market for paraprofessionals either.

**Responses and solutions.** Paraprofessional businesses might be able to exist in areas for which there is no viable market for law firms if paraprofessionals have less educational debt, lower overhead and lower income expectations.

The option for a lawyer to practice with a paraprofessional may also make a rural practice more viable for both if the combined practice allocates matters more efficiently according to each professional's specified authority, allowing services to be provided at lower costs.

Ultimately, our role is to recommend whether and under what conditions it is proper for a paraprofessional to engage in the limited practice of law. We are not able to conduct market research on the viability of rural or other markets. Paraprofessionals will have to test what markets are viable and how. As with any form of free enterprise, some business

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<sup>12</sup> [Preamble](#): A Lawyer's Responsibilities. Rules of Professional Conduct.

<sup>13</sup> Report and Recommendations American Bar Association Task Force on the Future of Legal Education, at pages 13 and 33. ([http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf); <http://perma.cc/N6XQ-2CX6>).

models will work, and others will not, and market entrants must adapt and innovate accordingly.

**Barrier: Nature of clientele and markets.** The rates for a successful paraprofessional may price some clients out of the market just as effectively as the rates for a successful lawyer. Some question whether paraprofessionals will be able to charge less than the modest means program<sup>14</sup> already administered by the Utah State Bar. Legal services in two of the recommended practice areas—eviction and debt collection—will be especially difficult because the respondents who need assistance do not have the money to pay for it.

**Responses and solutions.** As with any service, a paraprofessional likely will start with lower prices and grow to serve more sophisticated clients willing to pay more as the paraprofessional gains experience. Those paraprofessionals might retain their existing clients, or other providers might enter the market to fill any gaps.

Utah enjoys a superb modest means program that charges a \$25 finder's fee and \$50 to \$75 per hour based on the client's income and assets. That service can continue to grow, but the section on [practice areas of greatest demand](#) shows that lawyers fill only a fraction of the existing gap in legal services, and a multi-faceted approach is appropriate.

**Barrier: Gaps in representation.** If a paraprofessional represents a client, but the case develops beyond the scope of his or her competence or license to practice, the client will be disadvantaged while seeking a lawyer or navigating the rest of the case without representation.

**Responses and solutions.** A paraprofessional does not have to abandon the client. For matters that are too complex based on the paraprofessional's judgment or for matters beyond the scope of the limited license, a paraprofessional can refer the client to a specific lawyer or to several lawyers from which to choose. A paraprofessional who practices with a lawyer can handle matters within his or her competence and authority and call in the lawyer-colleague when appropriate.

Additionally, a licensed paralegal practitioner, as we have recommended it, will necessarily be a paralegal, and will continue to have the authority of a paralegal. If a client needs a service within the licensed paralegal practitioner's competence, but beyond his or her license, the licensed

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<sup>14</sup> (<https://www.utahbar.org/modest-means-lawyer-referral-program/>; <http://perma.cc/8RGQ-J3JG>).



paralegal practitioner can provide that service under a lawyer's supervision and license, much as they have for decades.

All of these referral methods ensure reasonable continuity of representation. Plus, if a client can enter the legal services market through a lower-priced paraprofessional, the client might seek the further assistance of a lawyer when the paraprofessional's representation must end, making available to lawyers clients they would not otherwise have.

This is similar to what occurs when a nurse practitioner refers a patient to a physician, when a general physician refers a patient to a specialist, or when an accountant refers a client to a tax attorney. Inevitably there is some delay, and some transitions are smoother than others, but the client is not left to sink or swim.

**Barrier: Service quality.** The quality of legal services may decline. Practicing law requires a particular legal education, and a JD provides the public with the value of legal competence. A legal education teaches numerous skills and attitudes that are an instrumental part of the practice of law. Among others, these skills include professionalism, communication and listening, research techniques, task organization and management, creative thinking, and inference-based analysis. These skills are taught and reinforced throughout three years of law school.

**Responses and solutions.** The level of education and other qualification requirements should match the nature of the authorized services. At a minimum, education should include concepts of professionalism, responsibility, civility and ethics similar to those conveyed to lawyers. Paraprofessionals must also be educated to understand the line between authorized and unauthorized services—perhaps with a clear admonition to err on the side of referring a client to a lawyer or to seek an opinion from the appropriate licensing authority in close cases. Paraprofessionals must also acquire the judgment necessary to understand when a task is beyond their competence, even if technically authorized.

**Barrier: Administrative costs.** A paraprofessional program will have administrative costs for regulating a new class of practitioners.

**Responses and solutions.** Licensing and other regulations are necessary, and clearly will result in costs to ensure consumer protection and to ensure that paraprofessionals are properly educated and limiting their practice to authorized services. The best way to minimize additional costs is to combine paraprofessional licensing within the existing system for licensing attorneys.

Although parallel licensing should minimize additional costs by building on the existing infrastructure, the income and expense for licensing lawyers must be kept separate from the income and expense for licensing paraprofessionals. This presents a significant chicken-and-egg problem: how to initiate licensing and regulation of a fledgling profession without any current dues-paying members.

**Barrier: Oversaturated legal market.** By some measures, the legal market is already oversaturated, and the addition of paraprofessionals engaging in the practice of law will stress the market even more.

**Responses and solutions.** This argument seems belied by the large number of self-represented parties in some types of litigation. To the extent that the legal market is saturated, it is that segment of the market that can afford to pay a lawyer for full representation.

## **(7) PROGRAM EVALUATION**

Dr. Clark's white paper recommends planning the evaluation up front as a way to focus on the characteristics of a paraprofessional program that are intended to add value and on how those characteristics will help achieve the intended goals.<sup>15</sup> The regulatory balance is between increasing access to justice and protecting the public against incompetent assistance.

To achieve that balance we consider the appropriateness, effectiveness and sustainability of the role.

### **(a) APPROPRIATENESS**

Dr. Clarke defines appropriateness as: (1) a discrete set of services that will make a significant difference in access to justice; and (2) the knowledge required to competently perform those services. If a paraprofessional program is to make a difference, the authorized services must fill the gaps in access.

### **(b) EFFECTIVENESS**

Effectiveness is the measure of competence and use. If the paraprofessionals are not sufficiently educated to perform competently, they will not be effective. But competence does not necessarily ensure significant use. If paraprofessionals are competent but their services are not used for other reasons, then access to justice is not improved.

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<sup>15</sup> Clarke, *Id.* at pages 4-5.

Possible secondary measures of effectiveness include: reduced burden on courts from self-represented litigants; improvements in procedural justice; improvements in litigant understanding; increased use of courts to address legal problems; and improved outcomes, such as reduced costs, greater satisfaction and more timely resolutions.

To be proven effective a paraprofessional program must achieve competence and use, but to measure the impact of the new role on secondary goals, benchmarks must be realistically chosen. For example, if the realistic alternative for most litigants is no assistance, then that is a better comparison than with a lawyer that the litigant would never have retained in the first place.

### **(c) SUSTAINABILITY**

Sustainability of the role is a function of perceived legitimacy and economic viability. Paraprofessionals may be competent, but they must be perceived to be competent if clients are going to use them. And clients will not take advantage of a paraprofessional, no matter how competent, unless they perceive value for cost.

The new role may not be sustainable for a variety of reasons: key support may come from a few individuals, who then move on; temporary funding subsidies may dwindle or disappear; market-based programs may fail to find a market; regulatory and education strategies may prove to be too costly.

### **(d) MEASUREMENTS**

Program goals: Increase access to legal remedies. Protect consumers.

Participant's role: See the section on [recommended authority](#).

Key stakeholders: A successful program will need participation by:

- Clients/Public
- Lawyers in the specified practice areas
- Bar administration
- Paraprofessionals in the specified practice areas
- Paraprofessional administration
- Higher education
- District court judges
- District court staff
- Self-help center lawyers
- Supreme court

**Appropriateness.** Determine whether the specified authority of a paraprofessional will make a significant difference in access to legal remedies. Determine whether the education, licensing and regulation required of a paraprofessional are sufficient to enable him or her to perform those tasks competently. Determine whether the education, licensing and regulation required of a paraprofessional are sufficient to protect clients.

**Effectiveness.** Determine whether paraprofessionals are indeed competently performing their authorized tasks. Determine whether paraprofessionals are being used. Identify and measure any secondary goals of key stakeholders.

**Sustainability.** Determine whether a market-based solution in which paraprofessional services are paid for by clients is durable. Determine whether the education, licensing and regulation of paraprofessionals in which the cost is paid for by the paraprofessional is durable. Determine whether the key stakeholders, particularly the paraprofessionals and their clients, perceive value.

Measuring a program such as this is very difficult, but these measurements represent the evidence on which evidenced-based practices are based.

## **(8) CHARACTERISTICS OF LIMITED-LICENSING IN OTHER STATES**

Utah is not the first state to venture down this road, but there are only a handful of examples from which to draw experience. We have identified programs in six states in which a person may provide some legal services directly to a client for pay without the supervision of a lawyer. In addition we have identified three states that are, like Utah, considering whether to start a program. California licenses document preparers and is considering whether to license technicians. We have not included the New York City court navigator program because, although innovative, it is a volunteer program. For a summary of the key characteristics of programs of other states, see the section on [characteristics of limited-licensing in other states](#).

## **(9) PARAPROFESSIONALS IN UTAH**

### **(a) CURRENT UTAH AUTHORITY**

When comparing the Utah rules governing paralegals and the practice of law with the statutes and rules of the states with paraprofessional programs of some kind, one is struck by the liberality of the Utah rules. In Utah there are no minimum education or experience requirements for a paralegal. “A paralegal is a person qualified through education, training, or

work experience....” There is no examination, no licensing, no application and approval. Yet a paralegal may do anything a lawyer might do: “the performance ... of ... substantive legal work, which ... requires a sufficient knowledge of legal concepts that ... [an] attorney would [otherwise] perform.” There are conditions on what a paralegal may do, but no limits. The paralegal must produce “work directly for a lawyer for which a lawyer is accountable,” or the paralegal must be under the “ultimate direction and supervision” of a lawyer, and the work must be “specifically delegated.”

The definition of the practice of law excludes a long list of services. Again, there are no regulations governing the qualification or credentialing of non-lawyers who provide these services—except for regulations that govern other professions that provide the services.

Utah, then, has a flexible base on which to build a paraprofessional program that other states may not have.

#### **(b) OTHER STATE MODELS**

The American Bar Association Task Force on the Future of Legal Education viewed Washington’s efforts as a positive step toward achieving the goal of increasing access to legal services through a paraprofessional program.<sup>16</sup> Although this may be true, and, while the Washington experience might provide useful lessons for a nascent Utah program, it appears that Washington’s program is not the right fit for Utah.

First, the education and experience requirements of Washington’s program are so arduous that it remains to be seen whether LLLTs can provide services at rates significantly less than those provided by lawyers. Second, some of the restrictions in the Washington program do not dovetail with current Utah law. For example, a Washington LLLT may not represent a client in negotiations. In Utah, anyone may do so, provided the negotiations are mediated.

Similarly, we can learn lessons from the program in other states, but neither are they exactly suitable for Utah. Paraprofessionals in the programs of states other than Washington are essentially document preparers who perhaps can discuss general legal principles but may not apply those principles to the facts of the case and may not give advice. In some states the document preparer cannot even advise which form to use. In most states, they cannot file the documents that they prepare. The authorized

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<sup>16</sup> Future of Legal Education, *Id.* at pages 14 and 25.

services are disjointed, requiring a client to employ a lawyer for parts of tasks that can otherwise be performed by a paraprofessional.

## **(10) RECOMMENDATIONS**

The more common example of paraprofessionals in the limited practice of law is the document preparer. An Oregon task force has recommended a program similar to the Washington LLLT program, but the Washington program is the only extant example of a paraprofessional authorized to offer services beyond document preparation.

The liberality of Utah's current rules point to a program of services greater than just document preparation. Establishing a program of document preparers would professionalize the system we currently have, in which unregulated document preparers are currently engaged in the unauthorized practice of law by charging a fee to prepare a court-approved form. Or they avoid the unauthorized practice of law by preparing forms for free, perhaps after selling the blank form to the client, and perhaps without the education and experience to do a good job.

Professionalizing those services would improve the quality of the documents being filed and would provide a better service to the client, but there is no way to know whether unregulated document preparers would spend the time and money to become licensed document preparers. And, if Dr. Clarke is correct in his opinion that smart systems will eventually replace or at least limit the use of document preparers, then we need to take a bolder step.

### **(a) RECOMMENDED TITLE**

Licensed Paralegal Practitioner

### **(b) RECOMMENDED PRACTICE AREAS**

Recognizing that implementing all practice areas simultaneously may be beyond human capacity, and recognizing the differing impact of different civil justice situations on people's lives, we recommend developing the approval, education and licensing for practice areas in the following order:

- (1) temporary separation under [Section 30-3-4.5](#), divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change;
- (2) eviction—a licensed paralegal practitioner should not represent corporate clients; and
- (3) debt collection—a licensed paralegal practitioner should not represent corporate clients.

If experience shows a practice area in which lawyers are not representing parties, the supreme court should consider appointing an appropriate group to examine that area and recommend:

- whether to authorize it as an approved practice area;
- whether any of the then-existing authority of a licensed paralegal practitioner would be inappropriate; and
- an appropriate course of instruction for the practice area.

**(c) RECOMMENDED AUTHORITY**

The licensed paralegal practitioner's authorized services will necessarily fall somewhere between these two extremes: the first of which anyone may perform under Rule 14-802; and the second only a licensed lawyer.

- Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.
- Informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

There is not much difference between the meaning of opinions and recommendations on the one hand and of counseling and advising on the other. So the distinguishing feature of the "practice of law" appears to be whether the opinions, recommendations, counsel or advice relate to the client's particular circumstances.

We have tried to outline the discrete tasks within an approved practice area that are appropriate for a licensed paralegal practitioner and that the client will see as valuable. And we have tried to avoid requiring a lawyer to complete discrete parts of those tasks. There remain parts of the litigation process, even within an approved practice area, within the sole province of a lawyer—drafting non-form pleadings, discovery, subpoenas, presentation of evidence and advocacy are examples—but a client should be able to rely on a licensed paralegal practitioner to accomplish an entire authorized task without a lawyer's assistance for parts of it.

**(i) INTAKE, CLIENT COUNSELING AND LAWYER REFERRAL**

All of the jurisdictions prohibit paraprofessionals from practicing beyond their license, but none appear to expressly require referral to a

lawyer. Perhaps it is simply presumed. A major component of a licensed paralegal practitioner practicing law in limited circumstances is that he or she understands and honors the boundaries of the profession. Finding competent counsel is difficult and stressful; a client's licensed paralegal practitioner is in a better position than anyone to help. The obligation to practice within one's competence and license is better expressed as a rule of professional conduct than as a description of authority.

None of the jurisdictions expressly authorize client interviews, although Washington permits a LLLT to "obtain facts." Obviously some type of client interview is necessary in any business relationship, and in an approved practice area the licensed paralegal practitioner should be authorized to interview the client to understand the client's objectives and to obtain the facts relevant to achieving that objective.

Unless there is a court-approved form to achieve the client's objective, the licensed paralegal practitioner's authority in client counseling should be limited to general information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies.

#### **(ii) FORMS**

If there is a court-approved form to achieve the client's objective in an approved practice area, a licensed paralegal practitioner should have extensive authority to:

- advise which form to use;
- advise how to complete the form;
- make the entries on behalf of the client;
- sign, file and complete service of the form;
- obtain, explain and file any necessary supporting documents; and
- advise about the anticipated course of the proceedings by which the court will decide the matter.

We did not reach agreement on whether a licensed paralegal practitioner should sign or otherwise acknowledge a form ghost-written but not filed by him or her. Lawyers who draft but do not file documents for a client do not have to acknowledge the document, and this encourages this discrete task. But this program is new, and perhaps the court needs to know when a form has been prepared by a licensed paralegal practitioner. If the supreme court decides that a ghost-written form should be signed or acknowledged by a licensed paralegal practitioner, it should make that an express requirement.

The judicial council should continue its work with the committee on resources for self-represented parties to develop new forms appropriate for



approved practice areas and to improve the forms that we already have. The council and committee should also continue to publish instructions for the forms and information about the facts and procedures relevant to the forms.

Except for a settlement agreement memorializing negotiations in which the licensed paralegal practitioner represented the client, a licensed paralegal practitioner should not be authorized to prepare a pleading or other paper for which there is no court-approved form.

### **(iii) INTERACTION WITH ANOTHER PARTY**

The licensed paralegal practitioner should be authorized to communicate with another party or the party's representative if the communication relates to the matter raised by the form.

The licensed paralegal practitioner should be authorized to represent a client in mediated negotiations. This is co-extensive with a service that is currently defined as outside the practice of law under Rule 14-802.

As noted earlier, we differ on whether a licensed paralegal practitioner should be authorized to represent a client in unmediated negotiations. If the supreme court decides to authorize a licensed paralegal practitioner to do so, it should be permitted only in an approved practice area, but it should include communicating the position of the client to the other party and vice versa, outside of formal negotiation sessions.

In an approved practice area the licensed paralegal practitioner should be authorized to explain to the client the documents of another party. If the paralegal is to represent the client during negotiations, the client needs to understand the other party's case.

In an approved practice area the licensed paralegal practitioner should be authorized to prepare a written settlement agreement in conformity with the negotiated agreement. If an order form exists, a licensed paralegal practitioner should be authorized to complete the form in conformity with the settlement agreement.

### **(iv) POST-LITIGATION ROLE**

In an approved practice area the licensed paralegal practitioner should be authorized to counsel and advise a client about how a court order affects the client's rights and obligations. This would authorize for the litigation's outcome the same authority we recommend for client counseling at the beginning: If there is a form—in this case the court's order—the licensed paralegal practitioner should be authorized to give counsel and advice about the order specific to the client's particular circumstances.

**(v) SERVICES AS A PARALEGAL**

A licensed paralegal practitioner, as we have recommended qualifying for it, will necessarily be a paralegal, and continues to have the authority of a paralegal. If a client needs a service within the licensed paralegal practitioner's competence, but beyond his or her license, the licensed paralegal practitioner is already authorized to provide that service under a lawyer's supervision and license.

**(vi) FUTURE EXPERIENCE**

If experience shows additional tasks that would be valuable to a client and appropriate for a licensed paralegal practitioner—or if experience shows that any of the tasks we have proposed are inappropriate—the supreme court should consider appointing an appropriate group to examine the tasks and recommend whether to add to or remove from the authorized list.

**(d) RECOMMENDED EDUCATION**

Beyond basic paralegal education, Washington requires that its legal technicians complete 15 credit hours (or 112 hours of instruction) of specialized education in order to practice in an approved practice area. The recommended model for Oregon is similar. By comparison, graduation from the University of Utah S.J. Quinney College of Law requires 88 credit hours. Washington also requires that the specialized education be obtained through a law school, and the University of Washington School of Law in Seattle is the only school to offer the curriculum. The courses are available through remote simultaneous participation.

At the other end of the spectrum, Nevada does not have any minimum education requirements for its document preparers, and Louisiana requires only a high school diploma or GED for its notaries public.

We recommend that the Utah licensed paralegal practitioner be authorized to provide a range of services that require independent judgment. The minimum education requirements must be sufficient to qualify those individuals to perform the services competently. We recommend a concentration of specialized classes in each of the approved practice areas, and we recommend delivery through the higher education infrastructure.

Specifically, we recommend that the minimum education of a licensed paralegal practitioner be:

- a Doctor of Jurisprudence degree from an ABA-approved law school; or
- an associate's degree with a paralegal or legal assistant certificate from a program approved by the ABA plus:
  - successful completion of the paralegal certification through the National Association of Legal Assistant's Certified Paralegal/Certified Legal Assistant exam<sup>17</sup>;
  - successful completion of a course of instruction for a practice area (content to be determined based on the approved practice area); and
  - experience working as a paralegal under the supervision of a lawyer or through internships, clinics or other means for acquiring practical experience.

Many Utah paralegals already have a bachelor's or associate's degree and a paralegal certificate. Most of them have been working under the supervision of a lawyer for years. Several of those have already successfully completed the NALA CP/CLA exam. For this last group, all that remains is to successfully complete the yet-to-be-created specialized course work in an approved practice area.

We recommend that a JD degree be one of two methods for meeting the education requirements of a licensed paralegal practitioner, but the candidate under either method would be required to meet any licensing requirements.

Since the range of authorized tasks that we recommend depends so heavily of the existence of a form, we recommend that the advanced instruction include intense work with the forms in a practice area, the objective that each form is intended to achieve, and the facts and procedures relevant to that objective.

**(e) RECOMMENDED LICENSING AND OTHER REGULATIONS**

**(i) ADMINISTRATION**

Louisiana and Nevada administer their document preparer programs in the executive department through the secretary of state. California administers its document preparer program in the executive department through the county clerks of the several counties. Under the Utah Constitution, governance of the practice of law must be under the authority

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<sup>17</sup> <http://www.nala.org/examdesc.aspx>; <http://perma.cc/UET2-22LA>.

of the supreme court. Arizona administers its document preparer program directly by the supreme court, but we do not recommend this model.

We recommend that a licensed paralegal practitioner program be administered through the Utah State Bar, as is done for the Washington LLLT program. The revenue from lawyers should not be used to pay the costs of administering a paraprofessional program, and vice-versa.

### **(ii) MINIMUM REQUIREMENTS**

The purpose of regulations should be to protect the public. What protections do we rely on when employing a lawyer? Education; examination; character and fitness review; mentored experience; continuing education; compliance with Rules of Professional Conduct; a complaint and discipline process; and the Lawyer's Fund for Client Protection. In addition, lawyers must comply with two administrative regulations: an application fee; and a licensing fee. The minimum requirements of a licensed paralegal practitioner should not be regulated beyond these without good reason.

Based on the requirements for paraprofessionals in other states and for lawyers in Utah, we recommend that regulations in the following areas be considered.

- Application and fee
- Character and fitness review
- Utah-specific licensing exam in the approved practice areas
- Mentored experience
- Appointment by the supreme court
- Oath of office
- Financial responsibility (bond or professional liability insurance)
- IOLTA account
- Annual licensing fee
- CLE
- Rules of professional conduct
- Complaint and discipline process

The supreme court might also consider establishing the paralegal division as a regulatory board, instead of using the board of bar commissioners for that role.

State and local business regulations would apply to a licensed paralegal practitioner's firm as to any other form of business.

### **(iii) LEGAL RELATIONSHIP WITH CLIENT**

In an approved practice area and within the approved tasks, a licensed paralegal practitioner should have a relationship with his or her client similar to that of a lawyer.

- Fiduciary duties
- Privileged communications
- Standards of care

### **(11) OTHER STRATEGIES**

Although authorizing qualified non-lawyers to engage in the practice of law in limited circumstances draws the most attention, it was not the limit of our charge. We offer five other strategies to help self-represented parties, and we hope that these other strategies are not put on hold while a program of licensed paralegal practitioners is being built.

#### **(a) DISCRETE LEGAL SERVICES**

Our focus on discrete services by licensed paralegal practitioners reveals the benefits to clients of discrete services by lawyers. The futures commission of the Utah State Bar recommends increasing “the use of discrete task representation and fixed fee pricing by (1) marketing the availability of “unbundling,” (2) educating lawyers and courts on best practices for implementing these approaches and (3) establishing an “unbundled” section for the Bar with lawyers who are willing to help clients on a fee-per-task, limited scope basis.”<sup>18</sup> We fully endorse these recommendations and urge the Bar to promptly implement them.

Because discrete tasks have an identifiable beginning and end, lawyers can offer a fixed price that is less than the unknown cost of full representation. This is a tremendous benefit to clients who in every other purchase of goods or services in their lives know or have a reasonably accurate estimate of the bottom line.

Offering discrete legal services is the only way a lawyer or licensed paralegal practitioner will reach a party who has decided for reasons other than cost to prosecute or defend a case without representation. Perhaps the party wants more control; perhaps the party believes he or she can perform the tasks more quickly or more professionally or will take greater care because of the personal connection to the litigation. Whatever the reason,

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<sup>18</sup> Future of Legal Services in Utah, *Id.* at page 5.

the party does not want full representation, and no seller will succeed by offering something the buyer does not want.

Lawyers are missing a large population of clients because not many lawyers offer discrete services, or those who do have not effectively advertised the services. The bar should do all that it can to support this business model. If the rules regulating discrete legal services are not sufficiently explicit, they should be made so. If the rules interfere with effectively delivering discrete legal services, the barriers should be removed.

**(b) ONLINE LAWYER DIRECTORY**

The futures commission of the Utah State Bar recommends “a robust online lawyer referral directory that is easily available to the public.” Building on this, the commission recommends “a consumer-focused website which, building on the online directory of lawyers, will become the key clearinghouse for clients in need of legal assistance.”<sup>19</sup>

A robust, bar-sponsored directory would help potential clients find lawyers and other legal services—something most lawyers should support—and it would be invaluable to the lawyers of the self-help center, who quickly see the need for full representation or a discrete legal service, but are prohibited from referring clients to a particular lawyer. Rarely does a bar commission find a product that simultaneously serves both its lawyer constituency and its public constituency. The recommended directory is that product.

The bar is examining implementation of the recommendations in the form of a “portal,” but the product to be delivered under that rubric is not well defined. We recommend that the bar begin implementation with a portal to what consumers need most—and what would most benefit lawyers—a portal to legal services. From the perspective of the potential client, this basic but robust referral system should include an online method of filtering and sorting legal services by:

- nature of the “civil justice situation” framed from the client’s perspective;
- location of the client; location of the dispute;
- languages spoken by the provider and other information meant to overcome barriers to access;
- license (lawyer or licensed paralegal practitioner);

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<sup>19</sup> Future of Legal Services in Utah, *Id.* at page 5.

- price, including qualification for pro bono and modest means;
- discrete services offered, including information, advice, document preparation, document review, coaching, representation at a hearing; and
- any other criteria that may be relevant to a potential client.

The effort begins with accumulating data that the bar does not now have: the information about individual lawyers, law firms and legal services that the application would use to filter and sort legal services based on the client's answers to the questions just posed. This directory should be the only bar-sanctioned directory, and it should be based on the most current and accurate information available. It should provide to lawyers a simple interface to describe the services they offer, and it should provide to the public a simple interface to shop for those services. We recommend the supreme court do what it can to assist the board of bar commissioners in a campaign to gather this information. We hope lawyers will quickly see an opportunity for advertising their services to clients.

The International Space Station is larger than a six-bedroom house.<sup>20</sup> The initial platform, completed in December, 1998, was about the size of a one bedroom apartment.<sup>21</sup> If the bar's directory expands—to include expert systems, intelligent checklists, business process analysis, document assembly, document translation, electronic filing, and all of the other terms used to describe portals—all well and good, but that also might take almost 20 years to build. The best start is the basic, robust referral system recommended by the futures commission.

The initial platform cannot be built too soon, and it will be put to good use while the rest of the modules are being planned, designed and built. The bar should advertise the directory's availability to the public in general, and several times a day court clerks, libraries and community organizations from around the state and the lawyers of the self-help center will refer people to it. The court website will link to the directory, and the self-help center will include information about it in their work with public libraries,

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<sup>20</sup> NASA

([https://www.nasa.gov/mission\\_pages/station/main/onthestation/facts\\_and\\_figures.html](https://www.nasa.gov/mission_pages/station/main/onthestation/facts_and_figures.html); <http://perma.cc/D75W-J3UP>).

<sup>21</sup> Approximately 9,700 cubic feet, the size of the two initial modules, Zarya <https://en.wikipedia.org/wiki/Zarya> and Unity [https://en.wikipedia.org/wiki/Unity \(ISS module\)](https://en.wikipedia.org/wiki/Unity_(ISS_module)).

community groups and other volunteers who in turn work with members of their communities in need of various legal services.

**(c) ONLINE DISPUTE RESOLUTION**

The judicial council is pursuing online dispute resolution in small claims litigation. Although the conceptual design is of a computer-assisted method of dispute resolution by humans, rather than the intelligent-system method of automated resolution recommended by Dr. Clarke's white paper, it represents a significant opportunity for more convenient and less costly access to the court. If successful, the lessons learned can be applied in other types of litigation, including interlocutory decisions during litigation.

**(d) ASSISTED RESOLUTION OF CASES INVOLVING SELF-REPRESENTED PARTIES**

The basic features for assisted resolution of litigation involving self-represented parties are: get the parties into the courthouse; provide them with an opportunity to explain their circumstances and their preferred outcomes; and then have the resources in place to reach and finalize an acceptable outcome. Alaska, California, Colorado and Minnesota have experienced good results with their programs.

In cases involving self-represented parties, Alaska conducts a hearing, early in the life of the case, at which attorneys are available to complete documents if a case is resolved. Only 2% of parties failed to appear at the hearings, 80% of new cases fully resolved with only one hearing, and 77% of modifications resolved with only one hearing. Only 5% of resolved cases required a further hearing within the next year.

Colorado and Minnesota have similar programs in which self-represented parties have a conference with a judge early in the case. Both states include an exchange of initial disclosures before the conference.

In Minnesota, an "evaluator" meets with the parties before they meet with the judge to try to mediate a settlement. If the case does not settle, the parties meet with the judge who tries to mediate a settlement or establishes deadlines for moving the case toward a litigated resolution. In Colorado 34% of cases fully resolved with stipulations and another 25% had no further hearings. Cases within the Colorado program resolved about 2 months more quickly than other similar cases.

[Rule of Civil Procedure 16](#) provides the court with sufficient authority to structure a conference in just about any way that makes sense for this purpose. The authority exists; all that is needed is someone to plan, design,



organize and implement a program and to examine whether the program is achieving its goals.

Utah has a program of assisted resolution of family law cases, but the conference and assistance occur toward the end of case, rather than the beginning. The Utah program is currently operating with court commissioners in the Third District Court, and there are plans to implement it in the Fourth District Court.

In the Utah program the case management system screens family law cases for cases in which there has been no activity for 180 days. Our rules permit these cases to be dismissed without prejudice, provided the parties are given an opportunity to show cause why the case should not be dismissed. The court commissioners schedule a special calendar consisting only of cases with self-represented parties. The commissioners also schedule other law and motion matters involving only self-represented parties on this calendar. Volunteer attorneys are available at the hearing, as are volunteer mediators and self-help center lawyers, who provide staff support. All of these people work with the parties to resolve the matter or, if the matter is not settled, to move the case to the next steps in the process.

The Third District Court has a similar program for debt collection cases, in which volunteer lawyers represent a self-represented defendant. In many cases the volunteer lawyers are able to negotiate a settlement or a payment plan with the plaintiff.

If an opportunity for assisted resolution were provided early in the case, instead of after 6 months of inactivity, it would be a substantial improvement. Or experience may show that there remains a purpose to providing an opportunity for assisted resolution rather than dismissal.

We recommend that the judicial council establish a pilot program of assisted resolution of family law and/or debt collection cases involving self-represented parties. The council should consider the features of the Alaska, California, Colorado and Minnesota programs, which include mutual initial disclosures, a conference early in the case with defined objectives, and the resources—mediators, lawyers, judges, commissioners and staff—to reach and finalize an outcome.

As part of the pilot program, the council should address a practical problem with the OCAP application. OCAP allows a party to prepare the appropriate forms for a divorce, but it does not include the capability to complete any particular form. This limitation hampers the self-help center lawyers who staff the calendar and prepare the necessary documents. The judicial council should work with the OCAP board and staff to develop this

capability, or it should work with the committee of resources for self-represented parties to develop and approve the necessary stand-alone forms.

**(e) SELF-HELP CENTER**

The self-help center is a human portal of sorts, providing information and assistance, especially with forms. The self-help center would be assisted greatly by improving the qualifications of those in the community who already provide general information, opinions or recommendations and assistance completing court-approved forms.

Improving those qualifications would professionalize the services already being offered. The recommendation that follows is for consideration by the judicial council as well as by the supreme court, because, although the self-help center is ultimately the responsibility of the supreme court, and the recommendations will leverage the self-help center's resources by training others to provide assistance, the recommendations will increase the work of the self-help center lawyers, and the judicial council ultimately must agree that the additional cost is a sound use of public money.

- Instruct court staff, public library staff, community and faith-based groups and other volunteers. The course of instruction would be offered for free. The participants would be certified upon completion of the coursework, but would not be permitted to charge for their services.
- Instruct in English and Spanish.
- Maintain a roster of certified providers.
- Provide virtual support to the providers.
- Continue to develop and review simple and clear forms and informational webpages.
- Explore other information media.
- Facilitate the translation of webpages, forms and any new medium into Spanish.

**(12) IMPLEMENTATION**

**(a) STEERING COMMITTEE**

We have outlined a supply-side model to meet the gaps in access to justice. We have developed as much detail as possible in the time available. But we recognize that this report remains only a blueprint. If the supreme court decides to move forward with this model, we recommend that it appoint a steering committee to identify, plan, develop and implement the

thousands of details necessary for the blueprint to become a reality. The committee should include representatives or input from:

- lawyers experienced in the practice areas;
- community organizations;
- the paralegal division;
- higher education administration;
- bar administration and leadership;
- court administration and leadership;
- judges and court commissioners;
- the self-help center;
- the office of professional conduct;
- the committee on rules of professional conduct; and
- others as needed.

**(b) QUESTIONS FOR CONSIDERATION**

We have identified a handful of questions for a steering committee, but the committee, as it investigates finer and finer details, will encounter many more.

- Should a licensed paralegal practitioner be required to sign or otherwise acknowledge a form prepared but not filed by the licensed paralegal practitioner?
- Should a licensed paralegal practitioner be authorized to represent a client in non-mediated negotiations?
- Should a licensed paralegal practitioner be authorized to accept service on behalf of a client?
- Should guardianship of a minor be an authorized practice area?
- Must a JD degree be from an ABA approved law school to satisfy the education requirement of a licensed paralegal practitioner?<sup>22</sup>
- Are there equivalent credentials from other states or nations that should satisfy the education requirement?
- Should any of the education or experience requirements of a licensed paralegal practitioner be waived for current paralegals? Which requirements should be waived? What should be the

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<sup>22</sup> We recommend that an ABA approved law school be sufficient, but is it necessary? See the section on [recommended education](#).

minimum requirements to qualify for the waiver? For how long should waiver be available?

- What should be the data points and data collection methods for measuring the success of the program?
- What should the content of the advanced course work and examination in a practice area consist of?
- What should the specific rules for the regulation, administration and licensing of the profession consist of?

Bar regulation, administration and licensing may serve as a model from which to start, but we urge the steering committee not to simply copy and paste. Detailed investigation may reveal legitimate differences between the licensing and regulation of licensed paralegal practitioners and of lawyers. Perhaps more important, this is an opportunity to think afresh about the issues and to transfer lessons learned back to the licensing and regulation lawyers.

**(13) TASK FORCE MEMBERS AND STAFF**

This report would not have been possible without the generous contribution of time, experience and judgment by the following people:

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S.J. Quinney College of Law  
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Ms. Elena Bensor-Slyter  
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Sen. Stephen H. Urquhart  
Utah Senate

Ms. Jody R. Gonzales  
Administrative Office of the Courts,  
Staff

Mr. Timothy M. Shea  
Utah Supreme Court, Staff

**(14) DRAFT RULES**

**1 Rule 14-802. Authorization to practice law.**

2 (a) Except as set forth in ~~subsection paragraphs (c) of this rule and (d),~~  
3 only persons who are active, licensed members of the Bar in good standing  
4 may engage in the practice of law in Utah.

5 (b) For purposes of this rule:

6 (b)(1) The “practice of law” is the representation of the interests of  
7 another person by informing, counseling, advising, assisting,  
8 advocating for or drafting documents for that person through  
9 application of the law and associated legal principles to that person’s  
10 facts and circumstances.

11 (b)(2) The “law” is the collective body of declarations by  
12 governmental authorities that establish a person’s rights, duties,  
13 constraints and freedoms and consists primarily of:

14 (b)(2)(A) constitutional provisions, treaties, statutes,  
15 ordinances, rules, regulations and similarly enacted declarations;  
16 and

17 (b)(2)(B) decisions, orders and deliberations of adjudicative,  
18 legislative and executive bodies of government that have authority  
19 to interpret, prescribe and determine a person’s rights, duties,  
20 constraints and freedoms.

21 (b)(3) “Person” includes the plural as well as the singular and legal  
22 entities as well as natural persons.

23 (b)(4) “Licensed paralegal practitioner” means a natural person  
24 qualified and licensed under the rules governing the practice of law.

25 (b)(5) “Practice area” means litigation in the district court in:

26 (b)(5)(A) temporary separation under Section 30-3-4.5, divorce,  
27 paternity, cohabitant abuse and civil stalking, custody and support  
28 and name change;

29 (b)(5)(B) forcible entry and detainer; and

30 (b)(5)(C) debt collection.

31 (c) Whether or not it constitutes the practice of law, the following  
32 activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to  
33 be able to practice law, is permitted:

34 (c)(1) Making legal forms available to the general public, whether by  
35 sale or otherwise, or publishing legal self-help information by print or  
36 electronic media.

37 (c)(2) Providing general legal information, opinions or  
38 recommendations about possible legal rights, remedies, defenses,  
39 procedures, options or strategies, but not specific advice related to  
40 another person's facts or circumstances.

41 (c)(3) Providing clerical assistance to another to complete a form  
42 provided by a municipal, state, or federal court located in the State of  
43 Utah when no fee is charged to do so.

44 (c)(4) When expressly permitted by the court after having found it  
45 clearly to be in the best interests of the child or ward, assisting one's  
46 minor child or ward in a juvenile court proceeding.

47 (c)(5) Representing a party in small claims court as permitted by  
48 Rule of Small Claims Procedure 13.

49 (c)(6) Representing without compensation a natural person or  
50 representing a legal entity as an employee representative of that entity  
51 in an arbitration proceeding, where the amount in controversy does not  
52 exceed the jurisdictional limit of the small claims court set by the Utah  
53 Legislature.

54 (c)(7) Representing a party in any mediation proceeding.

55 (c)(8) Acting as a representative before administrative tribunals or  
56 agencies as authorized by tribunal or agency rule or practice.

57 (c)(9) Serving in a neutral capacity as a mediator, arbitrator or  
58 conciliator.

59 (c)(10) Participating in labor negotiations, arbitrations or  
60 conciliations arising under collective bargaining rights or agreements  
61 or as otherwise allowed by law.

62 (c) (11) Lobbying governmental bodies as an agent or representative  
63 of others.

64 (c) (12) Advising or preparing documents for others in the following  
65 described circumstances and by the following described persons:

66 (c) (12) (A) a real estate agent or broker licensed by the state of  
67 Utah may complete State-approved forms including sales and  
68 associated contracts directly related to the sale of real estate and  
69 personal property for their customers.

70 (c) (12) (B) an abstractor or title insurance agent licensed by the  
71 state of Utah may issue real estate title opinions and title reports  
72 and prepare deeds for customers.

73 (c) (12) (C) financial institutions and securities brokers and  
74 dealers licensed by Utah may inform customers with respect to  
75 their options for titles of securities, bank accounts, annuities and  
76 other investments.

77 (c) (12) (D) insurance companies and agents licensed by the state  
78 of Utah may recommend coverage, inform customers with respect  
79 to their options for titling of ownership of insurance and annuity  
80 contracts, the naming of beneficiaries, and the adjustment of claims  
81 under the company's insurance coverage outside of litigation.

82 (c) (12) (E) health care providers may provide clerical assistance  
83 to patients in completing and executing durable powers of attorney  
84 for health care and natural death declarations when no fee is  
85 charged to do so.

86 (c) (12) (F) Certified Public Accountants, enrolled IRS agents,  
87 public accountants, public bookkeepers, and tax preparers may  
88 prepare tax returns.

89 (d) Within a practice area for which the licensed paralegal practitioner  
90 qualifies, a licensed paralegal practitioner may represent the interests of a  
91 natural person who is not represented by a lawyer by:

92 (d) (1) establishing a contractual relationship with the client;



93           (d)(2) interviewing the client to understand the client’s objectives  
94           and obtaining facts relevant to achieving that objective;  
95           (d)(3) completing a form approved by the judicial council or board  
96           of district court judges;  
97           (d)(4) informing, counseling, advising and assisting with which  
98           form to use and how to complete the form;  
99           (d)(5) signing, filing and completing service of the form;  
100           (d)(6) obtaining, explaining and filing any document needed to  
101           support the form;  
102           (d)(7) reviewing documents of another party and explaining them;  
103           (d)(8) informing, counseling and advising about the anticipated  
104           course of proceedings by which the court will resolve the matter;  
105           (d)(9) informing, counseling, advising, assisting and advocating for  
106           the client in mediated negotiations;  
107           (d)(10) drafting, signing, filing and completing service of a written  
108           settlement agreement in conformity with the negotiated agreement;  
109           (d)(11) communicating with another party or the party’s  
110           representative; and  
111           (d)(12) informing, counseling and advising about a court order that  
112           affects the client’s rights and obligations.  
113

**(15) CHARACTERISTICS OF LIMITED-LICENSING IN OTHER STATES**

**(a) ARIZONA**

**Status.** Program in place since July 1, 2003.

**Title.** Legal document preparer.

**Minimum education.**

Individual:

- (1) A high school diploma or GED and two years of law-related experience as a court employee or under the supervision of a lawyer or a certified legal document preparer.
- (2) A certificate of completion from a paralegal or legal assistant program approved by the ABA.
- (3) A certificate of completion from a paralegal or legal assistant program that is institutionally accredited and that requires 24 semester units, or the equivalent, in legal specialization courses.
- (4) A certificate of completion from an accredited educational program designed specifically to qualify a person for certification as a legal document preparer.
- (5) A degree from a law school accredited by the ABA or institutionally accredited.

Business:

- (1) Certification as a business entity.
- (2) Designated principal who holds individual certification as a legal document preparer.

**Administration and regulation.**

Examination on legal terminology, client communication, data gathering, document preparation, ethical issues, and professional and administrative responsibilities. Certification and renewal of certification by the supreme court. Regulatory board. Examination fee. Application fee. Licensing fee. Revenue and expenses administered by the supreme court. Background investigation. 20 CLE hours per 2-year certification cycle. Rules of professional conduct. Complaint and discipline process. Administrative support staff: approximately 3 FTE.

**Authority.** To or for a person or entity not represented by a lawyer:

- (1) Prepare or provide legal documents.

- (2) Provide general legal information—but not specific advice, opinions, or recommendations—about possible legal rights, remedies, defenses, options, or strategies.
- (3) Provide general factual information about legal rights, procedures, or options.
- (4) Provide forms and documents.
- (5) File, record, and arrange for service of legal forms and documents.
- (6) May not sign any document other than some specified notices.

**Source.** Arizona Code of Judicial Administration Section 7-208.  
(<http://www.azcourts.gov/cld/Legal-Document-Preparers>;  
<http://perma.cc/4K9H-C8RC>).

**(b) CALIFORNIA**

**Title.** Limited license to practice law or licensing of legal technicians.

**Status.** The Limited License Working Group was created on March 6, 2013 as a subcommittee of the Board of Trustees' Committee on Regulation, Admissions and Discipline Oversight to explore, research and report the feasibility of creating a limited license to enable certified individuals to provide limited, discrete legal services to consumers in defined subject matter areas. Meetings continue.

**Source.** Website of the California State Bar  
(<http://www.calbar.ca.gov/AboutUs/BoardofTrustees/LimitedLicenseWorkingGroup.aspx>; <http://perma.cc/3YAP-EUD9>).

**Title.** Legal document assistants.

**Status.** Program in place.

**Minimum education.**

- (1) A high school diploma or GED and 2 years of law-related experience under the supervision of a lawyer.
- (2) A baccalaureate degree in any field and 1 year of law-related experience under the supervision of a lawyer.
- (3) A certificate of completion from a paralegal program approved by the ABA.
- (4) A certificate of completion from a paralegal program that is institutionally accredited and that requires 24 semester units, or the equivalent, in legal specialization courses.

**Administration and regulation.** Register with the county clerk of the county of principal place of business and of any other county in which

services are performed. Registration fees. Bi-annual re-registration. \$25,000 bond for an individual; \$25,000 to \$100,000 bond for a business, depending on the number of assistants. Other statutory regulations. Unable to determine the number of administrative support staff because registration is decentralized.

**Authority.** For compensation, provide “any” [that is, the following] self-help services to a self-represented individual.

- (1) At the individual’s specific direction complete in a ministerial manner legal documents selected by the individual.
- (2) Provide general published factual information about legal procedures, rights, or obligations that have been written or approved by an attorney.
- (3) Make published legal documents available.
- (4) File and serve legal forms and documents at the specific direction of the individual.
- (5) May not provide advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms, or strategies.
- (6) In order to suggest what forms to complete, the legal document assistant must have a detailed guide, approved by an attorney, stating exactly what forms are needed for a particular objective.
- (7) The client must know what he or she wants, and what forms to use. Or the client can decide which forms to use based on the attorney-approved guide.

**Source.** Business and Professions Code Chapter 5.5.

(<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=bpc&codebody=&hits=20>; <http://perma.cc/4CAA-QRBW>). See also the website of the California Association of Legal Document Assistants, (<http://calda.org/>; <http://perma.cc/5Y22-L8TC>).

### (c) COLORADO

**Status.** A subcommittee of the Colorado Supreme Court Advisory Committee is examining the Washington state LLLT program. First meeting: June 2015.

**Source.** Press release: *Colorado Studying New Limited Legal License*. (<http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>; <http://perma.cc/GCY7-HNCH>).

**(d) FLORIDA**

**Status.** Program in place.

**Title.** Association of Legal Document Preparers.

**Minimum education.**

Not stated.

**Administration and regulation.**

Not stated.

**Authority.**

Not stated.

**Source.** Website of the Florida Association of Legal Document Preparers (<http://www.faldp.org/>; <http://perma.cc/A7RR-6J2S>).

**(e) LOUISIANA**

**Status.** Program in place since “time immemorial.”

**Title.** Notary public.

**Minimum education.** High school diploma, or GED.

**Administration and regulation.** Pre-assessment test. Examination. Application with the secretary of state. \$35 application fee. \$75 examination fee. Good moral character, integrity, and sober habits. Appointed by governor with the advice and consent of the Senate. Registration with secretary of state. \$10,000 bond renewed every 5 years. May be appointed in the parish of residence and in any parish in which he or she maintains an office. Annual report to the secretary of state with \$25 report fee. Voluntary associations.

**Authority.**

(1) Draft, prepare and execute affidavits, acknowledgements and authentic acts.

(2) Documents listed on the website of the Professional Civil Law Notaries Association as proper for a notary to prepare, but not negotiate on behalf of a client:

- Affidavits
- Acknowledgments
- Authentic Acts
- Security Agreements
- Mortgages
- Acts of Sales
- Donations
- Bond for Deed
- Acts of Adoption
- Guarantee Letters
- Power of Attorney
- Affidavits of Heirship
- Small Successions
- Wills

- Trusts
- Real Estate Transactions
- Partition of Property
- Incorporations
- LLC Formations
- Operating Agreements
- Partnership Agreements
- Matrimonial Agreements
- Public Inventories
- Contracts
- Bill of Sales
- Quit Claims
- Public Inventories
- Contracts in Authentic Form
- Provisional Custody Agreements

**Source.** Louisiana R.S. Title 35; (<http://perma.cc/RDN5-KKBN>). See also the website of the Professional Civil Law Notaries Association, ([http://www.pclna.org/notary\\_duties.html](http://www.pclna.org/notary_duties.html); <http://perma.cc/3RH6-YNYB>) and the website of the Louisiana Notary Association, (<http://www.lna.org/>; <http://perma.cc/U9WY-7X7J>).

**(f) NEVADA**

**Status.** Program in place since March 1, 2014.

**Title.** Document preparation services.

**Minimum education.**

None.

**Administration and regulation.** Registration with the secretary of state. Applicant information and history, business information, background check and a cash or surety bond in the amount of \$50,000. No application fee. Annual renewal. Active state business license. Complaint and discipline process. Private right of action for double damages. Criminal liability for willful violation of the enabling act. Written disclosure and written contract required. Communication with client is not privileged.

**Authority.** For compensation and at the direction of a client, provide assistance to the client in a legal matter, including:

- (1) preparing or completing any pleading, application or other document;
- (2) translating an answer to a question posed in a document;
- (3) securing any supporting document, such as a birth certificate, required in connection with the legal matter; or
- (4) submitting a completed document on behalf of the client to a court or administrative agency.

**Source.** Nevada Revised Statutes Chapter 240A and secretary of state Regulation R136-13. (<http://nvsos.gov/index.aspx?page=1346>; <http://perma.cc/4N7M-ZBM3>).

**(g) OREGON**

**Title.** Limited License Legal Technician. (The task force also outlines a voluntary registered paralegal program.)

**Status.** The task force studying limited licensing issued its report and recommendations in February, 2015.

**Recommendation.**

The Task Force recommends that the Board of Governors consider the possibility of the Bar's creating a Limited License Legal Technician (LLLT) model as one component of the BOG's overall strategy for increasing access to justice. It further recommends, should the Board decide to proceed with the LLLT concept, that it begin with the suggestions developed by Task Force Subcommittees. The Task Force also suggests that the first area that be licensed be family law, to include guardianships.

Should the Board decide to proceed with this concept, the Task Force recommends a new Board or Task Force be established to develop the detailed framework of the program. For the reasons set out herein, the BOG should review the recently established Washington State Bar Association LLLT program and consider it as a potential model.

**Recommended minimum education.** Associate degree. 45 quarter credit hours of legal studies in core curriculum requirements (paralegal studies). Instruction in an approved practice area for the number of credit hours determined by the board. Core curriculum exam and practice area exam.

**Recommended minimum experience.** 4,160 hours or 2 years of substantive law-related experience supervised by a lawyer with 2,080 hours or 1 year of experience in the specialty practice area in which the applicant is requesting licensure. Completed within 3 years of passing core curriculum exam.

**Recommended administration and regulation.** Regulatory board with administrative support from the state bar association. Examination fee. Application fee. Background check. Character and fitness review. Oath. Annual licensing fee. Financial responsibility (Professional liability insurance). 45 CLE hours every 3 years with a 3-year rotating reporting cycle. One prong of the CLE component would cover the core CLEs and the other prong would be specific to the specialty license. Rules of

professional conduct. Complaint and discipline process. Privileged communications.

**Recommended authority in family law.**

- (1) Provide approved forms, assist client to choose which forms to use. Assist in completing forms in a ministerial capacity and without giving legal advice.
- (2) Provide generalized explanations of the law without applying it specifically to the client's case or fact pattern.
- (3) Explain options without offering legal opinions.
- (4) Review approved documents completed by the client to determine if they are complete and correct.
- (5) Review and interpret necessary background documents and offer limited explanations necessary to complete approved forms.
- (6) Provide or suggest published information about legal procedures, legal rights and obligations and materials of assistance with children's issues.
- (7) Explain court procedures without applying it specifically to the client's case.
- (8) File documents at the client's request.

The family law subcommittee also discussed whether LLLTs should be permitted to work with both parties, subject to ethics rules applicable to LLLTs.

**Discussed but not decided.**

- (1) What entity should oversee the program?
- (2) How would the program be implemented initially?
- (3) How would the initial implementation be financed?
- (4) Should legal technicians have to contribute to a client protection fund?
- (5) Should legal technicians have to maintain client trust accounts?
- (6) What entity should provide malpractice insurance?
- (7) What activities and roles should be permitted of legal technicians?
- (8) How should legal technicians with licenses from other states be treated?
- (9) How should legal technicians who have a primary office outside of Oregon be handled?
- (10) What responsibilities should legal technicians have depending on whether they are under the direction and supervision of a lawyer? Is supervision relevant?



**Source.** Legal Technicians Task Force Final Report to the Board Of Governors  
([http://bog11.homestead.com/LegalTechTF/Jan2015/Report\\_22Jan2015.pdf](http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf); <http://perma.cc/4NE3-AJK5>).

**(h) WASHINGTON**

**Title.** Limited license legal technician.

**Status.** Program in place. Initial licenses issued Spring 2015.

**Minimum education.** Associate degree. 45 credit hours of core curriculum instruction in paralegal studies. Instruction in an approved practice area for the number of credit hours determined by the regulatory board. (Currently 15 credit hours in family law, the only approved practice area.) One credit hour is 7.5 hours of instruction. Core curriculum exam and practice area exam.

**Minimum experience.** 3,000 hours of substantive law-related work experience supervised by a licensed lawyer. Acquired no more than three years before licensure and no more than three years after passing the examination.

**Administration and regulation.** Regulatory board with administrative support from the state bar association. Budget approved by the association's board of governors. Examination fee. Application fee. Background check. Character and fitness review. Oath. Annual licensing fee. Financial responsibility (Professional liability insurance). IOLTA account. 10 CLE hours per year. Rules of professional conduct. Complaint and discipline process. Privileged communications.

**Authority.** Within an approved practice area for which the technician qualifies:

- (1) Obtain relevant facts and explain the relevancy to the client.
- (2) Inform the client of procedures, including deadlines and documents that must be filed, and the anticipated course of the proceeding.
- (3) Inform the client of procedures for filing documents and service of process.
- (4) Provide the client with self-help materials prepared by a lawyer or approved by the board.
- (5) Review documents or exhibits of the opposing party and explain them to the client.
- (6) Select, complete, file and effect service of approved forms, federal forms, forms the content of which is specified by statute, or forms

prepared by a lawyer. Advise the client of the significance of the forms.

- (7) Perform legal research.
- (8) Draft legal letters and documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a lawyer.
- (9) Advise a client about other documents that may be necessary to the client's case, and explain how the additional documents may affect the client's case.
- (10) Assist the client in obtaining necessary documents or records, such as birth, death, or marriage certificates.

**Source.** Washington Rule APR 28 and implementing regulations.

(<http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians>; <http://perma.cc/RJ5W-NQU2>).

**(i) OTHER STATES**

- (1) Nearly all states have pro bono programs in which lawyers or non-lawyers offer information, advice or representation for qualified individuals.
- (2) The Connecticut Bar Association's Task Force on the Future of Legal Education and Standards of Admission issued a June 2014 report recommending the state modify its practice rules "so that nonlawyers be permitted to offer some basic legal services to the public."
- (3) The Massachusetts Bar Association voted in March 2014 to endorse the recommendations of the ABA Task Force on the Future of Legal Education, including the licensing of people other than those with law degrees.
- (4) Other states have held meetings about limited licensing but have taken no official steps as January 1, 2015.

**Source.** Robert Ambrogi, Washington. State moves around UPL, using legal technicians to help close the justice gap, ABA JOURNAL (Jan. 1, 2015, 5:50 AM),

([http://www.abajournal.com/magazine/article/washington\\_state\\_moves\\_around\\_upl\\_using\\_legal\\_technicians\\_to\\_help\\_close\\_the\\_justice\\_gap](http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap); <http://perma.cc/FL75-QKAR>).