

Licensed Paralegal Practitioners

by Justice Deno Himonas and Timothy Shea

Introduction

In his State of the Judiciary address to the Utah Legislature, Utah Supreme Court Chief Justice Matthew Durrant highlighted three initiatives recommended in three collaborative studies: indigent representation in criminal cases, pretrial release practices, and access to civil justice. In the chief justice’s words:

Now let me turn to the values I mentioned earlier – fairness, access to justice, individual rights, and public safety. Judges are in a unique position. Though we have a very limited policy role, we encounter the concrete consequences of numerous policy issues that relate to these values. I believe that with this perspective comes a responsibility to raise issues for discussion that may not otherwise be addressed. In this way, we in the judiciary serve as conveners. We bring various stakeholders together to examine these issues and to explore potential solutions to identified problems. We then usually present whatever consensus proposal there may be to you, the Legislature, for your consideration of possible action. We believe this shared process has served Utahns well.

The three initiatives are responses to difficulties faced by the judiciary, and, more important, difficulties faced by parties in the litigation process or by those whose participation is marginalized. The 2016 General Session of the Legislature considered legislation addressing the first two – indigent

representation in criminal cases and pretrial release practices. The third initiative does not require legislation and is moving forward under the supervision of the Utah Supreme Court.

In May 2015, the Utah Supreme Court appointed a task force to examine a market-based, supply-side solution to the unmet needs of litigants. The court has approved the task force’s recommendations, which are available on the court’s website, and has appointed a steering committee to implement those recommendations. See http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf. In a nutshell, the task force recommended:

- The Utah 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 paralegal practitioner in three practice areas:
 - temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change;
 - residential eviction; and
 - debt collection.
- Within an approved practice area, the court should authorize a paralegal practitioner to:
 - establish a contractual relationship with a client who is

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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;
 - 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.
- The court should establish the education requirements and regulatory requirements to qualify as a paralegal practitioner.

The recommendations describe the advanced qualifications needed for a paralegal practitioner to provide relevant legal services in response to an identified need.

Identified Need

In a contribution to *The New York Times* on June 17, 2015, Theresa Amato cites the World Justice Project’s 2015 Rule of Law Index for the point that “the United States ranks 65th [out of 102 countries] for the accessibility and affordability of its civil justice. We’re tied with Botswana, Pakistan and Uzbekistan, not far behind Moldova and Nigeria.” By all accounts the United States has a good civil justice system, scoring high in several factors and ranking twenty-first overall, but for too many people, a civil remedy is simply out of reach.

Based on American Bar Association research cited in the task force report, people do not employ lawyers for a variety of reasons. The cost of hiring a lawyer is often a factor, especially because lawyers frequently do not quote a bottom-line price for their services. Some people do not understand that recourse to the courts to solve a problem is an option. Some do not consider intervention outside of the family an appropriate solution to the problem. Some believe that self-representation, especially with help from time-to-time, will yield more satisfactory results.

District court data shows that family law, residential evictions, and debt collection are the types of cases in which the concentration of self-represented parties is highest. Whatever the reasons for not hiring a lawyer, paralegal practitioners will be offering their services to clients who largely are not currently represented by lawyers.

Relevant Legal Services

The task force built upon the work of the American Bar Association Task Force on the Future of Legal Education and the ABA Commission on the Future of Legal Services, which respectively call for and establish objectives for licensing persons other than lawyers to deliver limited legal services. The Utah task force also considered the limited license legal technician (LLLT) program from the State of Washington and document-preparation programs in Arizona, California, Louisiana, and Nevada. The Oregon State Bar has published a report with recommendations for a LLLT, and, although not as far along, California and Colorado are examining the potential of a Washington-like program.

Other than a Washington LLLT, the paraprofessionals in the other states are limited to document preparation. The spectrum of authority runs from Louisiana, which allows notaries public to draft original documents, to California, which allows legal document assistants only to record in a court-approved form what the client dictates.

The ABA Task Force on the Future of Legal Education endorses the Washington LLLT program as a positive contribution to meeting the increasing need for qualified professionals who provide limited law-related services without the oversight of a lawyer. The Washington program allows a LLLT in family law cases to advise the client about the forms and to select, complete, file, and effect service of the forms. Beyond forms, the authority of a licensed technician is limited, but it is sufficient to assist the client with the proceedings in which the forms are relevant.

The Washington program allows a LLLT to perform certain legal services under the supervision of a lawyer. Under current Utah law, these services would be allowed to be performed by any paralegal under the supervision of a lawyer, so the task force's recommendations do not extend beyond the services that a paralegal practitioner may offer directly to a client.

The authority recommended for a Utah paralegal practitioner has four focal points:

- engaging the client and determining the client's objectives;

- preparing the court-approved forms necessary to present the client's case;
- helping the client understand the other party's documents; and
- helping the client understand the court's order.

Within an approved practice area – family law, residential evictions, and debt collection – a paralegal practitioner will be authorized to enter into a contractual relationship with the client and determine the client's objectives. If there are forms to achieve the client's objectives, the paralegal practitioner will be able to advise about those forms and to assist the client in completing them. The paralegal practitioner will be able to explain documents filed by an opposing party and to represent the client in mediated negotiations with the other party. Finally, the paralegal practitioner will be authorized to explain a court order resulting from the proceedings.

“As the committee considers the finer details of regulation, it likely will find distinctions between the two professions that legitimately mean different regulations.”

A rule defining the authority of a paralegal practitioner is still a ways away, but, if a client needs legal services beyond those ultimately specified in a Utah Supreme Court rule, the client will need to hire a licensed lawyer, who might be assisted

by a traditional paralegal or by a paralegal practitioner.

Advanced Qualifications

Other than Nevada, which does not have a minimum education requirement, the other states require a high school education to qualify as a document preparer. The higher minimum qualifications of a Washington LLLT reflect that paraprofessional's wider authority and discretion: an associate's degree with forty-five credit hours of paralegal study and fifteen credit hours of advanced study plus 3,000 hours of law-related experience supervised by a lawyer.

Under current Utah law, non-lawyers in general and paralegals in particular may perform a wide range of services that are or come close to the practice of law, yet there are no minimum education or experience requirements.

Rule 14-113 of the Judicial Council Rules of Judicial Administration authorizes a paralegal to do just about anything a lawyer may do. There are conditions on the paralegal's work, but no limits. The

paralegal may perform the “substantive legal work . . . that absent . . . assistance, the attorney would perform.” Utah R. Jud. Admin. 14-113(a). The paralegal must perform the work for the lawyer, not the client. The client’s protection lies in the lawyer being accountable for the paralegal’s work.

There are no minimum requirements for a paralegal in Utah. A paralegal is anyone “qualified through education, training, or work experience, who is employed or retained by a lawyer.”

Similarly, Rule 14-802 of the Judicial Council Rules of Judicial Administration is quite liberal in what it allows anyone to do, even though those services might be considered the practice of law. Prohibited in some other jurisdictions, Utah allows anyone to “[provide] 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.” *Id.*

As much as they widen the scope of legal services by a qualified non-lawyer, the task force recommendations will also promote consumer protection by establishing reasonable minimum requirements for a paralegal practitioner. The details will be developed by an implementation steering committee, but a paralegal practitioner will be required to have 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;
- 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.

The steering committee will also recommend appropriate licensing and administrative regulations. Although the myriad rules currently regulating lawyers offer a sound starting point for regulating paralegal practitioners, the steering committee will not take a “copy and paste” approach. As the committee considers the finer details of regulation, it likely will find distinctions between the two professions that legitimately mean different regulations.

The Challenges Ahead

Building a new profession from scratch is no simple task. The task force identified in its report some of the challenges that lie ahead. The market is already saturated with lawyers, yet parties are largely self-represented in the three recommended practice areas. Can paralegal practitioners offer services at a price that will find clients while enabling a living wage? There will be administrative costs to regulating this new profession; how are those expenses paid when there are as yet no paralegal practitioners to pay them?

These are just a few of the challenges facing a nascent profession.

Next Steps

In his State of the Judiciary address, Chief Justice Durrant described the task force’s recommendations as putting Utah “on the cutting edge of innovation and public service when it comes to access to justice.” After commending the Bar and the courts for their considerable and continuing efforts to address the public’s unmet legal needs, Chief Justice Durrant recognized the remaining hard work of implementing these recommendations:

There is still much to be done, such as finalizing minimum education, certification, and licensing requirements. But we believe this new client and market-driven approach holds great promise – not as a substitute for attorneys – but as a complementary legal resource for providing meaningful assistance in specific areas where existing legal resources are inadequate and the need is great.

The Utah Supreme Court has appointed a steering committee to engage in that hard work, to take up where the task force left off. With broad representation from judges, lawyers, paralegals, educators, and administrators, the steering committee will develop the learning objectives and curriculum required of a paralegal practitioner and the method for delivering that education to students. The committee will develop the regulatory infrastructure for the program, including licensing, mentoring, continuing education, rules of professional responsibility, and discipline. And the committee will develop the measures of a successful program and the methods for gathering data.

The steering committee is projected to complete its recommendations in early 2017, making it possible for Utah to see its first paralegal practitioners by the end of next year.